

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 2011-12 by Francis Rose, Oxford University Press**
- Candidates must comply with the ILEX 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 ball point 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 ILEX 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 the equitable remedy of specific performance and critically analyse its place among the remedies available to the successful Claimant.

(25 marks)

2. Explain:

(a) the common law rules governing the incorporation and interpretation of exclusion clauses;

(10 marks)

(b) how the Unfair Contract Terms Act 1977 affects clauses excluding liability for breach of contract in non-consumer contracts;

(10 marks)

(c) the differences in the approaches the court is required to take under the Unfair Contract Terms Act 1977 and under the common law.

(5 marks)

(Total: 25 marks)

3. Compare and contrast the **practical effects** of discharge of contract by way of breach with those of discharge by way of frustration.

(25 marks)

4. Explain the doctrine of privity of contract and critically analyse its effects and the attempts by the judiciary and the legislature to limit or exclude its operation.

(25 marks)

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

Question 1

Larry owns and runs a blacksmith's business. He entered into negotiations with Sundries General Ltd ('SGL'), a company that supplies sundries to garden designers and contractors.

Larry attended a meeting with Teresa, a representative of SGL, at which it was agreed (subject to contract) that Larry should make and supply a minimum of 2,400 metal fittings for garden gates per annum for a period of five years.

At the end of the meeting, Teresa told Larry that the agreement was subject to a written contract which he would receive shortly, and which he should read, sign and return to her.

Larry received the contract, which included technical specifications for the gate fittings and drawings setting out the design and dimensions of those fittings. Larry noticed that the dimensions in the drawings would give rise to problems when manufacturing the fittings. He therefore amended the drawings, signed the contract and posted the documents to Teresa.

When Larry received no response he made and delivered 100 sets of fittings in compliance with his amendment to the drawing which SGL had sent him. When Larry submitted his invoice, SGL paid promptly and made no complaint about the fittings supplied.

Larry then made and delivered to SGL 24 similar consignments. All were made in accordance with Larry's amendment to SGL's drawing. Each time SGL paid Larry's invoice promptly and without complaint.

Fiona, a garden designer and contractor, designed and made gates. In doing so she relied upon the dimensions of gate fittings published in SGL's catalogue. The dimensions in SGL's catalogue are those set out in SGL's original contractual specification to Larry. Fiona claimed she suffered loss as a result and SGL has recently come to an out of court settlement to compensate her.

SGL has now informed Larry that it will accept no more goods from him and that it will bring proceedings against him in breach of contract.

Advise Larry:

- (a) On whether a valid contract exists between SGL and Larry.

(20 Marks)

- (b) If a valid contract exists, the relevant terms of that contract and the implications for SGL's claim against Larry.

(5 Marks)

(Total: 25 marks)

Turn over

Question 2

Glenda owns and runs a business that makes and supplies cake confectionary to retailers. She began her business in January 2009.

In July 2009 Glenda entered into an agreement with Harry for the lease of a small factory for a period of five years at a rent of £1200 per month.

By the end of September 2009 Glenda's business was suffering financial difficulties resulting from taking on the expenses associated with the starting of a new business whilst lacking the resources to survive until sales were sufficient to generate an adequate income.

In January 2010, Glenda learnt that Harry, her landlord, was himself, in financial difficulties. She wrote to Harry offering him £500 in rent for February or no payment at all. Harry reluctantly accepted Glenda's £500 as payment of the rent for February 2010.

Glenda wrote to Harry again in April telling him that her business was still doing very poorly and asking him to reduce her rent to £500 per month because of her financial situation. Harry agreed and Glenda has paid £500 per month in rent ever since.

In May 2010 Glenda launched a range of new bakery products. As a result, her income improved considerably.

Harry has now discovered that, whilst it was true that Glenda's business was in financial difficulty in April 2010, by October 2010 it was making a substantial profit.

Advise Harry on whether he can recover the outstanding rent that he believes he is owed (£700 for February 2010 and £700 per month from April 2010 and continuing).

(25 marks)

Question 3

Shirley, a property developer, decided to build a house ('the house') for herself and her family. She wanted the house to be modern in design and built large reinforced concrete and glass. She also wanted the house to provide a place in which she could display her valuable collection of paintings.

The Dominic Trent Partnership ('DTP') is a leading firm of architects.

At a meeting with Ahmed, a senior partner in DTP, Shirley described the nature of her painting collection. She explained that her paintings would be damaged by sunlight and that, if she were to go ahead with the project, it was vitally important to her that the glass walls of the house should protect the paintings from sunlight. Ahmed assured her that modern glass-making technology would offer her paintings the protection needed.

Shirley then entered into a contract with DTP for the design of the house. DTP produced a design, detailed drawings and technical specifications for the house. DTP's involvement in the project ended at that point and Shirley paid DTP's bill. She then took over the management of the construction of the house herself.

Shirley ordered materials and engaged a building company, which constructed the house. Both the construction of the house and the materials ordered were in strict compliance with DTP's drawings and specifications.

Once the glass had been fitted Shirley soon discovered that it possessed none of the light-protecting qualities required. Upon investigation, it was discovered that whilst the glass conformed to the specification ordered by Shirley and specified by DTP, DTP's specification for the glass was incorrect.

It is estimated that the cost of replacing the glass will increase the building cost of the house from £1,000,000 to £1,500,000. The value of Shirley's paintings is estimated at £750,000.

- (a) Advise Shirley on any claims that she may have against DTP in breach of contract.

(13 marks)

- (b) Advise Shirley on the damages she may recover if she is successful; include in your advice the principles the court will use when deciding whether to award substantial damages in respect of breach of contract.

(12 Marks)

(Total: 25 marks)

Turn over

Question 4

Tom owns and runs a boat building and repair yard. Stewart owns *The Ali M*, an ocean-going pleasure boat. Will owns and runs 'Will's Plant', a business that trades in plant and machinery for use in boat-building and marine engineering.

Two years ago Stewart entered into a contract with Tom for the restoration of *The Ali M* at a price of £180,000, to be paid when all the work on the vessel had been completed.

The restoration included the shot-blasting and repainting of the entire vessel. It was a condition of the contract that the work must be completed within six months of the date of the contract.

Tom decided that, in order to meet his obligations under the contract with Stewart, he needed to purchase a new shot blasting machine. Tom calculated that he needed a machine that was capable of blasting at least 60 square metres per hour. He later visited 'Will's Plant' and told Will that he required a shot-blaster that was capable of blasting a minimum of 60 square metres per hour. Will told Tom that the Kahn SB ZX 88 ('SB ZX 88') was the "best shot blaster on the market" and that "it would blast a minimum of 80 square metres per hour".

A week later, Tom purchased a SB ZX 88 from Will's Plant at a price of £30,000.

Will was extremely pleased with the sale because Kahn plc, the manufacturer of the SB ZX 88, had launched a sales drive earlier in the year, which included the sending of full technical details of the SB ZX 88, and a promise of payment of £5,000 to the distributor on the first SB ZX 88 sold by him.

After using the SB ZX 88 for a few days Tom realised that it could blast only 35 square metres per hour. He later found that this was made clear in the manufacturer's documentation.

After Tom had been working on *The Ali M* for two months, Stewart became concerned at Tom's slow rate of progress. Stewart then terminated the contract and is refusing to pay Tom for work done.

Advise Tom on any claim he may have against Will in misrepresentation.

(25 marks)

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com