

24 January 2022
Level 6
CONTRACT LAW
Subject Code L6-2

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 and Restitution 2021 – 2022, 32nd edition, Francis Rose, Oxford University Press, 2021.**
- 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.

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

1. Critically analyse how the courts have attempted to develop the test for remoteness of loss following a breach of contract.

(25 marks)

2. Critically evaluate, in the context of a contractual claim for misrepresentation:

(a) the principle that the misrepresentation must induce the claimant (reliance);

(10 marks)

(b) the remedy of rescission and its availability.

(15 marks)

(Total: 25 marks)

3. Critically assess how true it is that both offer and acceptance must be actually communicated to create a valid contract.

(25 marks)

4. Critically analyse to what extent the rule that fresh consideration must be provided can be avoided through:

(a) the exception of *implied assumpsit* (implied promise) to the rule of past consideration;

(10 marks)

(b) promissory estoppel.

(15 marks)

(Total: 25 marks)

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

Question 1

A number of years ago, Alison was diagnosed with a terminal illness. In 2019, suffering from increasingly poor health, Alison decided to sell her business and retire. Having been told by her doctor that she was unlikely to live for more than two or three more years, Alison was keen to provide for her daughter, Claire, although she worried that Claire tended to spend rather than save her money.

Bart offered Alison £600,000 to buy her company. Alison agreed with Bart that she would sell him the business for £600,000, with £100,000 payable immediately to Alison and the remainder to be paid to Claire in instalments of £50,000 a year for the next ten years. Bart paid the £100,000 due to Alison immediately and also made the £50,000 payments to Claire due in 2020 and 2021.

Alison died in October 2021. Bart has refused to make the payment to Claire due at the start of 2022, on the basis that he made the contract with Alison, not Claire. Claire is one of the executors of Alison's estate.

In 2020, after Bart had made the first £50,000 payment, Claire, her husband Deniz and their three young children went on what the brochure called 'the holiday of a lifetime' to the Maldives. The total cost of the holiday was £8,000, which Deniz paid in advance to Excellent Escapes Ltd (EEL), a company that promised 'ultra-luxurious, five-star relaxing bliss'. The contract was made between Deniz and EEL, although it did refer throughout to the 'family holiday'. Unfortunately, the holiday was a complete disaster. The family were accommodated in a two-star hotel that was undergoing extensive building work, so most facilities were closed. The building work began very early in the morning and continued until late at night, meaning that none of the family were able to sleep well throughout their stay.

Advise Claire as to whether she can enforce any of these contracts directly.

(25 marks)

Question 2

George's Garage (GG) is a second-hand car dealership in the town of Kempston, owned by George. In June 2021, Harvinder visited GG, looking to purchase a large family car. Harvinder told George that he wanted a car that was safe and fuel-efficient and that would have room for himself, his wife and their four young children. George showed Harvinder one particular vehicle, the Fairfield Fivestar, which he said would be ideal for Harvinder's needs. George told Harvinder that the Fivestar was a 2020 model. Harvinder replied: 'I don't care how old it is. What matters is how safe it is in an accident.' Harvinder was unsure about the £18,999 asking price for the Fivestar, so he left the garage without buying the vehicle.

A few weeks later, still looking to purchase a vehicle, Harvinder visited GG again. The same Fairfield Fivestar was still on sale and the price had dropped to £16,999. Harvinder decided to buy the car. George drew up a written contract, which stated that Harvinder was buying a '2020 Fairfield Fivestar' in 'good working order'. Before he signed the contract, Harvinder asked George if the vehicle had a five-star safety rating, to which George replied: 'Trust me, this is the safest car on the market. You don't need to check that.' Harvinder signed the contract and paid George £16,999 in exchange for the car.

The Fivestar that Harvinder purchased has broken down four times in the last six months. During the most recent repair, the mechanic told Harvinder that the car is actually a 2018 model and has a two-star safety rating.

