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. On June 5 Alvin wrote to Bob offering to sell 500 bags of sand at £20 per bag. On June 7 Bob posted a reply in which he accepted Alvin’s offer but added that if he did not hear to the contrary he would assume that the price included delivery to his (Bob’s) yard. The following morning, before Bob’s letter arrived at Alvin’s office, Alvin read a posting on the internet which stated that the price of sand was about to fall and he immediately sent an email to Bob stating ‘our price of £20 includes delivery’.

On receiving Alvin’s email at 11am on June 8, Bob posted a letter to Alvin confirming his acceptance of Alvin’s terms. By mid-day, however, Bob also saw the posting on the internet which indicated that sand prices were about to fall and, having considered the matter, sent an email to Alvin stating ‘Decline your offer of sand’.

The price of sand did fall to £15 per bag and Bob refuses to accept any sand from Alvin.

Advise Alvin.

2. ‘The doctrine of consideration is highly unsatisfactory since it often seems that the courts simply “find” consideration where they believe that parties should be bound by their agreement. In addition, it is difficult to justify the different treatment given to promises to pay more (as occurred in Williams v Roffey Bros) and those to accept less (as occurred in Foakes v Beer).’

Discuss.
3. Chloe is the managing director of a whisky distillery, Glencrows. In an effort to increase sales across Europe, she enters into negotiations with Derek, a European distributor of alcoholic beverages. She tells Derek that Glencrows' new whisky, Burns, is of the finest quality yet and that this type of dry whisky always sells well across Europe. She also informs Derek that McDougal, the famous whisky connoisseur, works at Glencrows and, if Derek distributes the whisky, he will get to work with him. Derek has never heard of McDougal and is not interested in celebrity culture. However, he finds Chloe very attractive and wishes to get to know her better. He also wants to use this opportunity to expand his business into the whisky market, having formerly concentrated his business solely on wine and beer. He therefore contracts with Chloe to distribute Burns across central Europe.

Derek's attempts to break into the European whisky market are disastrous. It is well known in the whisky industry that dry whisky is unpopular in Europe and will not sell. Derek realises, however, that McDougal is a hugely popular television celebrity in Europe and believes that his association with Glencrows will help Derek to sell the whisky. However, Derek now discovers that a week before he signed the contract with Chloe, McDougal gave Chloe notice to leave Glencrows and no longer works there. Derek is distraught. In addition, the failure of his whisky venture means that he has been unable to invest in a new brandy liqueur which is proving extremely profitable in Europe.

Advise Derek.

4. John and Kester Ltd contract for John to sell Kester 50 acres of land. The contract was entered into on February 13 and the land was to be conveyed to Kester on March 1. The purchase price was £2,000,000. On February 1 Parliament passed the (fictitious) Planning and Restriction of Residential Development Act. The Act came into force on February 10 and its effect was to prohibit the residential development of the 50 acres.

Neither party was aware of the legislation at the time of contracting. Kester paid to John a deposit of £200,000. Kester subsequently discovered the planning restrictions before March 1 and refused to complete the contract of sale. John sued for specific performance of the contract and Kester counter-claimed for the return of its deposit. The land, so restricted, is worth £100,000.

Advise John.
5. ‘English law provides that a stranger to a contract can neither be bound by the contract nor derive an enforceable benefit from the contract. Such restrictions are justifiable.’

Discuss.

6. Chardonnay regularly visits a London nightclub called Sensations. She always leaves her coat in the nightclub cloakroom and is given a ticket in exchange before entering the nightclub. On the back of the ticket is some small print which reads: “Sensations’ liability for loss or damage to personal property caused by any act or omission by an employee of Sensations is limited to £20.”

Chardonnay has recently bought a new leopard print coat worth £400. As usual, she leaves her coat with the cloakroom attendant. The nightclub is busier than usual and the cloakroom attendant forgets to give her a ticket this time. While Chardonnay is in the nightclub, the cloakroom attendant leaves the cloakroom open for ten minutes while he has his break. Hazel takes this opportunity to enter the cloakroom and steal Chardonnay’s coat.

Wayne also frequents Sensations on a regular basis since it is the perfect venue for entertaining his business clients. He has recently decided to become a member of the club since the membership allows him access to the VIP area at the back of the nightclub and free champagne. On joining, his membership package contained the following term and condition: “Sensations reserves the right to alter elements of its membership benefits without prior notice.”

Wayne brings one of his clients to Sensations. He tries to enter the VIP area but is denied access. The attendant explains that only celebrities are now able to use this area. When ordering some champagne, he is charged £300.

Advise Chardonnay and Wayne.
7. Violet has just purchased an old farmhouse that she plans to convert into a stylish hotel. She enters into two contracts:

i) The first is with a local building company, BotchUp Ltd, to build a timber roof for £20,000. She specifies that the builders source the timber from the local forests. This is because she wants to minimise the environmental impact of the hotel’s construction as well as to align the colouring of the roof with the hues of the natural landscape. BotchUp Ltd instead use their usual timber suppliers, importing the wood from Germany. Violet is furious. The hue of the timber is slightly different from that of the local timber, although it is difficult for anyone but an expert to perceive the difference. She is also angry because the use of foreign wood will harm the advertised image of the hotel as a building in peaceful harmony with its natural habitat. She insists that she needs to employ another company, Woodies, to tear down the roof and re-build another one, this time using local timber. Woodies have quoted £25,000 for the work.

ii) The second contract is with a local artist, Percy, whom Violet commissions to paint her portrait for the hotel entrance. Percy has a reputation for painting his subjects in a flattering light and Violet is delighted to secure his services. However, on the day of her first sitting Percy telephones Violet to say that he has been offered more profitable work and will not be coming. Violet is furious and demands that he attend the sitting.

Advise Violet.

8. Sarah agrees to give William private tuition for his Law of Contract examination to be held in eight months’ time. The fee is £2,000, of which William pays £300, with the balance to be paid on completion of the tuition. Sarah spends £400 in the preparation of some printed tuition notes. After two months Sarah goes to Spain for a week long holiday at Christmas. Whilst on holiday she is wrongly arrested, having been mistaken for a notorious criminal, and detained for two months. On her return to England she discovers that William has engaged another tutor and is demanding the return of his £300. Sarah sues for the balance of the £2,000.

Advise Sarah.

How would your answer differ, if at all, if Sarah had been convicted and detained for shoplifting?

END OF PAPER