

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 2023

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.
- You can use your own unmarked copy of the following designated statute book – ***Blackstone's Statutes on Contract, Tort & Restitution, 33rd edition, Francis Rose, Oxford University Press, 2022.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

SECTION A

Answer at least one question from this section

1. (a) Critically evaluate how true it is that an agreement can only be formed by express words of offer and acceptance.

(15 marks)

(b) Critically evaluate how true it is that the courts will not uphold contracts made in a social or domestic context.

(10 marks)

(Total: 25 marks)

2. Critically analyse the extent to which the law of undue influence protects vulnerable parties.

(25 marks)

3. Critically analyse how far the law of contract has been able to establish an effective test for remoteness of damages.

(25 marks)

4. Critically assess, in respect of the doctrine of privity, how effective in circumventing the basic rule:
 - (a) the various exceptions developed prior to 1999 have been;

(15 marks)
 - (b) the Contract (Rights of Third Parties) Act 1999 has been.

(10 marks)

(Total: 25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Absolute Analysis Limited (AA) is a small firm of business analysts that specialises in advising organisations in relation to using customer data. In 2019, AA moved to new office premises in Kempston.

The new premises were a suite of serviced offices in an office block owned by Business Buildings plc (BB). AA agreed that they would lease their offices from BB for 10 years, with an annual rent of £15,000 payable in December. The contract contained a break clause after five years that would allow AA to choose to end the lease early.

In late 2020 the managing director of AA approached BB to ask whether the lease could be renegotiated. The COVID-19 pandemic had negatively affected AA's business and they were increasingly worried about the financial viability of the company.

Upon hearing this, BB's property manager negotiated a revised contract with AA. The terms of the contract remained the same, except that the rent was lowered to £12,500 per year and the break clause was removed.

AA continued to struggle financially and in early 2022 took out a loan with Charleston Credit (CC). AA borrowed £100,000 with an interest rate of 10%. They were due to repay £110,000 in December 2022.

AA's financial situation began to improve but only slowly and, in September 2022, AA contacted CC and told them they would be unable to repay the loan as scheduled. The chief executive of CC, keen to recover what money she could, agreed with AA that they would instead pay back £89,000 in "full and final settlement of the debt".

Hearing about this, BB's property manager told AA in October 2022 "we can drop the rent until you get back to profitability" and told AA they need only pay £10,000 until further notice. AA paid £10,000 in December 2022.

BB and CC have both recently reviewed their finances and found that they need to raise funds. BB have contacted AA with a demand for payment of £5,000 "missing" rent from December 2022 and given notice that "the annual rent remains £15,000".

CC have issued a demand for immediate payment of the £21,000 not paid in December 2022.

Advise AA:

- (a) whether the 2020 amendment to the rental contract is enforceable by AA; **(10 marks)**
- (b) whether the October 2022 amendment to the rental contract binds BB; **(10 marks)**
- (c) whether AA are obliged to repay the additional £21,000 to CC. **(5 marks)**

(Total: 25 marks)

Turn over

Question 2

Ezichi owns a children's "soft play" centre near Kempston, called Fun and Frolics. The centre contains a small reception area, a large play area and a café. Ezichi employed three people to help run the centre: Gerry who is a qualified childcare provider, Harriet who is in charge of taking bookings as well as sales and marketing and Izu who works making coffee and sandwiches in the café.

Ezichi considers herself something of an expert on law having watched a lot of "how to" videos online. When employing Gerry, Harriet and Izu, she included various clauses in their contracts. Gerry, Harriet and Izu have all recently left Ezichi's employ and she has heard that they are all working elsewhere.

Gerry's contract contained the following clause:

"Gerry hereby promises not to work in any childcare-related role for a period of six months after leaving this employment. This applies to businesses based within three miles of Fun and Frolics."

Gerry is now working for XYZ Nursery, a nursery setting for toddlers and pre-school age children. XYZ Nursery is based one mile from Fun and Frolics.

Harriet's contract contained the following clause:

"Harriet hereby promises not to work in a "soft play" or similar business within five miles of Fun and Frolics for one year after leaving this employment and that she will never approach any customer of Fun and Frolics after that time."

