

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 Statutes on Contract, Tort & Restitution 2010-11, by Francis Rose, Oxford University Press.**
- Candidates must comply 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)

Question 1

Analyse the court's use of rebuttable presumptions when dealing with disputes concerning intention to create legal relations.

(25 marks)

Question 2

Explain and analyse the concepts of offer and acceptance and the court's use of them when deciding whether there is agreement between possible parties to a contract.

(25 marks)

Question 3

Actual undue influence is '... some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating and generally, though not always, some personal advantage obtained by the guilty party.'

Lindley LJ, *Allcard v Skinner* (1887)

(a) Analyse the meaning of Lindley LJ's statement and, using decided cases, provide examples of the kind of conduct that has been held to amount to undue influence.

(10 marks)

(b) Explain and analyse the kind of conduct that might lead to a successful plea of duress and distinguish it from the conduct described in Lindley LJ's statement above.

(15 marks)

(Total: 25 marks)

Question 4

Analyse the policy considerations which underpin the common law on covenants in restraint of trade and their practical influence upon the extent to which clauses in restraint of trade are enforceable.

(25 marks)

SECTION B
(Answer at least ONE question from this section)

Question 1

Imran is a potter who makes high quality porcelain dinner services. He entered into a contract for the supply of dinner services with Esther, who owns and runs a shop that specialises in retailing unusual and high value china.

The duration of the contract is five years. The contract contains the following provision:

'Imran shall supply a minimum of ten dinner services per month throughout the duration of the contract.'

In the first year of the contract Imran supplied an average of ten dinner services per month. That is, in some months he supplied fewer services than were stipulated in the contract but in other months he supplied more dinner services than were stipulated.

In the second year of the contract Imran only managed to supply one dinner service in the first three months of the year.

Esther consequently wrote to Imran stating:

'As you are in breach of a condition of our contract, I hereby exercise my right to terminate our agreement.'

The day before he received Esther's letter, Imran purchased, at great expense, new equipment that he intended to help him fulfil his obligation to Esther.

Advise Imran.

(25 marks)

Turn over

Question 2

Magdalene inherited a painting by Alfred Wallace from her grandmother.

She took the painting to Oscar, an art dealer. Oscar told Magdalene that the market for such paintings was very limited, that he did 'not know where to sell such a painting' and that he 'would be stuck with it' in his shop for years to come. Oscar offered £1,000 for the painting. Magdalene, who was completely ignorant of the painting's value, accepted Oscar's offer.

A number of Wallace paintings of similar size and quality were recently sold at auction for more than £20,000 each. When Magdalene left his shop Oscar telephoned Nicholas, a specialist dealer in 20th Century paintings, and told him: 'I've an excellent Wallace that I'm prepared to sell cheaply for a quick sale'. Nicholas later inspected the painting and after some negotiation paid Oscar £15,000 for it.

Magdalene has now discovered that the painting that she sold to Oscar for £1,000 is on sale in Nicholas's showroom for £25,000.

Advise Magdalene of any claim she may have against Oscar.

(25 marks)

Question 3

Arthur owns and runs a property development business. Busy Ben Ltd ('BB'), a company that trades as a supplier of carpentry and joinery services. Arthur entered into two separate contracts with BB.

The January Contract – 'The Grange'

The first contract was entered into in January (the 'January Contract') for the supply and fitting of new stairs and floors to 'The Grange', a house that Arthur was renovating. The price agreed was £26,000. The contract provided that BB would complete all work within 26 weeks of entering into the contract.

Six weeks later Arthur entered into a contract with Catherine for the granting of a 25 year lease of 'The Grange'. Catherine was to obtain possession 20 weeks from the date of this contract. Arthur was subject to a penalty of £1,000 per week for each week thereafter that Catherine was unable to take possession.

In April (i.e. 10 weeks after work commenced), it became clear that BB was not working sufficiently quickly to complete the work in the time agreed in the January Contract. Arthur therefore promised to pay BB an extra £5,000 if performance was complete by the date provided in the January Contract.

BB consequently worked quicker and completed the work on time.

The March Contract – 'The Old Rectory'

The second contract between Arthur and BB was entered into in March (the 'March Contract'). It provided that BB supply and fit six new kitchens to 'The Old Rectory', which Arthur was converting into flats. The price agreed was £36,000. The time agreed for completion of the work was 26 weeks from the date of the March Contract.

Arthur later decided that BB was, again, working too slowly to complete the work within the agreed time so he promised to pay BB a further £15,000 provided the work was completed within the time agreed. BB completed the work on time.

Arthur subsequently discovered that as soon as he promised to pay extra to ensure compliance with the January Contract, BB withdrew all its workers from the March Contract and put them to work on a contract for another customer. He believes that this was an act of fraud, intended to cheat him of the £15,000 extra that he had promised to pay. He is now refusing to honour either of his promises to pay BB extra money.

Advise Arthur on whether:

- (a) BB can enforce his promise to pay an extra £5,000 for completing the work on the January Contract within the time originally agreed.

(18 marks)

- (b) BB can enforce his promise to pay an extra £15,000 for completing the work on the March Contract within the time originally agreed.

(7 marks)

(Total: 25 marks)

Question 4

Grand Union Leisure Boats Ltd ('GULB') is a company that operates a boat hire business, specialising in the provision of vintage canal barges to members of the public. The minimum price for the hire of one of GULB's barges is £800 per week. In 'high season' (June, July and August) the price is £2000 per week.

Manchester Marine Engineers Ltd ('MME') is a company that trades as a boat builder and repairer. It is one of the very few companies whose employees have the skills to restore and adapt very old vessels to a condition where they may be used by members of the general public.

In November 2009 GULB purchased the Broughton Lilly ('the barge') with the intention that it should be renovated and used in GULB's business. Later in November 2009 GULB signed MME's standard form contract for the renovation and alteration of the barge.

The contract provided that work on the barge commence in January 2010 and be finished by April 2010. The contract also provided:

- '17. All implied terms, whether by statute or by common law, are hereby excluded.'
- '55. Liability for any breach of contract is hereby limited to £10,000.'
- '85. All liability for any economic loss resulting from defective workmanship is hereby excluded save where that equipment is returned to MME's yard for inspection within a period of 10 days from the breach of contract or GULB becoming aware of the breach.'

MME did not complete the work on the barge until October 2010, forcing GULB to turn away business. In November 2010 the barge sank whilst moored at GULB's Marina: water had seeped into the vessel because timbers replaced by MME in the renovation had not been fitted sufficiently tightly.

GULB was unable to raise the barge from the bottom of the canal for 10 days. MME's yard is approximately 200 miles from GULB's Marina. The cost of transporting the Broughton Lilly to MME's yard would be £10,000.

Advise GULB on whether MME's exemption clauses are likely to be effective.

(25 marks)

End of Examination Paper

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