

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

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.

Candidates may use in the examination their own unmarked copy of the designated statute book: Contract, Tort and Restitution, by Ewan McKendrick, Sweet and Maxwell.

OR

Blackstone's Statutes on Contract, Tort and Restitution, 2006-7, 17th edition, by F.D. Rose. Invigilators may carry out spot checks.

SECTION A

1. Sian wished to purchase a house in Denton. She located and was interested in buying Spitfire House. She then entered into a contract with Rowan & Hale, a firm of surveyors and valuers. In her instructions she explained to Rowan & Hale that quietness was of central importance to her. Rowan & Hale surveyed the property and valued Spitfire House at £350,000. They failed to notice or report on the high levels of noise caused by aircraft landing and taking off at an airfield three miles away from the property. Sian subsequently purchased Spitfire House. When she moved in, she was very distressed by the high levels of aircraft noise.

In order to lessen the effect of the aircraft noise, Sian decided to have her house double-glazed. She consequently entered into a contract with Holly & Fogg, a specialist double-glazing company, for the fitting of double-glazed windows to Spitfire House at a cost of £15,000. She specified a style of window that was in keeping with the house's Georgian character. The work was undertaken whilst she was on holiday. When she returned from holiday she discovered that Holly & Fogg had fitted ornate Victorian-style windows. Sian is now insisting that the Victorian-style windows should be removed and replaced by Georgian-style windows. The cost of such a removal and replacement is £25,000.

Advise Sian on:

- (a) Any claim she may have against Rowan & Hale, including the principles upon which damages will be calculated, should she prove successful;

AND

- (b) Any claim she may have against Holly & Fogg, including the principles upon which damages will be calculated, should she prove successful.

(25 marks)

P.T.O.

2. Arthur owns and runs a business that specialises in the supply of luxury sailing boats to wealthy customers.

He entered into two separate contracts with Ben, a boat builder.

The first contract was for the renovation and re-fitting of 'The Gold Crest'. The written agreement provided that Ben would complete all the work within 26 weeks of the date that he commenced work. The agreed price for the work on 'The Gold Crest' was £50,000.

The second contract was for the renovation and refitting of 'The Viper'. The written agreement provided that Ben would complete all the work within 26 weeks of the date that he commenced work. The agreed price for the work on 'The Viper' was £50,000.

Six weeks after Ben commenced work, Arthur entered into a contract with Catherine for the sale of 'The Gold Crest'.

That contract provided that Arthur should deliver 'The Gold Crest' to Catherine within 20 weeks of the date of their agreement. The contract also provided that Arthur should pay Catherine £1,000 for each and every week that he was late in delivering the vessel to her.

Ten weeks after Ben commenced work, it became clear to Arthur that Ben was not working sufficiently quickly to complete the work by the agreed date. Arthur therefore offered to pay Ben an extra £10,000 for each of the two vessels that Ben completed within the time originally agreed.

Ben consequently worked more quickly. He completed the work on each of the vessels within 26 weeks from the date he started work on the contract in question. Arthur is now refusing to pay Ben the extra £10,000 that he promised for completing work on 'The Gold Crest' on time. He is also refusing to pay Ben the extra £10,000 that he promised for completing work on 'The Viper' on time.

Advise Ben

(25 marks)

P.T.O.

3. Karl, a chef, owns and runs 'The Fat Ox', a well-known restaurant. He wished to refurbish his kitchen. He asked Emma, a salesperson for Industrial Catering Equipment Ltd ('ICE'), to visit his kitchen at 'The Fat Ox'.

After discussing his requirements for new work surfaces and ovens with Emma, she handed Karl a document entitled 'Standard Terms & Conditions of Business'.

Karl told Emma that he had no time to read such a lengthy document and asked her to explain its contents. Emma responded that the document contained ICE's sales policy. That policy was to supply good quality equipment and be fair to its customers. ICE was prepared to exchange goods or refund money where it was in the wrong but that it would not do so where equipment failed to function properly as a result of abuse or unreasonable wear and tear. Karl then completed and signed an order form for £80,000 worth of equipment.

ICE subsequently supplied and fitted new work surfaces and ovens. Karl later discovered that the ovens did not reach sufficiently high temperatures to enable food to be cooked safely and well. The work surfaces became deeply scratched with everyday use and so were difficult to keep clean.

'The Fat Ox' has consequently been unable to trade for the past four months.

When Karl approached ICE to demand that the equipment be removed and he be recompensed he was referred to the booklet 'Standard Terms & Conditions of Business', which (among other things) provided:

'1. All implied terms, whether by statute or by common law, are hereby excluded'.

'55. Liability for any breach of contract is hereby limited to the cost of the equipment purchased.'

'85. All liability for any economic loss resulting from the supply of defective equipment is hereby excluded save where that equipment is returned to ICE's factory for inspection within a period of 12 days from the breach.'

Advise Karl.

(25 marks)

P.T.O.

4. Hugh is a wholesale trader in paper goods. In January 2005 he entered into an extremely lucrative contract for the supply of high quality art and craft papers to Home Hobbies Ltd, a company which owns and runs a chain of hobby shops.

Hugh consequently needed to expand the storage capacity of his business. He approached Felicity, who owns a number of warehouses and other commercial premises. Hugh explained to Felicity that he wished to store high quality paper and that those papers were very sensitive to moisture and to dirt.

Felicity suggested that her warehouse in Silver Street would be suitable. In December 2005 Hugh and Felicity entered into a written agreement. Under that agreement Hugh was to pay Felicity £4,000 per month in rent for the warehouse in Silver Street. The duration of the agreement was three years.

In December 2006 Home Hobbies Ltd rejected paper supplied by Hugh because it had been contaminated by damp and by vermin. This caused the paper to buckle and discolour, making it unsuitable for Home Hobbies Ltd's purpose. Home Hobbies Ltd has now terminated its contract with Hugh and is seeking compensation for breach of contract.

Upon closer inspection of the warehouse in Silver Street, Hugh discovered that it is very damp and is infested with rats.

Advise Hugh as to:

- (a) any claim he may have against Felicity in contract;

AND

- (b) whether he is entitled to terminate his contract with Felicity at once.

(25 marks)

SECTION B

5. Explain and analyse cases in which the court has used means other than an examination of concepts of offer and acceptance to identify whether an agreement exists between the parties.

(25 marks)

6. With reference to decided cases, assess the extent to which clauses in restraint of trade are enforceable.

(25 marks)

7. Compare and contrast the common law action of duress with the equitable action of undue influence.

(25 marks)

8. Analyse the circumstances in which the remedy of specific performance may be available.

(25 marks)