Harriet is now working for Crazy Monkeys, a rival soft play business based two miles from Fun and Frolics.

Izu's contract contained the following clause:

"Izu hereby promises not to work in any catering role for a period of six months after leaving this employment. This applies to businesses worldwide."

Izu is working in a restaurant in Birmingham, around 75 miles away from Kempston.

Advise Ezichi as to the enforceability of the above clauses.

(25 marks)

Question 3

Jagdeep, Kylie and Lisbet are friends who visited Magic Motors (MM), a local go-karting track. As he had made the booking, on arrival Jagdeep was asked to sign a form which contained the following term:

"Magic Motors are not liable for any injuries suffered while driving a go-kart, howsoever caused".

Kylie and Lisbet were not asked to sign forms. All three friends proceeded to the changing room, where they were given overalls and helmets. A large sign on the wall stated:

"Magic Motors are not liable for any personal injury or damage to personal property while you are a guest on our premises".

However, while the friends were using the changing room the sign was obscured by hanging coats.

As they walked out to the go-kart track, Jagdeep slipped in a puddle of motor oil that had negligently been left on the floor rather than cleaned up. He broke his ankle and was unable to participate but told Kylie and Lisbet to still go ahead and race.

During the race, Kylie's car suffered a braking problem, which was due to negligent maintenance by MM. Unable to slow down, Kylie crashed into Lisbet at a considerable speed. Kylie broke her arm in the collision. Lisbet was uninjured but her designer jeans were ruined and her expensive smartphone was damaged beyond repair.

When the friends complained as they were leaving, the manager took them into the changing room and showed them the sign. He told them that MM did not consider itself liable for any of the damage suffered.

Advise Jagdeep, Kylie and Lisbet as to whether any claims in negligence will be prevented by the exclusion clauses given above.

(25 marks)

Turn over

Question 4

Oona runs a bridal shop, which sells wedding dresses and related accessories. Oona specialises in particularly expensive dresses by noted designers and is a dress designer herself.

In June 2022, Preeti visited the shop ahead of her upcoming marriage to Quentin in March 2023. Preeti told Oona she wanted a ball gown type dress with a long train. Preeti tried on a number of dresses but could not find one she was happy with. Oona suggested that she might want a custom-made dress instead. Oona told her that she "knew exactly what Preeti wanted" and they agreed Preeti would pay £8,500 for the custom dress. The written contract signed by Preeti and Oona did not mention the style of dress or the length of the train.

In October 2022, Ruth and Susie visited the shop. They were marrying each other and wanted to wear matching dresses. Oona suggested a particular style of dress by a famous designer and Ruth and Susie were delighted. Oona had a dress that required only minimal alterations to fit Ruth, but because Susie was very tall, Oona said more extensive alterations would be required for her dress. They agreed that Oona would deliver both dresses two weeks ahead of Ruth and Susie's wedding, which is later this month. The total contract price was £12,000.

While at the shop, Ruth and Susie also picked out various accessories, including a small tiara for their young daughter, Tilly, to wear as she was acting as flower girl. This cost £35. Oona agreed to deliver all their purchases together.

Oona delivered Preeti's dress last week. Preeti was furious to find that the dress is a sheath style dress with a very short train, something very different from what Preeti was expecting.

Oona was also due to deliver Ruth and Susie's dresses last week but had not finished altering Susie's dress. She was able to deliver the accessories, although she had to replace Tilly's tiara with a very similar alternative as the original tiara was damaged.

Oona wants to deliver the dress tomorrow, but Ruth and Susie have told her they have lost faith in her and will be sourcing their dresses for next week's wedding elsewhere.

Advise Oona as to:

- (a) whether there may be a term implied by fact into her contract with Preeti;
(10 marks)
- (b) how the courts are likely to categorise the term about delivery of Susie's dress;
(9 marks)
- (c) how the courts are likely to categorise the term about the style of Tilly's tiara.
(6 marks)

(Total: 25 marks)

End of the examination