

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For the following qualifications :-

B.Sc.

ES2030: Law I

COURSE CODE : **ENVS2030**

UNIT VALUE : **0.50**

DATE : **24-APR-02**

TIME : **10.00**

TIME ALLOWED : **3 hours 15 minutes**

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ENVS2030 – LAW I

ANSWER FOUR QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. “The Construction (Design and Management) Regulations 1994 gave effect in Great Britain to the EC Temporary or Mobile Worksites Directive 92/57/EEC relating to the minimum safety and health requirements at temporary or mobile construction sites. They strengthen considerably the legal requirements relating to the management and control of health and safety in construction” V.J. Davies & K.Tomasin Construction Safety Handbook, 2nd edition 1996, Thomas Telford pages 20/21.

Discuss this statement.

(25 marks)

2.

- a) A valid contract gives the parties rights and duties, which are enforceable in the courts. Explain the main elements necessary for a valid binding contract.

(10 marks)

- b) Contracts are usually arrived at by one party proposing terms and the other party agreeing to them, it should not introduce new proposals or stipulations. However in practice, construction industry organisations may try to exploit the process of offer and acceptance within the negotiations so as to contract on their own standard terms. The result is that it is frequently difficult to decide at which precise moment the parties have reached agreement.

Discuss this statement using case law to illustrate and support your answer.

(15 marks)

3.

- a) Property development also involves the construction of new road systems to serve the buildings. In such circumstances, the developer requires these roads to be adopted by the Highways Authority so that they can be maintained at the public expense. Explain the adoption procedures.

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(9 marks)

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- b) The method statements and the construction health and safety plans show that a contractor developing a major commercial building on a restricted city centre site cannot undertake the construction work effectively and safely without taking the following actions:
- i) depositing builders skips on the road to allow the removal of building rubbish.
 - ii) Erecting external scaffolding, which partly obstructs the pavement.
 - iii) Depositing pallets of building materials on the road
 - iv) Erecting a hoarding around the construction site to protect the public from both demolition and construction operations.

Discuss the legal position in relation to these required actions.

(16 marks)

4.

- a) Most building contracts provide that a contractor who is guilty of a failure to complete the contract works by the contractual completion date pay an amount designed as liquidated and ascertained damages (LAD's). In enforcing such damages, the courts have always insisted that these damages should not be seen as a penalty. However, this strict traditional approach may be changing as illustrated by the case *Phillips Hong Kong Ltd v Attorney General of Hong Kong* (1993) 61 BLR 41.

Explain why building contracts contain such a LAD clause, consider the case law underpinning the courts traditional approach towards LAD's and evaluate the current position as illustrated by the Phillips case.

(13 marks)

- b) Design and Build Construction Ltd is building an insitu reinforced concrete water tower. The supporting structure is being constructed on a continuous 24 hours day/7 days a week basis using a slip form moving shutter. All tools and equipment required for this construction are electrically powered and Design and Build Construction Ltd has arranged accordingly the installation of a temporary mains power supply from Major Power Supplies PLC.

As a result of a major failure at the power generation plant the power supply fails causing Design and Build Construction Ltd substantial rectification costs as well as acceleration costs in order to avoid contract completion delays. Design and Build Construction Ltd has now submitted a claim to Major Power Supplies PLC for the interruption of the power supplies and the rectification and acceleration costs.

Advise the parties of the legal position supporting this advice with case law as appropriate.

(12 marks)

5. The law relating to Unfair Dismissal requires employers to act properly in their decisions and procedures when dismissing employees. Some employers argue that the law operates to their disadvantage making it impossible to dismiss poor employees. Is this true?

(25 marks)

6. **Read the attached Law Report reproduced with the permission of The Times Newspaper and answer the questions below.**

- a) Classify this case as civil or criminal and explain the factors which lead you to your conclusion.

(8 marks)

- b) Identify the legal issue in dispute and the decision of the court. Do you consider the decision correct in law and for the parties involved?

(10 marks)

- c) Bert and Bill, drivers of the numbers 59 and 203 buses, were racing back to the depot in order to obtain the best parking place for their buses. Bert swung widely at the depot entrance and collided with Tim, a fellow employee, leaving work on his bike. The Bus Company had given repeated warning to drivers entering the depot to drive slowly and carefully. Advise Tim.

(7 marks)

LAW REPORT – JUNE 6 1973 - COURT OF APPEAL

“LONDON TRANSPORT NOT LIABLE FOR CONDUCTOR’S DRIVING”

IQBAL -V- LONDON TRANSPORT EXECUTIVE

Before Lord Justice Megaw, Lord Justice Buckley and Lord Justice Orr.

The London Transport Executive were held not to be vicariously liable for the negligence of a bus conductor while driving a bus in one of their garages when conductors were expressly prohibited from driving buses.

Their Lordships dismissed an appeal by the plaintiff, Mr Mohammad Iqbal, a bus driver, of Tirenay Road, Streatham Hill, from the judgement of Mr Justice Brabin in December, dismissing his action for damages for personal injuries sustained when he was crushed between the rear of his own bus and the front of another bus which his conductor was attempting to move in order to enable him to get his own bus out of the garage.

Mr Patrick Mayhew, QC, and Mr Hugh Carlisle for the plaintiff; Mr H Tudor-Evans, QC, and Mr Jeremy Wingate-Saul for the defendants.

LORD JUSTICE MEGAW said that the plaintiff was employed by the defendants as a bus driver, working from their Streatham garage. The accident had happened in the garage. The plaintiff had been standing at the back of his own bus, which he was going to take out to drive on its normal service. Whilst so standing, he was struck and crushed between its rear and the front of another bus. Fortunately his injuries, although unpleasant, were not as grave as some which came before the courts.

The accident had happened because the conductor of the plaintiff’s bus, a Mr Carberry, had got into the other bus, and, not knowing how to drive it, never having driven a bus before, he started it, could not stop it and crushed the plaintiff. There was no doubt, and it was fully accepted, that Mr Carberry was forbidden by the defendants to drive buses in any circumstances. That prohibition had been conveyed to him and made clear to him on many occasions, and he was well aware that he was so forbidden.

The question was whether; despite that prohibition, in doing what he did he was acting within the scope of his employment so as to make the defendants vicariously liable for his unquestionably negligent act.

The accident had occurred at about 7.05 am just before the bus was to go out on its first run. The plaintiff had found that his bus could not be moved until the other bus had been moved, because the other bus was parked directly at its rear. He had therefore asked, or told Mr Carberry to get someone from the engineering department to move the other bus. No doubt that was a perfectly proper request or instruction. There were several engineers available who were entitled to drive the other bus. But, for some reason best known to himself, Mr Carberry had tried to drive it himself.

The defendants' garage manager, Mr Sinden, had given evidence of a number of circulars which had been put on the notice board at the garage which included express instructions that "In no circumstances is a conductor allowed to drive a bus". The defendants' rulebook was also clear and specific. In cross-examination, Mr Sinden had agreed that it was part of the conductor's "overall job to co-operate with the driver in getting the bus out on to the road".

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END OF PAPER

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