



## 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 2016-2017, 27th edition, Francis Rose, Oxford University Press, 2016.**
- 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**

**BLANK PAGE**

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

1. Critically analyse the approach of the courts to contractual terms which may be in restraint of trade.  

**(25 marks)**
  
2. Assess the extent to which good consideration can be found in:
  - (a) past consideration; **(8 marks)**
  - (b) a pre-existing public duty; **(8 marks)**
  - (c) a pre-existing contractual duty. **(9 marks)**

**(Total: 25 marks)**
  
3. Evaluate the rights of a consumer under a contract between a trader and a consumer in relation to the sale or supply of goods, digital content or services.  

**(25 marks)**
  
4. Critically analyse the willingness of the courts to depart from the usual measure of substantial damages for breach of contract.  

**(25 marks)**

**Turn over**

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

**Question 1**

Ayesha has been married to her husband Brian for 14 years. On becoming pregnant with their first child ten years ago, Ayesha sold her successful business and used the proceeds to purchase a house, 'Oak Wood'. The property is held in Ayesha's sole name.

During the last decade, Brian has developed his own business in IT Services. Two years ago, a rival company began to target Brian's clients and his business suffered as a result. Brian decided that he needed to expand aggressively and improve the marketing of his business. He approached his bank, Western Counties District Bank ('WCDB'), with whom he had a business account, for an unsecured business loan of £100,000. The bank refused to grant the loan. Both Brian and Ayesha also use WCDB for their personal finances.

Without the loan, Brian's business continued to deteriorate. He then asked Ayesha to support his application for a business loan by offering Oak Wood as security. He untruthfully told Ayesha that the loan was needed to enable a move to larger premises as the business was so successful. Ayesha refused, after which Brian became increasingly temperamental and verbally abusive. When Ayesha continued to refuse his demands, he moved out of the family home and into a hotel, and told Ayesha that he was considering emigrating.

At this point, Ayesha relented and agreed to use Oak Wood as security for the loan to Brian's business. They went together to WCDB, where they met with Caroline, the local branch manager. Caroline knew Brian and Ayesha well from their previous dealings with the bank, and as soon as Brian made it clear that Oak Wood would be used as security, Caroline immediately granted the loan of £100,000 and the relevant documents were signed by Ayesha and Brian.

Brian used the money from the loan to try to expand his business and improve his marketing, but he was unable to compete with the rival company. He has been unable to make any repayments of the loan, and his business is no longer profitable.

WCDB is now seeking possession of Oak Wood.

Advise Ayesha of the possibility of the court setting aside the agreement with WCDB on the ground of undue influence.

**(25 marks)**

## Question 2

Jiro is the owner of a shop that specialises in selling rare and expensive computer hardware. Jiro read in the press about the development of a new and exclusive type of processor, known as the Speedster 2.0, by a local firm, Indigo Components Limited ('ICL'). Soon his customers began to ask him to stock the Speedster 2.0, and Jiro contacted ICL to discuss placing an order for some processors to sell in his shop.

At a meeting between Jiro and Laura, the head of sales for ICL, it was agreed that ICL would supply 500 Speedster 2.0 processors to Jiro, for the total sum of £25,000. It was agreed that all 500 processors would be delivered to Jiro in a month's time.

Laura then handed Jiro a contract consisting of the standard terms of sale on which ICL operated. Jiro signed the agreement. The contract included the following clauses:

'CLAUSE 24: Indigo Components Limited will not be liable for any fault, error or defect in any or all of the goods supplied under this agreement when such goods are used in an abnormal manner.'

'CLAUSE 30: Notwithstanding any other provision of this contract, Indigo Components Limited will be liable to a maximum of £10,000 only for any loss suffered by the buyer of the goods transferred under this agreement as a result of any breach of this agreement by Indigo Components Limited.'

A month later, ICL delivered 100 Speedster 2.0 processors to Jiro. When he asked about the missing part of the order, Jiro was told that due to a problem with factory equipment, they would not be able to supply any more processors.

