

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:—

B.A.

Laws C9: Contract and Tort II

COURSE CODE : LAWSC009

UNIT VALUE : 1.00

DATE : 11-MAY-05

TIME : 14.30

TIME ALLOWED : 2 Hours 30 Minutes

CONTRACT AND TORT II

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

PART A

1. Delia and Garry wish to open a new restaurant in London. In February, they enter into a contract with Sam Co to refit the kitchen and dining room of an old restaurant that has been disused for a number of years. They tell Sam that they wish to open on Dec 1st of the same year. They also tell Sam that the theme and décor of the restaurant will be modelled on a relaxing summer garden and that the advertising will emphasise this. They will approve the colours and fittings for the dining room in advance.

The contract contains the following terms:

- a) Payment will be made by three instalments of £10,000 on the 1st of February, June, and September respectively; with the balance of £70,000 to be paid on satisfactory completion of the work, which is to be completed no later than the 31st of November.
- b) If the work is not finished by the 31st November, Sam is to pay what is referred to in the contract as a 'penalty' of £200,000 to Delia and Garry.

Delia and Garry are busy over the ensuing period, but approve the progress of the building and decorating before paying each instalment. On the 15th of November, it is clear that the building work and kitchen are complete, and all that remains to be done is the painting and decorating. Delia and Garry confer with Sam's decorator to confirm the peaceful English garden theme, colours and other decoration and then leave the country to purchase the finest and freshest of exotic foods for the grand opening menu on 1st December.

On their return on 30th November, Sam tells them proudly that he has finished, but on their arrival at the new restaurant, Delia and Garry are horrified to discover that, rather than a peaceful English Garden, the restaurant has been decorated to resemble a tropical rainforest.

Delia and Garry insist that they are unable to open the restaurant and must cancel all the bookings they have made.

Advise Delia and Garry.

TURN OVER

2. Alice is a portrait photographer. An international photography magazine has agreed to publish her photos in their June issue. She is very excited because she knows that publication in the magazine will mean more commissions for her. She contracts with Interexpress to deliver her photographs to New York, telling them that the package is very valuable and that it is crucial that it arrive the next day. Interexpress assures her of next day delivery, but due to the negligence of one of its employees, the package becomes lost in the warehouse. When the photos fail to arrive on time, the magazine contacts Alice, who is furious, and thinking that she may still be able to make the submission date, catches the next plane to New York in order to take her spare set photos there herself. She had to cancel a client in order to do this, but thought that publication of the photos was more important than losing one client. When she arrives in New York the magazine tells her that she has missed this publication date, but that they will publish her photos in their December issue. Alice is disappointed, but does not pursue any action against Interexpress, thinking that a December publication is better than no publication at all.

Unbeknownst to Alice, the board of a top Premiership football club has got the idea from the June issue of the magazine to commission individual photos of each member of the team. She only realises this when, one year later, the photos of the team are published along with an accompanying article in which the Chair of the team explains that he arrived at the idea for the photos from the June issue of the magazine, and that the club had paid the photographer £500,000 for completing the portraits.

Advise Alice.

CONTINUED

3. Clement and his boyfriend George, with whom he had been living for 16 years, were involved in a serious car accident with Drucilla on 15th June 2004. Drucilla's insurers admitted that she had been negligent in crossing over the central reservation on the Euston Road and crashing into Clement's car. George was killed instantly by the crash. He was 40 years old.

Clement is currently 35 years of age. In September 2002 Clement began the LLB programme at the University of London, and reduced his hours of work so that he worked 16 hours per week, earning the equivalent of £9000 per year. He did not require more money, as his partner George earned £40,000 per year and agreed to support him while Clement completed his degree. While Clement had been complaining recently that he hated his studies, wanted to quit them and return to gardening full time, George had encouraged him to complete the degree and to wait to see what he wanted to do on graduation in the summer of 2005.

Clement is devastated by George's death. While according to George's will he, Clement, is the sole beneficiary of George's estate, he is unable to continue his studies without the financial assistance he had received from George and in fact his bereavement has left him depressed and unable to do much of anything.

He approaches you for advice about any claims he may have against Drucilla.

Advise Clement.

PART B

4. Assess the merits of the 100% principle in assessing damages for personal injury in tort or contract.
5. Should English law develop a more liberal approach to the availability of specific performance as a remedy for breach of contract?
6. Comment upon the ways in which the claimant's behaviour might affect the assessment of damages in defamation.
7. To what extent can a claimant recover in contract for non-pecuniary loss?

END OF PAPER