

The Institute of Legal Executives
LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW
COMMERCIAL LAW

Time allowed: 3 hours

Each question carries a total of 25 marks

Answer FOUR only of the following EIGHT questions. This paper is divided into two sections. You MUST attempt at least ONE question from Section A and at least ONE question from Section B.

Full reasoning must be shown in answers – a yes or no answer will earn no marks.

Authorities and decided cases should be cited where appropriate.

SECTION A

1. (a) Alan is an antique dealer who specialises in porcelain. His elderly aunt has just died leaving him an oil painting, which is described in her Will as "A view of an olive grove – School of Materazzi – 17th Century". Alan has no expertise in this field and he decides to sell it from his shop, labelling it "Italian Materazzi 1600s". The painting is eventually bought for £6,000 by Marco, an Italian restaurant owner for display in his new restaurant. Marco arranges to have the picture and frame restored by Paul at a cost of £1,000. The painting is to be unveiled by an Italian international footballer, who plays for the local premiership club, as part of the official re-opening of his restaurant. Whilst the painting is being restored, a colleague of Paul's, who is a specialist in this field, declares that it is in fact a 1940s English forgery worth only about £250. Marco asks for a refund and compensation for the abortive expenses of the restaurant opening, but Alan shows him a copy of his standard terms of trade, which Marco has acknowledged by signing.

Clause 4 reads:-

"Whilst every effort is made to correctly identify merchandise, the Buyer must rely on his own enquiries and expertise. No refunds can be given by the Seller."

Advise Marco.

(15 marks)

AND

- (b) Marco has bought a high-tech lighting system on the internet, which is manufactured by a Japanese firm, but imported via a distributor Lights plc, which is based in Finland. Shortly after installation, one of the lights explodes and ignites, injuring Roberto, a chef. The local authority has insisted that Marco closes his kitchen whilst it is completely re-wired and new lighting installed, so that he suffers a substantial loss of profits.

Advise Marco and Roberto.

(10 marks)
(Total: 25 marks)

P.T.O.

2. Brian and his wife Chloe have for many years been keen fans of rock group the Transylvanian Impalers. The group have announced their farewell tour, but for tax reasons will not be playing in England. Chloe sees an advertisement in a newspaper and obtains a brochure from a company, Memorable Music Events Limited, which is offering a weekend trip to Lisbon to see the group's last ever concert on a date which coincides with the couple's silver wedding anniversary. Chloe decides to book the trip as a treat for her husband at an inclusive price of £2,100.

The brochure promised flights from their local airport, Exeter, to Lisbon; a luxury five star hotel in the heart of the city from which "dramatic views" were promised; a champagne reception on arrival; "excellent food with a wide choice" on a full board basis throughout the three nights stay; and tickets at the front of the venue.

Chloe pays the deposit and shortly afterwards is surprised to receive three separate invoices, one for accommodation, one for travel, and one for the concert, all of which she pays.

Three weeks before the concert she receives a note from Memorable Music Events Limited that the hotel has been taken over by another company which has raised all the prices and therefore there will be a supplement of a further £100 for the holiday. There is also a surcharge of a further £50 for aviation fuel. Chloe sends a further cheque for the extra amounts under protest.

The weekend is a disaster. The outward flight is delayed by six hours for unexplained reasons. In consequence they miss the champagne reception and on arrival are given the last available room at the hotel, which is small and at the back looking straight onto an industrial estate. No food is available on arrival and their first night is spoilt. The food at the hotel is very poor and no choice is offered on a basic set menu, so they eat out at an extra cost of £150.

As they go to the concert venue they see large posters in Portuguese. A helpful passerby tells them that the posters say that the concert has been cancelled due to "throat problems" suffered by Boris Scrimgeour, the group's singer and it will be re-arranged for the following weekend. No help is available to the couple and they have difficulty understanding what it said by the staff at the concert venue, who speak only Portuguese and do not offer them any refund.

Finally, their plane is again delayed so that it cannot return to Exeter "for operational reasons" and they are flown back to London Heathrow, leaving them with a further five hour journey at their own expense, which costs them £150.

Chloe's letter to Memorable Music Events Limited, which complains about these matters, leads to an unsympathetic response, which points out that they cannot be considered the supplier of the holiday for legal purposes, since it was not a "package", but each element was arranged separately. Moreover, the company insists that all the difficulties were due to circumstances beyond their control and were unforeseeable. Moreover, refunds were available, provided concert goers took their tickets there and then to the ticket office.

- (a) Discuss Chloe's rights and indicate your view on the principles on which damages might be available. **(20 marks)**

AND

- (b) Suppose Memorable Music Events Limited was declared insolvent before any legal action could be taken, but that Chloe had paid for all elements of the package on her Middlemarch Bank credit card.

Advise her.

(5 marks)
(Total: 25 marks)
P.T.O.

3. You are a trainee legal executive with Eliot and Co Middlemarch. You are consulted by the Managing Director of Tiles Unlimited, a company which specialises in the import and sale of expensive handmade Italian and Portuguese tiles to builders and property developers for incorporation into upmarket housing. Six months ago the company supplied Herbert & Co Ltd, a previously reliable customer, with a large order of tiles on the standard terms of Tiles Unlimited. No payment has been received although the credit period has long since passed and you have just been informed that Herbert & Co Ltd is in grave financial difficulty and may have appointed a receiver. The following terms appear in the contract:-

` ... 15. Payment

Payment for tiles delivered is due no later than 15 days after delivery. The buyer must pay interest on any late payment at 15% per annum above the prevailing base lending rate of Middlemarch Bank plc, such interest running even after judgment until payment in full. Failure to pay shall entitle the seller to sue for the price of the delivered goods.

