



## THE CHARTERED 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 this question paper fully.** However, you may make notes on this 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. This 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 2019-2020, 30th edition, Francis Rose, Oxford University Press, 2019.**
- Candidates must comply with the CILEx 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 ballpoint 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 CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW** and the **LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

**SECTION A**  
**(Answer at least one question from this section)**

1. Critically evaluate the extent to which the law successfully balances the freedom of contract with the regulation of exemption clauses. **(25 marks)**

2. Critically analyse how an offer:

(a) can be distinguished from an invitation to treat;

**(15 marks)**

(b) may be terminated.

**(10 marks)**

**(Total: 25 marks)**

3. Critically assess how true it is to say that a party who provides anything less than strict and entire performance has not discharged a contract. **(25 marks)**

4. Critically analyse when valid consideration may be found in the promise of:

(a) past consideration;

**(14 marks)**

(b) a pre-existing public duty.

**(11 marks)**

**(Total: 25 marks)**

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

**Question 1**

Arjun, the owner of a retro-themed café in Kempston-on-Sea, decided to hold a monthly 'Pinball Tournament', in order to attract customers. The first tournament was scheduled to run from the afternoon of Friday 8 May 2020, to the 'Grand Final' on the evening of Sunday 10 May 2020.

In April 2020, Arjun contracted with Belinda, who runs her own business selling and hiring out vintage pinball machines. Arjun and Belinda agreed that Arjun would hire two 'Superpower 1965' pinball machines for one weekend a month for the next six months, at a total cost of £2,500. The contract contained the following terms:

'Clause 5: Delivery of the machines supplied under this agreement will take place no later than 2pm, Friday 8 May 2020.'

'Clause 12: All pinball machines supplied under this agreement will be in playable condition at all times.'

On 8 May, Belinda was delayed, because she was busy negotiating a particularly lucrative sale to another client. As a result, she did not deliver the machines to Arjun's café until 7pm. Arjun had carefully scheduled the tournament to begin at 4pm and, as a result, a considerable number of his customers were unable to play as scheduled.

To make matters worse, one of the machines developed a fault, which meant that after every three games, it needed to be reset, which took five minutes each time.

On Saturday, over the course of the day both machines developed serious faults, which meant that neither machine could be used to play pinball and the tournament had to be cancelled.

Arjun is furious that the tournament was a disaster and wishes to recover damages for the problems he experienced. He also no longer trusts Belinda and wishes to repudiate the contract.

Advise Arjun as to:

- (a) how clauses 5 and 12 are likely to be categorised by the court;  
**(18 marks)**
- (b) whether he may terminate the contract for any breach(es) of clauses 5 and/or 12.

**(7 marks)**  
**(Total: 25 marks)**

**Turn over**

## Question 2

Emil is the Chairman of the Kempston United Supporters Society (KUSS), a group of football fans who all support Kempston United Football Club. In January 2019, Kempston United reached the Third Round of the FA Cup for the first time in the club's history. They were drawn to play against a Premier League team, Northchester City, whose home ground is 250 miles from Kempston.

Emil decided to organise a trip to the match in Northchester for himself and other interested members of KUSS. Emil personally contracted with Frank, who ran a local coach hire business, to hire a 32-seater coach to transport 'Emil and other KUSS members' to and from Northchester on the day of the match. It was a term of the contract that 'all passengers will have access to toilet facilities'.

Emil decided that it would be best to break up the long journey to Northchester, so he decided to schedule a stop for lunch. Again, Emil contracted personally with the restaurant owner, Gemma, in booking a private room as well as a buffet meal and drinks.

Harriet and Ivanna were two keen Kempston United fans and KUSS members, who paid to go on the trip. Harriet had checked in advance with Emil that the coach would have toilet facilities as, due to illness, Harriet has a stoma bag and needs frequent access to a toilet. However, on the day of the trip, the coach provided by Frank did not have toilet facilities. As a result, Harriet was unable to travel on the coach and had to buy an extremely expensive train ticket instead.

Ivanna travelled with Emil and the rest of the KUSS members to Northchester. On the way to the match, the group visited Gemma's restaurant, as planned. Ivanna, who is severely allergic to shellfish, enjoyed a bowl of noodle soup from the buffet. Unfortunately, the soup contained shellfish stock as a base, and Ivanna was taken seriously ill. As a result, she was unable to continue on to Northchester and missed the football match. Ivanna has since discovered that there was an express term in the contract between Emil and Gemma which stated that no food containing shellfish would be served.

