



THE CHARTERED 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 2013-14, 24th edition, Francis Rose, Oxford University Press 2013.**
- Candidates must comply with the CILEx 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 ballpoint 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 CILEx 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)

1. Explain and critically analyse:

- (a) what the Claimant must demonstrate in order to succeed in a claim for substantial damages for breach of contract.

(13 marks)

- (b) the courts' use of 'expectation loss' and 'reliance loss' when quantifying damages for breach of contract.

(12 marks)

(Total: 25 marks)

2. 'The doctrine of restraint of trade is one to be applied to factual situations with a broad and flexible rule of reason.'

Richards: Law of Contract.

Explain and analyse the law governing restraint of trade and its application by the courts to factual situations.

(25 marks)

3. Explain the meaning of 'anticipatory breach of contract' and critically analyse the remedies available to the innocent party when such a breach occurs.

(25 marks)

4. Explain and analyse the following statements:

- (a) 'Consideration may be executed or executory but not past.'

(18 marks)

- (b) 'Consideration must move from the promisee but not necessarily to the promisor.'

(7 marks)

(Total: 25 marks)

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

Question 1

Printo Ltd ('Printo') is a company that specialises in the supply and maintenance of office reprographic machinery. Smith & Co LLP ('Smith') is a firm of architects.

On 1st October, Printo's representative, John, attended a meeting at the offices of Smith to consider Smith's requirements for such machinery. At that meeting John discussed with Arthur, Smith's office manager, the Diamond ZX and the Printo Desk Top.

The Diamond ZX

John explained that the Diamond ZX was Printo's latest product. He said that it was the fastest and most economical machine of its class on the market. It could reproduce drawings of up to two square metres with outstanding clarity and precision. It was not available for sale but on a lease-only basis.

The Printo Desk Top

John explained that the Printo Desk Top was the most reliable printer of small documents on the market. European and American consumer research organisations had recognised it as the most reliable printer on the market.

At a second meeting, held on 21st October, Smith entered into a contract with Printo for the leasing of a Diamond ZX for a period of five years at a cost of £12,000 per annum. Before signing the contract on behalf of Smith, Arthur told John that the Diamond ZX capacity to copy large drawings was very attractive to Smith.

On the same day, Smith entered into a second contract with Printo for the purchase of 25 Printo Desk Top machines at a cost of £5,000 each. Arthur handed John a cheque for that amount, drawn on Smith's account.

In fact the Diamond ZX is slow, expensive to run and can copy drawings of only one square metre.

In the two months following the purchase of the Printo Desk Top machines 20 of the 25 machines broke down and it has not proved possible to repair them.

Smith now wishes to obtain damages and sever all business connections with Printo.

Advise Smith on the following:

- (a) any action based on breach of contract it may take against Printo in respect of the Diamond ZX's performance;

(12 Marks)

- (b) any claim in misrepresentation it may bring against Printo in respect of the performance of the Printo Desk Top machines' performance.

(13 Marks)

(Total: 25 Marks)

Turn over

Question 2

On Monday 1st May, an advertisement appeared in a newspaper called 'Money Times'. It advertised a sale of shares in Goldspec plc. ('Goldspec'), a mining company. Daria saw the advertisement on the day of its publication. She immediately completed the application form contained in the advertisement, and posted her request for 10,000 shares at £1 per share. Together with the application form, she enclosed her cheque for £10,000. Daria's application form and cheque were received by Simon, Goldspec's company secretary, on Wednesday 3rd May. Simon sent the share certificates by post to Daria on the same morning.

During the night of Monday 1st May, Daria began to have doubts about the wisdom of her purchase. On Tuesday 2nd May, she sent a letter to Goldspec's company secretary, withdrawing her offer to purchase the shares.

On Thursday 4th May, it was reported in the press that Goldspec had discovered a major new seam of gold in one of its South African mines. That evening, Simon attempted to telephone Daria to inform her that Goldspec no longer wanted to accept her application for the purchase of shares. Daria was not available and so Simon left a message on her telephone answering machine, stating that Goldspec withdrew its acceptance of her application and that the company required her to return the share certificates as soon as she received them.

Daria heard about Goldspec's discovery of a new seam of gold on the 6 o'clock news that evening. She consequently decided to proceed with the purchase of the shares.

Daria's letter purporting to revoke her offer of 1st May was received by Simon on Friday 5th May at 9.00 am. At 10.00 am (on Friday) Daria received her share certificates in the post. At 10.30 am she heard Simon's demand for the return of the share certificates on her telephone answering machine.

Advise Daria as to whether she is entitled to keep the 10,000 Goldspec shares.

(25 marks)

Question 3

Gerald wished to celebrate his silver wedding anniversary by treating himself and his wife, Agnes, to a holiday. His impaired vision meant that he was unable to drive so he went to the office of Byways Limousines Ltd ('Byways'), a company that specialises in the hire of luxury cars.

Gerald entered into a contract with Byways for the hire of a Lexis car together with a driver for a period of two weeks at a cost of £2,500.

As he was leaving Byways' office Gerald was handed an envelope containing brochures recommending various hotels. The envelope also contained a sheet of paper headed 'Terms and Conditions of Hire' on which was written, among other things, the following:

- (i) Neither the company nor its employees or agents shall be liable for acts or omissions that occasion injury to clients or damage to or loss of their property, howsoever caused.
- (ii) Any liability of Byways, its employees or agents is limited to £100.
- (iii) A person who is not a party to this contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this contract. This clause does not affect any rights or remedies of any person which exists or is available otherwise than pursuant to that Act.

On the fourth day of Gerald and Agnes' holiday the car in which they were travelling left the road and crashed into a stone wall. This accident was caused by the carelessness of William, a driver employed by Byways.

The Lexis car was rendered incapable of continuing with the tour. Both Gerald and Agnes decided that they had lost confidence in William's driving abilities and consequently in Byways. They abandoned their holiday and returned home the same day.

In the accident, Gerald suffered a broken collarbone and cuts and bruises. Both Gerald and Agnes suffered damage to their luggage and clothing. They were both very disappointed that their holiday was cut short and had ended in such an unsatisfactory manner.

Advise Gerald and Agnes on any claim they might bring against Byways in breach of contract.

(25 Marks)

Turn over

Question 4

Mary is a designer and maker of wedding dresses. In February, she was approached by Boris, who asked her if she would make a wedding dress for his daughter, Sophia's, wedding.

In March, Mary had further discussions with Boris and with Sophia, who stipulated that they required particular silk fabrics and lace that could only be obtained from Italy. Mary pointed out that the materials in question were both unusual and very expensive. Boris responded that the cost was unimportant and that he wanted Sophia to have the dress she wanted for her wedding.

Mary and Boris then entered into a contract which provided that Mary would design and make a wedding dress to the requirements stipulated by Boris and Sophia for Sophia's wedding on 10th October. The price agreed was £10,000. Boris paid Mary a deposit of £4,000.

Mary obtained the fabrics and designed and made the dress. An appointment was made with Sophia for the afternoon of 25th September for a final fitting of the dress. On the morning of 25th September, Boris telephoned Mary to say that Sophia's fiancé had been killed in a car accident and so there would be no wedding. Therefore, the dress was no longer required.

Mary is now demanding that Boris pay the balance of the full contract price for the dress. Boris is refusing to pay and is demanding the return of his deposit.

Advise Mary.

(25 Marks)

End of Examination Paper

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