Elements of the Law of Contract

Tuesday 22 May 2012: 10.00 – 13.15

Candidates will have fifteen minutes during which they may read the paper and make rough notes ONLY in their answer books. They then have the remaining THREE HOURS in which to answer the questions.

Candidates should answer FOUR of the following EIGHT questions.

Candidates should answer all parts of a question unless otherwise stated.
1. Norman, a model, has been losing his hair, a matter which concerns him greatly. He reads an advertisement in a men’s magazine which states:

‘Thinning hair? Receding hair? Worry no more for an easy lotion is now available: Dynamic Hair Growth – a new lotion made by the Dynamic Hair Growth Company. The use of the Dynamic Hair Growth lotion will not only halt hair loss, it will reverse this process and restore any hair already lost. Simply use Dynamic Hair Growth three times daily, in accordance with the instructions, for two months and see the results. A full head of hair or we will provide you with £1,000.’

The advertisement also states, in small print below the bold statement, ‘see our website for further information’. Norman does not check the website which provides a long list of medical conditions which will prevent the Dynamic lotion from properly working.

Norman purchases the Dynamic Hair Growth lotion from Easy Chemists, where the sales assistant informs him that the lotion has done wonders for her husband’s hair. Norman uses the lotion in accordance with the instructions for two months. At the end of the two months, Norman is completely bald. When he contacts the Dynamic Hair Growth Company, their doctor examines him. Based on this examination, Dynamic inform him that the baldness is due to a rare medical condition. Norman, now no longer able to work as a model, becomes despondent.

Advise Norman.

To what extent, if any, would your advice differ if the Dynamic Hair Growth had been a gift to Norman from his girlfriend, Olive?
2. Abby operates a taxi company and has entered into lucrative contracts with two law firms, City Slackers LLP and Fat Cats LLP. The following events occur:

a) Her contract with City Slackers involves the supply of ten taxis every night to take their employees and clients home from the firm’s offices. After a month, Abby realises that the rise in petrol prices has made it impossible for her to supply the taxis without operating at a loss. She contacts City Slackers and informs them that she will not be able to supply the full quota of ten taxis the following night. City Slackers are hoping to finalise a very profitable deal with important clients that week and have no time to find an alternative taxi firm. In addition, they think that Abby’s professional taxi service will give a good impression and may help to seal the deal. They therefore agree to pay Abby an extra £500 if she can continue to provide the taxis for the rest of the week. Abby agrees but when she invoices City Slackers they refuse to pay her the additional money.

b) Abby has an agreement with Fat Cats to supply five taxis every morning. Recently, however, she has had a number of staff problems and is unable to provide enough drivers for the five taxis. She contacts Fat Cats and asks whether it would be possible to provide only three taxis for two months whilst she expands her business through a new advertising and recruitment drive. Fat Cats agree. Abby spends a huge amount of money on advertising, buys new cars and employs new staff. However, after the two months, Fat Cats now seek compensation for the two taxis that were not provided.

c) One of Abby’s drivers picks up the managing director of Fat Cats, Sophie, every morning. Sophie tells the driver that she loves being driven the longer, scenic route to work since it relaxes her and improves her performance during the working day. The driver begins to take Sophie via the scenic route. After a month, Sophie tells the driver that the journey is greatly benefitting her work and that Fat Cats will pay for the extra petrol. That day, Abby invoices Fat Cats for the last month’s services, including an additional £100 for the extended route. Fat Cats refuse to pay the additional £100.

Advise Abby.
3. ‘Although the Misrepresentation Act 1967 was a much-needed piece of legislation it was extremely poorly drafted, leaving much for the courts to develop. On the whole, however, the courts have done a good job in their interpretation of the legislation, particularly where the “fiction of fraud” is concerned.’

Discuss.

4. Walter and Metallica Ltd contract to provide that Walter will sell to Metallica an island rich in coal. The agreement was entered into on April 13 and the island was to be conveyed to Metallica on May 1. The purchase price was £5,000,000. On April 1 Parliament passed the (fictitious) Prevention of Strip Mining Act. The Act came into force on April 10 and its effect was to prohibit all strip mining on the island.

Neither party was aware of the legislation at the time of the contract. Metallica paid to Walter a deposit of £500,000. Metallica subsequently discovered the planning restrictions before May 1. Metallica refused to complete the contract of sale. Walter sued for specific performance of the contract and Metallica counter-claimed for the return of its deposit. The island, so restricted, is worth £200,000.

