

ADVANCED GCE UNIT

2576/RM

LAW

LAW OF CONTRACT SPECIAL STUDY MATERIAL

PRE-RELEASE MATERIAL FOR JUNE 2007 EXAMINATION

THURSDAY 21 JUNE 2007

Morning

Time: 1 hour 30 minutes



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- You may **not** take your previous copy of the Special Study Material into the examination.
- You may **not** take notes into the examination.

This document consists of **10** printed pages and **2** blank pages.

SOURCE MATERIALS

SOURCE 1

Extract adapted from Walker and Walker's English Legal System edited by Ward, Richard & Wragg, Amanda (2004). pp 62–63, 75–76, 34–36, 42, 218–219. By permission of Oxford University Press.

The traditional view of.....

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Details:

An extract from 'Walker and Walker's English Legal System' by Richard Ward and Amanda Wragg. ISBN: 978-0406959539

.....repercussions of law reform.

Where the words of.....

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Details:

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.....left by the legislature.

SOURCE 2

Extract adapted from the judgment of Blackburn J in *Taylor v Caldwell* [1863] 3 B & S 826

It may, we think, be safely asserted to be now English law, that in all contracts of loan of chattels or bailments, if the performance of the promise of the borrower or bailee to return the things lent or bailed, becomes impossible because it has perished, this impossibility (if not arising from the fault of the borrower or bailee from some risk which he has taken upon himself) excuses the borrower or bailee from the performance of his promise to redeliver the chattel. 5

The principle seems to us to be that, in contracts in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility of performance arising from the perishing of the person or thing shall excuse the performance. 10

In none of these cases is the promise in words other than positive, nor is there any express stipulation that the destruction of the person or thing shall excuse the performance; but that excuse is by law implied, because from the nature of the contract it is apparent that the parties contracted on the basis of the continued existence of the particular person or chattel. In the present case, looking at the whole contract, we find that the parties contracted on the basis of the continued 15

existence of the Music Hall at the time when the concerts were to be given; that being essential to their performance.

We think, therefore, that the Music Hall having ceased to exist, without fault of either party, both parties are excused.

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SOURCE 3

Extract adapted from Cheshire, Fifoot & Furmston's (2001) Law of Contract. Oxford University Press. p 583

In practice parties very.....

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An extract from 'Cheshire, Fifoot and Furmston's Law of Contract'.
ISBN: 978-0406930583

.....Ltd v Fareham UDC [1956] AC 696)

SOURCE 4

Extract adapted from the judgment of Lord Justice Vaughan Williams in
KB 740 CA

Krell v Henry [1903] 2

It is plain that English law applies the principles not only to cases where the performance of the contract becomes impossible by the cessation of existence of the thing which is the subject matter of the contract, but also to cases where the event which renders the contract incapable of performance is the cessation or non-existence of an express condition or state of things, going to the root of the contract and essential to its performance ... it is sufficient if that condition or state of things clearly appears by extrinsic evidence to have been assumed by the parties to be the foundation or basis of the contract and the event which causes the

5

impossibility is of such a character that it cannot reasonably be supposed to have been in contemplation of the contracting parties when the contract was made. I do not think that the principle is limited to cases in which the event causing the impossibility of performance is the destruction or non-existence of some thing which is the subject matter of the contract, or of some condition or state of things expressly specified as a condition of it. I think that you first have to ascertain what is the substance of the contract and then to ask the question whether that substantive contract needs for its foundation the assumption of the existence of a particular state of things. 10

Each case must be judged by its own circumstances. In each case one must ask oneself, first, what, having regard to all the circumstances, was the foundation of the contract? Secondly: was the performance of the contract prevented? And thirdly: was the event which prevented the performance of the contract of such a character that it cannot reasonably be said to have been in the contemplation of the parties at the date of the contract? If all these questions are answered in the affirmative (as I think they should be in this case) I think both parties are discharged from further performance of the contract. 15 20 25

SOURCE 5

Extract adapted from the judgment of Lord Justice Vaughan Williams in *Herne Bay Steamboat Co. v Hutton* [1903] 2 KB 683

I see nothing to differentiate this contract from a contract by which some person engaged a cab to take him on each of three days to Epsom to see the race, and for some reason, such as the spread of an infectious disease or an anticipation of a riot, the races are prohibited. In such a case it could not be said that he would be relieved of his bargain. 5

SOURCE 6

Extract adapted from *Law of Contract*. W T Major and Christine Taylor. 9th Ed. Pearson Educational. pp 258–259

Clearly the death of.....

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Details:

An extract from 'Law of Contract'. ISBN: 978-0273634348

.....cannot be legally enforceable."

SOURCE 7

Extract adapted from the judgment of Lord Wright in *Maritime National Fish Ltd v Ocean Trawlers Ltd* [1935] AC 524 PC

The essence of frustration is that it should not be due to an act or election of the party. There does not appear to be any authority which has been directly decided on this point. There is, however, a reference to the question in the speech of Lord Sumner in *Bank Line Ltd v Arthur Capel and Co.* What he says is:

“When the ship-owners were first applied to by the admiralty for a ship, they named three, of which the Quito was one, and intimated that she was the one they preferred to give up. I think it is now well settled that the principle of frustration of an adventure assumes that the frustration arises without blame or fault on either side. Reliance cannot be placed on a self-induced frustration. Indeed such conduct might give the other party the option to treat the contract as repudiated ...”

However, the point does arise in the facts now before the Board and their Lordships are of the opinion that the loss of the St Cuthbert’s licence can correctly be described as a ‘self-induced frustration’.

SOURCE 8

Extract adapted from the judgment of Lord Radcliffe in *Davis Contractors Ltd v Fareham UDC* [1956] from p 145 of ‘All England Law Reports’ (Volume 2); reproduced by permission of Reed Elsevier (UK) Limited trading as LexisNexis Butterworths.

Perhaps it would be.....

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An extract from ‘All England Law Reports’ about the *Davis Contractors Ltd v Fareham UDC* case

..... a case of frustration.

SOURCE 9

Extract adapted from *The Modern Law of Contract* ; 2003; Richard Stone. Cavendish Publishing. pp426–427

In *Avery v Bowden* (1855) 5 E & B 714.....

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Details:

An extract from 'The Modern Law of Contract' by Richard Stone.
ISBN (for 5th revised edition): 978-1859418826

.....claim for the breach.

SOURCE 10

Extract adapted from *Law of Contract* ; 2002; Paul Richards. 5th Ed. Pearson Educational. pp314–315

The effect of frustration.....

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Details:

An extract from 'Law of Contract' by Paul Richards. ISBN: 978-0582438170

.....(Frustrated Contracts) Act 1943.

SOURCE 11

Extract from the Law Reform (Frustrated Contracts) Act 1943

1 Adjustment of rights and liabilities of parties to frustrated contracts

- (1) Where a contract governed by English law has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract ... 5
- (2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged shall in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable: 10
- Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred. 15
- (3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which the last foregoing subsection applies) before the time of discharge, there shall be recoverable from him by the said other party, such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular, – 20
- (a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under the last foregoing subsection, and 25
- (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract. 30

SOURCE 12

Extract adapted from The Modern Law of Contract ; 2003; Richard Stone. Cavendish Publishing. pp 398–401

Section 1(2) of the.....

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.....by the other side.

There is, however, a ...

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.....that has been done.

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