

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

B.A.

Contract and Tort II

COURSE CODE : LAWS6201

UNIT VALUE : 1.00

DATE : 02–MAY–06

TIME : 10.00

TIME ALLOWED : 2 Hours 30 Minutes

CONTRACT AND TORT II

Answer **THREE** questions including at least one question from **PART A** and at least one question from **PART B**.

PART A

1. Answer **ONE** of the following:

- a) "Atiyah (1979) says that the model of contract theory which implicitly underlay the classical law of contract was the model of the market."

Comment on this statement, in the light of the work of at least one of the following: Hugh Collins, James Gordley, Brian Simpson or Peter Goodrich.

- b) "Over the past 100 years, no-fault rules have developed differently across Europe depending on the subject matter and legal system involved."

Discuss the development of these rules, including their advantages and disadvantages, in the area of motorised traffic.

- c) What are the advantages and disadvantages of the Cour de cassation *Perruche* decision of 17 November 2000?

- d) "Most commentators outside the insurance industry agree that in most cases the obligation of disclosure is too difficult for most insureds, whether advised by a broker or not, and that the law is due for reform. As a rule of [insurance] contract law, the disclosure duty is an unusual one born of particular times and circumstances which no longer prevail."

Discuss.

- e) "The banker's duty of confidentiality is substantially undermined by the circumstances in which the bank may or must breach that duty."

Discuss.

- f) "The practical reality of employer domination over workers and applicants for employment means that the common law of the contract of employment can make little contribution to achieving justice at work."

Critically evaluate this statement.

- g) "The development of a remedy in English law for violations of personal privacy has not kept up with the requirements of the ECHR."

Discuss.

TURN OVER

PART B

2. Helen, known for directing light-hearted comedies, decides to direct a play dealing with issues surrounding war. She hopes that this will attract the attention of Sharon, who despises light-hearted comedy, but who has pledged to give £2 million to a new face on the "war play" scene.

Helen hires Derek and Colin to design the set for her. She will pay £10K for the preliminary designs and a further £15K when the set has been finished in accordance with the designs, to ensure that the set is functional.

Helen then hires Renee, a noted comedian, to act in the play. Renee contracts to perform for £30K. Helen chooses Renee because she is having trouble finding people who specialise in this type of production. However, she explains time and time again to Renee that this is a serious role, unlike Renee's previous roles in plays, and ensures that this is a term in her contract.

Renee thinks that all through rehearsal Helen has been joking and so on opening night, she plays the role in her normal light-hearted style. One crucial element of the set is the wire from which Renee leaves the stage at the end of the play. Unfortunately, the wire is not stable and so she falls onto the stage instead of departing at the end. She suffers a broken leg which leaves her unable to walk for at least one month.

The audience is disgusted by the fact that the production deals with a sensitive matter with bad taste. Many walk out in protest and others spread the news that people should not go and see this play. The play is forced to close immediately. Helen is devastated and decides to sue whoever she is able to in order to get damages.

Advise Helen as to her rights and liabilities.

CONTINUED

3. Harry decides that he wants an owl aviary built in his garden. He hires Ron to do this work for him. Harry tells Ron that the pen must be painted on the inside in "night-sky black" as this enables the owls to rest in the day time. He also says that the aviary must be 10 feet high. Ron charges Harry £20,000 to build this aviary for him.

The contract stipulates that if Ron breaches the contract in any way, he must pay Harry a sum by way of liquidated damages of £1 million.

Ron cuts corners and is able to save £5,000 by building the aviary one inch shorter than the contract demands. This is because he can use a standard length of wood, whereas 10 feet exactly is a difficult length to find and generally has to be specially cut. He also saves £1,000 by buying "jet black" paint rather than "night sky black" paint.

Harry is furious when he sees the aviary. Unbeknownst to Ron, he wanted to allow owl owners in the area to leave their owls with him whilst they were on holiday. The owners prefer "night sky black" and are willing to pay more to leave their owls in aviaries with this colour, because it enables a particular breed of owls to sleep better. Harry had requested a height of 10 feet as this is the exact height at which the owls of this breed like to sleep. However, the market value of the aviary is unaffected because most owls would be happy in this environment.

Harry wants the pen to be made as per the contract. Can he force Ron to do this? What other rights and remedies does he have?

4. Zoe and Claire, both aged 18, are involved in a serious car accident which is caused by the negligence of Hector. As a result of the accident Zoe is left in a persistent vegetative state. She is unable to move and doctors say she has no awareness of her condition. She is likely to remain in this condition for the rest of her life.

Claire is rendered quadriplegic. She is unable to move, but doctors say her mental functioning is good. Before the accident both Zoe and Claire were medical students who lived with their parents.

How will their damages for personal injury be assessed?

PART C

5. "The law relating to rights and remedies available to an innocent party on a breach of contract severely disrupts the principle of freedom of contract."

Discuss.

6. "There is no reason to abolish jury determinations of damages for defamation; the law already provides adequate limitations upon their discretion."

Discuss this statement. Do you agree with it?

7. Should we continue to distinguish between tortious and contractual causes of action?

END OF PAPER