

**UNIVERSITY COLLEGE LONDON**

University of London

**EXAMINATION FOR INTERNAL STUDENTS**

For The Following Qualification:–

*LL.B.*

**LL.B. Part II: Commercial Law**

**COURSE CODE : LAWSII08**

**DATE : 19-MAY-06**

**TIME : 10.00**

**TIME ALLOWED : 3 Hours 15 Minutes**

## COMMERCIAL LAW

Answer **FOUR** questions.

1. “It is a vital feature of English Commercial Law that it provides parties with certainty and the ability to calculate commercial risks.”

In relation to materials studied in this course, explain whether you agree or disagree with this statement.

2. Montagu Ltd (“Montagu”) trades in fresh fruit and vegetables and has a board of directors consisting of Romeo, Juliet and Tybalt. Romeo is appointed managing director of Montagu Ltd, but he is not permitted to undertake any actions involving expenditure above £5,000 on behalf of the company without the consent of a majority of the directors.

On 1 January, Lawrence contacts Romeo offering to sell Montagu a consignment of fruit for £12,000. This is well below the normal wholesale price, but Lawrence is in financial difficulties and wants a quick deal. Romeo says, “Can you wait a bit. I need to think about this.” Lawrence replies, “I’ll give you two hours, but I need a deal, so after that time I’ll go elsewhere.” Romeo is unable to contact the other directors, so he goes back to Lawrence and agrees to buy. A brief contract of sale is signed by Romeo, “Romeo, Managing Director, Montagu Ltd”.

On 2 January, Benvolio offers to sell Romeo a consignment of vegetables for £8,000. Romeo decides to buy them without bothering to consult his fellow directors because he believes they would agree to the purchase. The next day, Benvolio meets Juliet, who, on hearing of the deal says, “He had no authority to do that. I will have to talk to the other directors and I’ll tell you tomorrow if we are prepared to go ahead.” Later that same day and before Juliet has contacted Benvolio, Capulet offers Benvolio £10,000 for the vegetables. Benvolio decides to accept and writes to Juliet, “Since Romeo acted without authority, I am withdrawing my offer.”

On 8 January, at the next board meeting the directors decide that they want Benvolio’s vegetables, but they do not want Lawrence’s fruit.

Discuss Montagu’s legal position.

**TURN OVER**

3. “As a contract is constituted by the concurrence of two or more persons and by their agreement to the same terms, there is an anomaly in holding one person bound to another of whom he knows nothing and with whom he did not, in fact, intend to contract.” (Lord Lindley in *Keighley, Maxsted & Co v. Durant* (1901))

Discuss this proposition in the context of the law of agency.

4. Discuss the view expressed by Willes J in *Hare v Henty* (1861) that a person “who employs a banker is bound by the usage of bankers”.
5. Hamlet opens an account with Toytown Bank. He is issued with a cheque book and a credit card.

Hamlet decides to buy a picture at the Royal Academy summer show. The Royal Academy ask him to send by post a cheque for £5,000 payable to “RA”, which he does. The cheque is stolen in the post and is paid into a false account in the name of “R.A. Frost” at Othello Bank in Turkey. Othello Bank sends the cheque to Macbeth Bank, which is a member of the London clearing system, and the cheque is subsequently debited to Hamlet’s account. Before the cheque is debited to Hamlet’s account, the Royal Academy contact Hamlet to tell him that the cheque has not arrived. He issues a new cheque, but does not tell his bank about the missing cheque.

Hamlet uses his credit card in a shop. As he is typing his PIN, Gertrude looks over his shoulder. She follows him and steals the credit card from his pocket. She buys goods costing £1,000 for which she pays with the card using the PIN that she saw Hamlet type.

Discuss the legal issues raised by these facts.

6. Answer **EITHER** (a) **OR** (b)

(a) Discuss the purpose of non-assignment clauses, their effectiveness and the nature of the controversy surrounding them.

**OR**

(b) “The assignment of rights under a contract does not affect the identity of the parties to that contract and does not make the assignee a party to that contract.”

Discuss.

**CONTINUED**

7. Norsk Lumber (“Norsk”) is a major Norwegian dealer in timber products. It enters into the following contracts:
- (i) Norsk agrees to sell birch standards to Wilkinson Products (“Wilkinson”). The contract calls for payment by letter of credit. At Wilkinson’s request, a letter of credit is issued by the Edinburgh Bank and confirmed by the Oslo Bank. When Norsk presents shipping documents for payment to the Oslo Bank, the bank rejects the documents on the ground that a customs certificate is a photocopy. Subsequently, Norsk presents again the documents, this time with an original customs certificate. The Oslo Bank, however, rejects the documents again, after referring the matter to Wilkinson. This time, the Oslo Bank cites a discrepancy in the bill of lading, which refers to “white birch standards” instead of, as called for by the letter of credit, “birch standards”. It is known in the timber trade that white birch standards and birch standards are one and the same thing.
  - (ii) Norsk is the seller of a quantity of cedar roof tiles to Roof Products (“Roof”). Shipment is to take place in May from a Norwegian port. Norsk was not responsible for shipping the goods but bought them from another company that did. Before Norsk tenders the shipping documents to the confirming bank, the Oslo Bank, it discovers that the goods were shipped on 2 June and the date of the bill of lading fraudulently altered by someone to 31 May.

Advise Norsk in respect of *both* of the above contracts.

8. Norman is an art dealer who specialises in French paintings. He telephones Eric, a well-known collector of 18th century French art, to say that he has acquired a small painting by Leclerc in which Eric might be interested; the asking price is £35,000. Leclerc was a gifted pupil and imitator of the great 18<sup>th</sup> century painter, Fragonard.

As Norman knows, Eric needs a work of this sort to maximise his chances of selling his entire collection to an American millionaire. Eric comes to Norman’s studio, examines the painting and, without comment, offers £30,000, which Norman accepts. Norman makes out an invoice reading: “Hercule-Marie Leclerc 172? - 1773: Les demoiselles sur le lac. Oil on canvas 26 by 33 cms. £30,000.” Norman pays the price by cheque and takes delivery. Four weeks later, an expert friend of his draws attention to certain passages of brushwork that persuade them both (correctly) that the painting was not by Leclerc and was probably a late-19th century pastiche of the Fragonard manner. The painting should not fetch more than £500 at auction.

Advise Eric.

**TURN OVER**

9. What is the difference between the implied terms of description and of satisfactory quality in sections 13 and 14(2) of the Sale of Goods Act 1979? What is the significance, if any, in the change of wording in section 14(2) from *merchantable* to *satisfactory* quality?

**END OF PAPER**