



CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 2 – Contract Law

Question paper

January 2024

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- A calculator is provided should you require the use of one.
- You can use your own unmarked copy of the following designated statute book – ***Blackstone’s Statutes on Contract, Tort & Restitution 34th edition, Francis Rose, Oxford University Press, 2023.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

SECTION A

Answer at least one question from this section.

1. Critically analyse how true it is to say that only a statement of fact can constitute an actionable misrepresentation.

(25 marks)

2. Critically assess the development of the law relating to liquidated damages (penalty) clauses.

(25 marks)

3. Critically analyse how the court will decide:
 - (a) whether a statement is a term or a representation;

(12 marks)
 - (b) how to categorise a term as a condition, a warranty or as innominate.

(13 marks)

(Total: 25 marks)

4. Critically analyse how accurate it is to say that restraint of trade clauses will always be held void at common law.

(25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Ashraf, Barry and Connor are all professional footballers who play for Kempston County.

Ashraf is 19 and broke into the first team only last season. After a string of excellent performances, Ashraf signed a new contract with the club on a significantly higher salary. Barry, the club captain, is 37 and coming to the end of his career. Ashraf always looked up to Barry growing up and so when Barry advised Ashraf to invest in Barry's new business selling non-fungible tokens (NFTs), Ashraf was interested.

Over the next few weeks, Barry repeatedly told Ashraf he should invest. Ashraf asked his teammate Connor for advice and Connor told him NFTs seemed to be a high-risk investment. When Ashraf did not immediately invest, Barry stopped passing to Ashraf in matches and singled him out for unfair criticism during training. Eventually, Ashraf invested his entire savings of £200,000. Ashraf did not seek legal advice on the investment because Barry told him: "You can trust me, I know what's best for you".

Connor's contract with Kempston County was also due to expire at the end of the season. In March 2023, the club approached Connor about negotiating a new contract. All of Connor's previous contracts were negotiated by his agent but, unfortunately, his agent died suddenly in December 2022.

Worried that he did not have the legal knowledge to represent himself in negotiations, Connor asked his cousin Damyan, a qualified legal executive, to negotiate with the club on his behalf. One evening while at a family birthday party, Damyan and Connor had a conversation and agreed that Damyan would represent Connor in the negotiations with the club. Connor was quite drunk at the time and Damyan asked Connor to send him an email stating that Damyan would act as his representative to "make it official". Connor did so and told Damyan: "Don't worry, I'll make sure you get the usual share".

Barry's NFT business recently entered administration and Ashraf is worried he will lose his entire investment. Damyan agreed a new contract for Connor. Connor gave Damyan a watch worth £10,000 as a 'thank you gift' but Damyan has demanded a payment of £250,000, representing the 15% share of total earnings that Connor's former agent used to receive. Connor is refusing to pay, saying he thought it, the help with Connor's contact, was a 'family favour'.

Advise:

(a) Ashraf as to whether his contract with Barry can be set aside for undue influence;
(15 marks)

(b) Connor as to whether he is likely to be legally bound to pay Damyan the £250,000.
(10 marks)

(Total: 25 marks)

Turn over

Question 2

Evelyn runs her own business buying and selling used cars. In October 2023, Evelyn saw an advert on a used car website, which stated:

"Vintage (1985) Lotus Excel for sale, excellent condition, only 40,000 miles. Need quick sale, £10,000 (cash preferred). First come first served, miss it and it's gone."

Evelyn contacted Frankie, the seller, via the message function on the website, stating that she, Evelyn, accepted Frankie's offer and was ready to exchange £10,000 cash for the car when and where Frankie wished. Evelyn sent her message at 19:00 on Friday 6th October.

Anticipating the sale, Evelyn contacted a client who had purchased similar cars from her before. He agreed he would pay Evelyn £24,000 for the Lotus Excel, which was the market value for the car.

Frankie replied to Evelyn the following Tuesday 10th October. Frankie told Evelyn that another buyer had telephoned her on Monday and she had agreed to sell the car to him instead. She had not checked her messages on the website until that Tuesday morning.

Last month, in December 2023, Evelyn arranged an auction to sell a number of cars she was struggling to find buyers for. She advertised the auction as having "no reserve prices".