In October 2021, Isla took her luxury sports car to GG, as she wanted George to make various modifications to it. They agreed that George would carry out the modifications and George said he would 'give you a call when it was done'. As Isla expected that the modifications may take up to a month, and given that the weather was expected to be very bad over winter, she asked George if he had 'a cheap runabout that would handle the snow'. George recommended a very old, but roadworthy, pickup truck that he had for sale for £1,999.

It is now January 2022. Isla is still waiting for George to finish the modifications to her car. She has checked her contract with George and there is no deadline specified as to when the work must be completed. She has also found that the pickup truck she bought does not have four-wheel drive and is completely unsuited to snowy conditions. The truck is also not very fuel-efficient, and the air-conditioning on the truck does not work.

Advise GG whether:

- (a) the statements made to Harvinder are likely to be terms or representations;

(13 marks)

- (b) it is in breach of any statutory implied terms in its contract with Isla.

(12 marks)

(Total: 25 marks)

Question 3

Kevin is a web developer, who runs a small business designing websites for companies and individuals.

In May 2021, Liam approached Kevin to design a website for his business selling personalised fountain pens. Liam agreed with Kevin that Kevin would design an e-commerce website for Liam for £2,500. The website would allow Liam to take payment from customers directly through the website via major credit and debit cards and using cryptocurrency.

In September 2021, Kevin completed his work on Liam's website. Liam has been very pleased with the design of the website and has had no problem accepting orders via credit or debit card, but he has been unable to accept cryptocurrency payments. In October 2021, Liam paid Melissa, another web developer, £250 to correct Kevin's coding errors, to enable him to take cryptocurrency payments.

In November 2021, Kevin agreed with Naru, a self-published author of romance novels, that he would create a personal website for Naru that showcased his work. Naru agreed to pay Kevin £4,500 to create the website, which would include extracts from Naru's books and discussion forums for Naru's readers. Kevin was about halfway through the work, when Naru cut off all contact with him. Naru has changed the login details for the website, so Kevin cannot work on it any further.

In December 2021, Kevin's cousin Oksana told him that she had long admired his work and would like him to create a website for her business, a national chain of estate agents. Kevin created the website, having worked right across Christmas in order to do so, as Oksana was keen that the website should be ready as soon as possible. Last week, Kevin sent Oksana his invoice for £6,000, but Oksana has emailed him, saying: 'I thought we were family. Family don't pay each other to do each other a favour!'

Liam, Naru and Oksana have not paid Kevin the sums agreed for their websites.

Advise Kevin as to whether he can claim those sums.

(25 marks)

Question 4

Rhys is the landlord and owner of the Shropshire Sow, a pub in Kempston High Street. Rhys purchases the beer that is served in his pub from Terrific Tipplers Ltd (TTL), a local brewery. Rhys has been buying his beer from TTL ever since he took over the pub in 2015 and, on average, he orders a delivery of beer once per month.

In September 2021, Rhys ordered a larger stock of beer than normal, because the pub had a number of exclusive bookings for private events. TTL failed to deliver the extra beer. Rhys ran out of beer during the birthday party of a local radio DJ, who then complained about this on his popular radio show. A number of customers cancelled their forthcoming events at the Shropshire Sow.

When Rhys complained to TTL, it referred him to a clause in its standard terms and conditions, which excluded liability for incorrect quantities being delivered. Rhys remembers occasionally being given a delivery note that contained this clause (among others), but he cannot remember whether he was given such a note with the September delivery.

Rhys employs Umberto as a chef in the pub's kitchen. One evening in November 2021, Umberto had gone to the storeroom to get more pepper for one of his dishes. Due to Rhys's negligence, an earlier spill of olive oil in the storeroom had not been cleaned up, and the lights in the room were faulty. Unable to see the puddle of oil in the dark, Umberto slipped and broke his knee. When he complained to Rhys, Rhys pointed out that under clause 28 of Umberto's employment contract:

'The employer is not liable for any damage suffered on the premises by any employee, howsoever caused'.

Rhys has told Umberto that since Umberto signed the contract, he is bound by clause 28.

Advise Rhys as to the validity of the exemption clause relating to:

(a) TTL;

(18 marks)

(b) Umberto.

(7 marks)

(Total: 25 marks)

End of Examination Paper