

INSTITUTE OF LEGAL EXECUTIVES

UNIT 2 – CONTRACT LAW*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statute Book on Contract, Tort & Restitution 2010-2011 by Francis Rose, Oxford University Press.**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL**

SECTION A
(Answer at least one question from this section)

1. Critically analyse the doctrine of privity of contract and attempts by the courts and parliament to limit or exclude its operation.

(25 marks)

2. "Some clauses which I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient."

Lord Denning LJ, *Spurling v Bradshaw* [1956]

In the light of the above statement explain and analyse the common law as it applies to the provision of notice of exemption clauses.

(25 marks)

3. (a) Explain the law on implied terms.

(20 marks)

- (b) Critically evaluate the effect of implied terms upon the doctrine of freedom of contract.

(5 marks)

(Total: 25 marks)

4. Explain and analyse the following:

- (a) repudiation of contract;

(6 marks)

- (b) rescission;

(7 marks)

- (c) specific performance.

(12 marks)

(Total: 25 marks)

SECTION B

(Answer at least one question from this section)

Question 1

A year ago, Marie purchased 'Ralph's Barber Shop' ('Ralph's') from Terry. Ralph's was in a large provincial city of nine hundred thousand people. The business had many customers and enjoyed a good reputation. The purchase price included a five-year lease of the premises and the goodwill of the business.

A term of the contract of sale provided that Terry must not establish a men's barbershop or ladies' hairdressing business within five miles of Ralph's for a period of five years.

Shortly after purchasing the business Marie appointed some new staff for Ralph's. The contracts of employment that she used were for a fixed term of 12 months and provided that the employee was not to work as a barber within the city for a period of two years from the date of termination of the contract.

Marie has now discovered that Terry has set up a ladies' hairdressing business, called '22nd Century', and a men's hairdressing business, called 'Terry's – The Original Barber Shop' ('Terry's'). '22nd Century' is situated three miles from Ralph's and 'Terry's' is situated two miles from Ralph's.

David was employed by Marie as a barber at Ralph's. After 10 weeks in that employment, he quarrelled with Marie and resigned. Marie has now discovered that he is working, as a barber, at Terry's.

Advise Marie on any action she might take against Terry and David.

(25 marks)

Turn over

Question 2

Gerry is a landscape gardener. Henry owns Upton Manor, a house surrounded by gardens ('the gardens') of about 20 acres (just over eight hectares). The gardens were neglected for many years.

Two years ago Henry entered into a contract with Gerry for the restoration and improvement of the gardens for a price of £250,000, to be paid when all the work on the gardens had been completed ('the contract'). The improvements included the digging of an ornamental lake. It was a condition of the contract that the work must be completed within six months of the date of the contract.

Gerry decided that he needed a digging machine that could move at least five tonnes of soil per hour if he were to be able to carry out his contractual obligations to Henry.

Gerry visited Plant UK Ltd, a company that trades in used construction plant and machinery. He told Igor, a salesman employed by Plant UK Ltd, the nature of the work that the machine would be used for and that it must be capable of moving at least five tonnes per hour. Without checking either the vehicle documentation or promotional material Igor told Gerry that Digger ZX25 has the capacity to move eight tonnes per hour. A week later Gerry purchased the ZX25 from Plant UK Ltd.

It later transpired that the ZX25 could move only three tonnes per hour. This was made clear in the manufacturer's documentation on the ZX25. After two months Gerry realised that the ZX25's performance meant that he would be unable to complete the work on the gardens by the agreed date. He consequently hired a second ZX25, together with a driver at a cost of £1,000 per week.

Henry became concerned at Gerry's slow rate of progress. Five months after Gerry began work on the gardens Henry terminated the contract and employed another landscape gardener. Henry is now refusing to pay Gerry.

- (a) Advise Gerry on any claim(s) he may have against Plant UK Ltd for breach of contract.

(18 marks)

- (b) Advise Gerry on any claim he may have against Plant UK Ltd for negligent misrepresentation under the Misrepresentation Act 1967.

(7 marks)

(Total: 25 marks)

Question 3

Arthur is a self-employed journalist who specialises in financial matters. He has written articles for 'The Financial Standard' ('FS'), a newspaper, for a number of years.

Last year, at a dinner party, Arthur learned from his cousin, Charles, a director of Prosperity Bank ('the Bank'), that the Bank was in difficulties and several of its directors were being investigated for fraud.

The next day Arthur wrote a short article about the Bank and its problems and sent it to the City Editor of FS. FS had not requested the article from Arthur. However, in previous dealings FS had paid Arthur £1,000 for such unsolicited articles.

Two days after Arthur sent his article to FS he received an email from its City Editor, addressed to freelance contributors to the newspaper, containing an offer of £15,000 for an article on the affairs of the Bank and its directors.

Seven days after the City Editor's email FS published Arthur's article.

FS is now denying the existence of a contract with Arthur and is refusing to pay him.

Advise Arthur on whether he has a valid contract with FS.

(Do **not** consider the law of copyright, confidence or privacy in your answer.)

(25 marks)

Turn over

Question 4

Donald was an accountant who had lodged with his elderly landlady, Enid, for more than 15 years. They had a friendly and close relationship, which included Donald taking care of Enid's garden and advising her on her investments. Enid, for her part, took care of Donald's laundry and cared for him when he was ill.

Donald's accountancy practice was failing. He had few assets apart from his business. He needed £250,000 to help him solve the problems with his practice. He sought a loan for that amount from the Wyvern District Bank. Wyvern District Bank refused Donald a loan because he lacked both sufficient income and assets against which the loan might be secured.

Donald then asked Enid to use her house to provide security for a loan. When she refused Donald cried and sulked for some days. He then said that he would have to leave Enid's house if she did not help him. Enid then agreed to help Donald.

Donald and Enid made an appointment with the manager of the Wyvern District Bank, who saw Donald and Enid together. They explained to him the nature of their relationship. The manager said to Enid that he assumed that a woman of her age and experience was familiar with the dangers of using her home as security for such a loan. The manager then granted the loan, secured on Enid's house. Donald has now taken the loan money and disappeared. Donald has made no repayments.

Wyvern District Bank is seeking possession of Enid's house.

Advise Enid on the possibility of having her agreement with Wyvern District Bank set aside on the ground of undue influence.

(25 marks)

End of Examination Paper

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