

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 2011-12, by Francis Rose, Oxford University Press.**
- Candidates must comply with 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 PRACTICE**

SECTION A

(Answer at least ONE question from this section)

Question 1

- (a) Compare and contrast what the claimant must establish to succeed in a claim for breach of contract with what must be established to succeed in an action in misrepresentation.
(8 marks)
- (b) Contrast the rules of remoteness of damage in contract with rules of remoteness of damage in misrepresentation.
(8 marks)
- (c) Compare and contrast the remedies available to the successful claimant in breach of contract with those available to the successful claimant in misrepresentation.
(9 marks)

(Total: 25 marks)

Question 2

Explain the equitable remedy of specific performance and critically analyse the bars to a claimant's success.

(25 marks)

Question 3

- (a) Explain and critically analyse the 'business efficacy test' and the 'officious bystander test' and their use by the courts in the implying of terms.
(12 marks)
- (b) Assess the impact of common law and statutory mechanisms for the implying of terms upon the parties' freedom to decide upon the content of a contract.
(13 marks)

(Total: 25 marks)

Question 4

Critically analyse the law governing whether the performance of an existing duty can amount to sufficient consideration.

(25 marks)

SECTION B**(Answer at least ONE question from this section)****Question 1**

'Don the Mantle' ('DM') is a well-known band of musicians. 'The Angry Peddler' ('AP') is a limited company that trades as a promoter of musical events.

In October 2010 DM entered into a written contract with AP, which provided that, in June 2011, DM should perform at 'The Brixham Bash', an annual music festival organised and managed by AP. In return AP agreed to pay DM a fee of £20,000 together with 3% of the gross revenue on tickets sold for the June 2011 festival. In previous years 'The Brixham Bash' had been attended by about 20,000 people, who had paid, on average, £100 per ticket.

DM hoped that 'The Brixham Bash' would promote DM to a wider audience and so lead to increased sales of their music and associated merchandise.

By May 2011 only 10,000 tickets had been sold for the 'The Brixham Bash'. AP decided that ticket sales were too poor to make the festival commercially viable. AP therefore cancelled 'The Brixham Bash' for 2011.

Advise DM on:

- (a) any claim it may have against AP

(8 marks)

- (b) how compensation may be measured if DM is successful in its claim.

(17 marks)

(Total: 25 marks)

Turn over

Question 2

Shirley owns and runs Newton's, a long established and world famous firm of specialist dealers in 18th century antique silver tableware, which trades from premises in central London.

In 2009, Shirley employed Roland to value, buy and sell antique silver. Whilst at Newton's Roland's dealings were exclusively with members of the antique trade. He had no contact with members of the general public. The terms of Roland's written contract of employment included the following:

- (i) Roland shall neither take up employment nor engage in the antique silver trade in Greater London for a period of 2 years from the date of the termination of his employment
- (ii) Roland shall not engage in the antique jewellery trade in Greater London for a period of 2 years from the date of the termination of his employment

Six months ago Roland resigned his job with Newton's. He has now set up his own shop, The London Antique Silver and Jewellery Shop, in the same street as that in which Newton's has its premises. Roland's new business deals in all kinds of antique silver and jewellery.

Advise Shirley on any action in contract she might pursue against Roland.

(25 marks)

Question 3

Stuart owned and ran a small company that specialised in the purchase, renovating and customising of classic cars. He lived with his wife and his two young children.

Thomas is Stuart's 80 year old, widowed father. Thomas is a former commercial lawyer, who retired at the age of 50. Since then he has taken no interest in the law and has devoted himself to his hobbies of playing chess and studying philosophy. Thomas is physically frail but mentally alert. Until her sudden death two years ago, Thomas relied upon his daughter, Ursula, for company and domestic care. He is now lonely and feels isolated.

Both Stuart and Thomas are customers of Southern Counties District Bank ('SCDB').

Tired of both his business and family life, Stuart sought a loan for £500,000 from the SCDB in order to finance a new life in South America. He told SCDB that the loan was needed to invest in new equipment for his business.

When SCDB refused to agree to Stuart's request, he proposed to secure the loan by way of a mortgage on Thomas's house.

When Thomas later refused to agree to this proposal, Stuart said: 'Then you will never see me again and I'll make sure that you never see your grandchildren ever again.'

Thomas then agreed to the transaction.

Later, Stuart and Thomas (together) saw a representative of SCDB, who proceeded to grant a loan of £500,000 to Stuart, secured by way of a mortgage on Thomas's house.

Stuart later withdrew the £500,000 from his account and disappeared. No attempt was made to repay any of the loan to SCDB. SCDB is now seeking possession of Thomas's house.

Advise Thomas on the possibility of the court setting aside his agreement with SCDB on the ground of undue influence.

(25 marks)

Turn over

Question 4

Alfie wished to promote 'Moonbeams', a nightclub that he had recently opened in the centre of Manchester. As part of this promotional campaign, he placed an advertisement in the local press and on local commercial radio stations:-

'DANCING ON MOONBEAMS!
Opening Night Celebration
Dance Marathon Competition
Start to dance at 10.00 pm
Keep dancing until at least 3.00am
And you will win £1,000
All welcome – all can win!'

As a special introductory offer the cost of entering Moonbeams on the opening night was £1.

Viola flew into Manchester from Rome on the afternoon of the Opening Night Celebration. She therefore neither read Alfie's advertisement nor heard it on local radio. Her boyfriend, Andreas, asked her to go to Moonbeams with him. Viola accepted his invitation. She was so pleased at the prospect of an evening dancing with her boyfriend that she bought the tickets to enter the club. Viola was such an enthusiastic dancer that she danced from 10.00 pm until 6.00 am.

Willow, a university student, heard Alfie's advertisement on a local radio station and, being short of money, decided to accept the offer to win £1,000. She went to Moonbeams, paid for her ticket to enter, and began dancing at 10.00 pm. She was still dancing at midnight, when Alfie made an announcement, over the club's public address system, that the Dance Marathon was cancelled and no prizes would be given. Willow nevertheless kept dancing, and continued to do so until 3.30 am.

Xiang read Alfie's advertisement in a local paper and decided to accept the offer to win £1,000 by dancing from 10.00pm until 3.00am. She went to Moonbeams, paid for her ticket to enter, but soon after she started to dance at 10.00pm she was approached by a member of Alfie's security staff and told that she 'might as well not bother because no reward would be paid'. Xiang went home at 10.15pm.

Advise Alfie on his possible contractual liability to Viola, Willow and Xiang.

(25 marks)

End of Examination Paper

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