Jiro was unhappy as he had at least 500 customers ready to purchase a Speedster 2.0 and would now lose the potential profit he could have made on those sales, although he was able to sell the 100 processors for £10,000. Unfortunately, within weeks a number of customers complained that their Speedster 2.0 had proved faulty and caused serious damage to their computer systems.

All of the customers affected had been using the processors to power their custom-built systems using components with which the processors had not been compatibility-tested. Jiro has been forced to pay compensation to these customers, amounting to over £15,000 in total.

Jiro now wishes to claim for substantial damages against ICL for his various losses. Advise Jiro whether ICL's exemption clauses will be effective:

- (a) at common law;
- (b) under statute.

**(10 marks)**

**(15 marks)**

**(Total: 25 marks)**

**Turn over**

### Question 3

Mary is a qualified dentist, who recently moved back to the UK after a decade of working in Australia. Unwilling to build up a new practice from scratch, she decided to look for an existing dental practice for sale. This led her to contact Nathan, an elderly dentist who wished to sell his practice in Greenhampton and retire from the profession.

Mary met with Nathan to discuss the current state of the practice. Nathan told Mary that he had 'at least 200 clients on the books' and that 'business could not be better'. Mary asked about the state of the premises, as she did not have the money to renovate the building. Nathan replied: 'In my eyes the building is absolutely fine, but feel free to check it out yourself'. Hoping to save her limited funds, Mary decided not to employ a surveyor to inspect the premises and did not have the chance to inspect it herself.

Reassured by Nathan's statements, Mary decided to purchase the practice after a short deliberation. She and Nathan entered into a written contract, which made no mention of the number of clients or the state of the premises.

Within a few weeks of taking over the dental practice, Mary realised that while there were many hundreds of clients contained in Nathan's records, very few still patronised the practice. In fact, there were only seven patients listed who had been for an appointment in the past year.

Mary also noticed that there appeared to be a serious problem with damp in the building. She has now had the premises surveyed and has been told that the premises are unsafe and will require an expensive renovation. In the past week, the damp has caused part of the roof to collapse.

Advise Mary as to:

- (a) whether the statements made to her by Nathan will be classified by a court as terms of the contract or mere representations;

**(8 marks)**

- (b) any claim in misrepresentation that she might have, if the statements are held to be mere representations.

**(17 marks)**

**(Total: 25 marks)**

#### **Question 4**

Thandie is the mother of two children, Will and Yolanda. In June 2013, Will completed his school education and told Thandie that he saw no point in attending university. Thandie was extremely disappointed, as she believed that Will should obtain a degree in medicine, as she wished for him to become a doctor.

Thandie said to Will: 'If you go to university and obtain a degree in medicine, I will pay you £50,000 on graduation'. Will was tempted by the offer, but was concerned that his mother might renege on her promise. He asked her to put the offer in writing, which Thandie did, and both she and Will signed the document. Will began studying medicine at Kempston University in September 2014.

Meanwhile, Thandie's health began to deteriorate and she was unable to devote her time to her successful business importing goods. Realising that the business would fail in her absence, she emailed her daughter Yolanda, asking her to come and work for her, at a salary of £20,000 a year. Yolanda was pursuing her own career in accounting in New York and was reluctant to leave her prestigious job at a major accounting firm, where her salary was much higher. She replied via email to her mother, saying that while she would love to help, she could only do so if Thandie promised to give her half of the business. Upon receiving this message, Thandie emailed Yolanda 'please come' and included details of a flight ticket from New York to London that she had purchased in Yolanda's name, but did not mention transferring any shares in her business. Thandie took the flight back and began working with Yolanda.

Thandie has now decided that she would prefer Will to be a lawyer, and has told him that she will not pay him the £50,000 on graduation from his medical degree. She has also told Yolanda that she had never agreed to give her a share of the business and will not do so.

Advise Will and Yolanda as to any claims they may have against Thandie.

**(25 marks)**

**End of Examination Paper**

© 2017 The Chartered Institute of Legal Executives

**BLANK PAGE**