Advise Harriet and Ivanna as to whether they may recover damages from Frank and Gemma, respectively, or breach of contract, even though Harriet and Ivanna are not parties to these contracts.

**(25 marks)**

### **Question 3**

In 2016, Lidia decided to retire from her career as a school teacher and move to Spain. Lidia planned to retain the house she owned in England, The Willows, and rent out this property to provide her with an income. However, soon after she left for Spain, her son Markus was declared bankrupt. Lidia and Markus had had a difficult relationship and had not spoken in recent years. Seeing an opportunity to make peace with her son, Lidia suggested that he move into her property, The Willows, to live rent-free.

Over the next year, Markus lived at The Willows, while Lidia remained in Spain. There was very little communication between the two. However, in April 2017, Markus wrote to his mother, asking: 'Would you consider investing in a new business?'. Lidia was very reluctant, as she knew Markus had repeatedly failed in business, but she phoned Markus, who told her that he was certain this new business would succeed. Lidia had no savings apart from the pension that she relied on for her living expenses, so Markus suggested that she mortgage The Willows. Markus called Lidia daily from then onwards, often becoming emotional when Lidia still expressed reservations.

In June 2017, Markus sent Lidia an email containing a number of complicated legal documents. Markus told Lidia that he 'could put your mind at rest' if she would agree to a teleconference. Lidia, who had no legal knowledge, was rather confused by everything Markus sent and agreed to the telephone call.

The teleconference took place between Lidia, Markus and Obi, the assistant manager at Premier Bank. During the call, Obi explained the terms of the mortgage to Lidia and warned her: 'If you don't keep up the repayments, you could be in real financial trouble'. Lidia again expressed her reservations, and said that she did not want to agree to the mortgage.

At this point, Markus told her: 'You don't want us to be estranged again, do you? Stop being silly and we can stay in each other's lives.' Frightened of losing touch with Markus, Lidia signed the documents. The effect of the mortgage was to borrow most of the value of The Willows, with the money being given directly to Markus' new business.

Last month, Lidia found out that Markus has once again declared bankruptcy. After a number of missed repayments, Premier Bank has issued proceedings seeking possession and sale of The Willows.

Advise Lidia as to whether the mortgage is likely to be set aside for undue influence.

**(25 marks)**

**Turn over**

## Question 4

Super Service Shopping (SSS) is a large company, which specialises in building and operating purpose-built shopping centres around England. In 2015, SSS constructed the Kempston Emporium, a sizeable shopping centre in the town of Kempston, with space for 20 retail units, to be occupied by different stores.

One of the retail units, Unit A1, is considerably larger than the 19 others. It was designed to be the 'anchor tenant' – a premium store that would attract shoppers who may then patronise other businesses. In late 2015, SSS agreed to rent Unit A1 to Tastee Foods Inc (TFI), a high-end supermarket. The contract stated that TFI would rent the premises for 15 years, and it was expressly agreed that TFI would operate a store from the unit at all times.

Unfortunately, the Kempston Emporium has not been as successful as expected. In January this year, in an attempt to increase custom, SSS hired the famous celebrity Ursula Unger to present a documentary series following life 'behind the scenes' at the Emporium. However, Ursula proved extremely unreliable, and often failed to attend for scheduled filming, meaning that SSS wasted large sums of money hiring crew and equipment. Ursula has recently pulled out of the project altogether, meaning that the documentary cannot be completed.

On hearing this news, TFI has decided that as its store is making a loss, it will close the store. TFI has indicated to SSS that, while it is willing to continue paying the rent, it refuses to reopen. SSS is furious, as without an 'anchor tenant', a number of other businesses have threatened to default on their leases of other units. No other companies are interested in taking over Unit A1.

Last week, Vijay visited the Kempston Emporium to buy a tenth anniversary present for his wife. Vijay parked in the Emporium car park, which is owned and operated by SSS. It is clearly expressed that users of the car park must pay in advance and may not stay longer than their parking ticket's validity. Users who overstay their ticket will be issued with a £500 charge. Vijay paid £4 to park for 2 hours, but then lost track of time, searching for the perfect present, and returned to his car an hour after the 2 hours had expired. SSS has issued a 'penalty notice' to Vijay, charging the £500 penalty fee. Vijay has refused to pay.

Assuming that all of the following are in breach of contract, advise SSS as to:

- (a) whether it can compel Tastee Foods Inc (TFI) to remain; **(7 marks)**
- (b) whether it can recover damages from Ursula Unger; **(8 marks)**
- (c) the extent to which it can enforce the penalty against Vijay at common law.

**(10 marks)**  
**(Total: 25 marks)**

**End of Examination Paper**

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