16. Ownership

16.1 Ownership of tiles delivered shall not pass to the buyer until all sums due are paid by the buyer to the seller.

16.2 The buyer shall store the tiles so that they are identifiable as the seller's property and the seller is granted irrevocable licence to enter the buyer's premises to recover the tiles.

16.3 The buyer's right to possession of the tiles shall terminate if an administrator, receiver or liquidator is appointed.

17. Resale

No products supplied shall become the property of the buyer until payment has been received by the seller in full.'

Advise Tiles Unlimited of its rights in each of the following situations:-

- (a) Many of the tiles are in the warehouse of Herbert & Co Ltd still wrapped in polythene. A proportion of them are in a nearby workshop where the tiles have been prepared for incorporation into houses by a process of machining the back of the tile lightly with abrasive material, but the tiles would still have resale value.

(10 marks)

AND

- (b) Some of the tiles have been incorporated into a row of townhouses being built nearby by Herbert & Co Ltd, but it appears that the tiles would have some value if removed. The properties appear to belong to Herbert & Co Ltd.

(8 marks)

AND

- (c) It appears that Herbert & Co Ltd realised that it had ordered more tiles than it needed and sold a considerable number on at a substantial profit to Loggins plc, another builder. Half of the payment has been made by Loggins plc to Herbert & Co Ltd and is identifiable in Herbert & Co Ltd's bank account; the rest is due for payment next week.

(7 marks)

(Total: 25 marks)

P.T.O.

4. (a) Some months ago John decided to leave his employers and set up his own business working from home as a Management Consultant. To assist in his new business he bought an advanced new computer system from Kenneth's Computer Emporium for £5,000 and it was delivered to his house. He did not unpack it or set it up at that time because when his notice at work expired he planned to go on a one week computer training course so as to familiarise himself with the advanced new system.

When John handed in his notice his employer pleaded with John to stay on with him for a few months, to help cope with an influx of work. He agreed to pay John a substantially enhanced salary for a further three months. In addition he agreed to refer to John some freelance business in the future. As a result of this John deferred leaving his employer and has only now left and taken the computer training course.

On attempting to set up the system which he has purchased, he is annoyed to find that the computer casing has a large dent in it and that the computer seems not to function at all. Moreover, due to advances in technology a better system is now available for only £3,000 from a rival supplier. John notifies Kenneth's Computer Emporium that he wishes to reject the computer, but they insist that he is too late to do this. They offer to undertake repairs free of charge and insist that the dent in the casing does not affect the computer.

Advise John.

(10 marks)

AND

- (b) Suppose for this part of the question only that John had accepted the offer of repairs and returned the computer to Kenneth's Computer Emporium. After a month Kenneth informs John that his workshop has been burgled and that John's computer has been taken. John asks for compensation, but Kenneth points out that in the repair request, which John has signed, there appears the clause:-

"The Emporium accepts no liability for customers' goods stored on the premises during repair. Customers should check that their own insurance covers the situation."

Advise John.

(5 marks)

AND

- (c) Suppose that some time later John's own home suffers a serious fire due to an electrical fault causing damage to his living room, bedroom and the room which he uses as an office and destroying much of his office equipment, together with other furniture. John's home and contents are insured with Galaxy Insurance plc, but when he makes a claim the insurer points out that his insurance cover is for residential premises only and that he has failed to inform the insurer that he runs his business from home. Galaxy tells him that there would have been a substantial extra premium had he informed the company of this. Accordingly, the insurer refuses to cover any of the repair or replacement work to his home and office.

Advise John.

(10 marks)
(Total: 25 marks)

P.T.O.

SECTION B

5. (a) The Trade Descriptions Act 1968 provides a defence in criminal proceedings to a person if it can be proved that:-
- (i) The commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident, or some other cause beyond his control; and
 - (ii) That he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by any person under his control.

Discuss with reference to the decided cases the extent to which the courts have been prepared to apply this defence.

(13 marks)

AND

- (b) Critically consider the way in which the courts have been prepared to adopt an imaginative approach to:-
- (i) time orders; **and**
 - (ii) applications in respect of extortionate credit bargains;
- in relieving a consumer of onerous obligations.

(12 marks)

(Total: 25 marks)

6. (a) What are the particular rules of the law of contract relating to auction sales?

(8 marks)

AND

- (b) Critically consider the case law relating to compensation paid to commercial agents under the Commercial Agents (Council Directive) Regulations 1993. To what extent is it right to consider them "bewildering" as the Court of Appeal observed in a 1999 case?

(12 marks)

AND

- (c) Explain the doctrine of ratification in the law of agency.

(5 marks)

(Total: 25 marks)

7. "Statutory protection for the bona fide purchaser has developed in a piecemeal and haphazard fashion; and some of the relevant provisions depend not on principles of equity or justice, but on fine technicalities which have little rhyme and less reason". (Report of the Crowther Committee).

To what extent do you agree with this analysis of the law concerning the transfer of title to goods by a non-owner? Has recent statutory or case law provision clarified or simplified the law?

(25 marks)

P.T.O.

8. "The new 'description' by which unascertained goods are sold is, in my view, confined to those words in the contract which were intended by the parties to identify the kind of goods which were to be supplied, the key to section 13 is identification".

(Lord Diplock in *Ashington Piggeries v Christopher Hill Limited* (1972) AC 441.)

- (a) Explain and discuss the extent to which you agree with the above statement by reference to decided cases.

(10 marks)

AND

- (b) To what extent can the seller of goods rely upon the use of contractual terms to exclude or restrict liabilities which would otherwise arise in respect of breaches of implied terms in sections 13 and 14 of the Sale of Goods Act 1979?

(15 marks)

(Total: 25 marks)