As part of the auction, Evelyn invited bids on a Ford Escort owned by Glenn. Herve, one of the people attending the auction, bid £2,000 for the car. There were no other bids, but Glenn then indicated to Evelyn that he did not want the car sold for this price. Evelyn withdrew the lot from the auction. The car has subsequently been valued at £8,500.

Evelyn believes she has a contract with Frankie to buy the Lotus but Frankie has sold the car to the other buyer. Herve is arguing that he is entitled to the Ford Escort.

Advise Evelyn.

(25 marks)

Question 3

Jiro runs his own business providing various services for pet owners, including dog walking, dog grooming and house sitting for clients who travel abroad, leaving their pets at home.

At the start of 2023, Jiro contracted with Kaneesha, a new client who owned two greyhounds. Jiro agreed with Kaneesha that she would pay £300 per month for the next year for him to walk both dogs twice a day, every weekday.

The next month, Jiro also arranged with Lisa to house sit for her three cats while she went abroad. Lisa was not sure how long she would be away. Lisa had to leave in a hurry and nothing was said about how much Jiro would be paid. When Lisa arrived back in the UK, she emailed Jiro suggesting a price of £500, which Jiro accepted. Lisa did not pay at the point Jiro accepted.

In May 2023, Jiro met Matt, a famous film star. Jiro and Matt agreed that Jiro would walk Matt's dog three times a week and that, rather than paying him, Matt would regularly mention Jiro's business on his social media channels. Jiro later agreed with Matt's boyfriend, Nick, that he would walk Nick's poodle. Nick told Jiro he would "be a great friend" in exchange and "invite him to all the best parties". Both agreements were stated to last for 18 months.

Jiro found that with these new clients - Lisa, Matt and Nick - he no longer had the time to walk Kaneesha's dogs. When he told Kaneesha this in June 2023, she offered to increase the amount she paid for July to December to £500 per month because she knew how difficult it would be to find another dog walker with availability at short notice. Jiro accepted this new offer.

Lisa has since refused to pay the £500, saying she thinks she should pay only £100 as that is "fair" and it is what other similar businesses usually charge.

Kaneesha says that she regrets agreeing the increase in fees and will only pay for July to December at the original rate of £300 a month.

Jiro has now been offered a job in IT and wishes to give up his pet business but Matt and Nick insist Jiro remains contractually bound to walk their dogs for the remaining 11 months of their agreement.

Advise Jiro.

(25 marks)

Turn over

Question 4

Picture Perfect Parking (PPP) is a company that leases and operates various car parks in the Kempston area.

Ravinder and his then-girlfriend Samara used the PPP-operated 'First Class' car park at Kempston airport to park Ravinder's car while they were abroad for three weeks. Samara booked the car park in advance in her name. The cost of parking was £500, and Samara paid a £100 deposit in advance. After they had returned, Samara's further payment of £400 was rejected by her bank. Samara and Ravinder are now broken up. Samara cannot now be located and PPP wish to recover the £400 from Ravinder.

Two years ago, PPP found out that the rights to operate three busy car parks owned by Kempston Council were available to bid on. PPP made an agreement with Total Transport Trailers (TTT) to submit a joint bid, led by TTT. Their bid was successful and, as agreed, TTT operated two of the car parks while PPP operated the 'Church Road' car park. Kempston Council has failed to pay PPP various fees due under the contract. However, the contract is between TTT and the Council, and TTT have told PPP that "We've not lost anything, why would we enforce this for you?"

Last year, PPP wanted to resurface a car park that it owns. PPP contracted with Ursula who runs a specialist resurfacing company. PPP told Ursula that she must purchase the tarmac used to resurface the car park from Vehicular Varnish (VV) because they had heard this was the best quality tarmac, guaranteed to last for 20 years. Ursula did so and resurfaced the car park. Within six months, the tarmac began to degrade and potholes appeared. The contract between Ursula and VV expressly excludes the operation of the Contracts (Rights of Third Parties) Act 1999.

Advise PPP as to whether it:

(a) can recover the £500 from Ravinder;

(6 marks)

(b) can enforce the agreement between TTT and Kempston Council;

(10 marks)

(c) can rely on the 20-year guarantee in the contract between Ursula and VV.

(9 marks)

(Total: 25 marks)

End of the examination

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