Advice Metallica.

5. Pat is the owner of an old and somewhat decrepit house in need of attention. Her family decide that, as a birthday gift to her, they will have the house renovated and refurbished. Her husband, Quentin, engages Sparke Ltd, a firm of electricians, to rewire the house and install recessed lighting throughout. The work is to be completed by the end of February. Pat’s mother, Ruby, arranges to have Floode Ltd install a new set of bathroom fixtures in the upstairs bathroom. This work is also to be completed by the end of February. After Ruby has placed her order, she and Floode agree that Floode will only be accountable to her. Not to be outdone in the project, Terence, Pat’s father, visits the Busted shop and arranges to have a complete home entertainment system delivered to Pat’s home.

Sparke work slowly and erratically and at the end of April have still not completed their work. Floode do not supply the bathroom fixtures ordered and what they do install is so poorly done that the entire work will need to be replaced. Pat and Ruby argue over this and Ruby insists that everything is fine and that there is nothing she will do about this. The home entertainment system from Busted is not as described and is unable to function continuously for more than half an hour. Pat and Quentin have had to live in a hotel for the past two months and found it difficult to function normally given the stress of the situation.

Advise Pat.
6. Hubert decides to improve his foreign language skills. He telephones SpeakRite, an online foreign language service, and enquires about their Polish language courses for beginners. Patek, one of SpeakRite’s salespersons, explains the content of the Polish language package to Hubert. Every month a password will be emailed to Hubert which will enable him to download the full content of that month’s lessons. In addition, SpeakRite undertake to provide Hubert with an hourly conversation class by telephone with one of the company’s native Polish teachers. The package costs £100 per month.

Hubert is impressed and decides to subscribe to the monthly package. He receives a contract by email which directs him to a website containing SpeakRite’s terms and conditions. When Hubert accesses the webpages and tries to read them, however, he is unable to understand anything as it is all written in Polish. He nevertheless sends SpeakRite the initial £100 to commence the course.

All goes well for the first two months. However, certain problems then arise. Hubert discovers that the native Polish teacher has resigned and there will no longer be any conversation classes available. In addition, when Hubert enters his password a virus within SpeakRite’s webpages deletes all of Hubert’s files on his computer. He immediately telephones SpeakRite who send one of their engineers, Marek, to investigate. Unfortunately, Marek cannot rescue the files. On leaving Hubert’s home, Marek reverses his van over Hubert’s foot causing him serious injury.

On complaining to SpeakRite, Hubert is given an English copy of the company’s terms and conditions:

i) SpeakRite reserve the right to alter the content of their service without prior notification.

ii) SpeakRite accept no responsibility whatsoever for damage to property, howsoever caused.

iii) SpeakRite accept no liability for personal injury caused to their clients by SpeakRite or their employees.

Advise Hubert.

7. ‘English law’s restrictive approach to the equitable remedy of specific performance is difficult to justify. Since the only reason that parties enter contracts is to obtain performance, then the law should allow parties to enforce performance when breach occurs.’

Discuss.
8. Smooth Sam is a disc jockey. He agreed to work last Saturday for the Nelson Arms pub. The Nelson Arms agreed to provide Sam with all the necessary equipment for his show including a selection of 200 records. The Nelson Arms also agreed to pay Sam £1,000 for his show on Saturday and to pay Dave, Sam’s friend, £150 to set up the equipment before Sam went on stage and to take it down afterwards. Dave was not a party to the contract between the Nelson Arms and Sam.

On Saturday, Dave arrived at the Nelson Arms early and set up the equipment for Sam. However, when Sam arrived he found that there was only a selection of 40 records available. He thereupon informed Tom, the manager of the Nelson Arms, that he would not perform and left.

Tom was furious. He told Dave to leave the equipment set up and began telephoning around to find another disc jockey for the evening. He eventually contacted a disc jockey called Rocking Rod who agreed to perform at the Nelson Arms that evening for £1,500. Tom agreed to pay for this fee but, when Rod arrived at the Nelson Arms, Tom found that Dave had taken down the disc jockey equipment and gone home. Tom was forced to pay two local youths £75 each to set up the equipment for Rod. Rod then performed that evening and was very successful.

Sam and Dave are demanding their fees of £1,000 and £150 from the Nelson Arms. Tom has refused to pay them and is threatening legal action by the Nelson Arms (which is a limited company) against Sam for breach of contract.

Discuss.

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