Elements of the Law of Contract

Wednesday 29 May 2013: 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.
On Wednesday Frederick advertised his Nikon D800E digital camera in the local newspaper for £2,000. George, on seeing the advertisement, called at Frederick’s house on the same day to see the camera. After discussion, Frederick offered to sell the camera to George for £1,500. George stated that he would need some time to think it over but that Frederick should assume if he heard nothing from George by Thursday evening, that George had bought it. Frederick replied that this arrangement was fine by him.

At 3pm Hari telephoned Frederick and offered to buy Frederick’s camera for £2,300. Frederick immediately accepted Hari’s offer and e-mailed George revoking his original offer. Unknown to Frederick and George, there was a problem with George’s internet service provider and the message to George was never directed to him. Although Frederick did not know this, he was worried about the matter and tried to telephone George again at 6pm. Frederick spoke to Isabel, George’s wife, and told her that the camera had been sold. Isabel said that she expected George home at 6.30pm and would pass the message on to him then. However, George had already decided to buy the camera and had faxed his acceptance to Frederick’s home at 5.15pm. Frederick did not read George’s acceptance until 6.30pm. George came home at 7.15pm and Isabel then gave him the message from Frederick.

Advise Frederick.
2. Harold is planning a number of celebrations for the fortieth birthday of his partner, Percy. He intends to hold a firework party in the garden of their stately home on the eve of Percy’s birthday. Harold wants to prevent the fireworks from landing on the roof of their property, since it dates from the 14th century and would be difficult to repair if it got damaged. He therefore telephones his friend, Sam, the fire chief at the local fire station, and tells him that he will pay him £1,000 if he attends on the night of the party with three fire fighters. Sam agrees. It is a requirement under local regulations that at least two firefighters attend firework events.

Harold needs to redecorate the ten bedrooms of his house so that his guests can stay in comfort during the party period. He contacts his cousin, Gloucester, who is a painter and decorator, and asks him to undertake the work. Gloucester charges Harold £3,000. After completing only one bedroom, Gloucester is offered another job at a higher wage and informs Harold that he will not complete the job. Harold is desperate to get the painting finished in time for the party and offers to pay Gloucester an additional £1,500 if he completes it. Gloucester agrees and completes the work.

Harold telephones Birthday Banquets to arrange the food for the party. Birthday Banquets agree to provide a hot buffet for 300 people on Percy’s birthday. Harold agrees to pay them £800. However, a week before the party, all the chefs at Birthday Banquets get sick. On learning of this, Harold tells Birthday Banquets that if they can find another reliable company to prepare the buffet that would be great. Birthday Banquets contact Fantastic Foods, who agree to provide the buffet instead.

After the party, Harold refuses to pay Sam the £1,000 and tells Gloucester he will only pay him the £3,000. On receiving an invoice from Fantastic Foods, he also refuses to pay them any money.

Advise Harold.
3. Wendy is arranging a party for her daughter, Violet’s, 5th birthday. Wendy is anxious that Violet’s birthday party is a success. She is hoping to start her own business as a childrens’ party organiser and believes a successful party will attract business from many of the parents at her daughter’s party.

Wendy visits Pirate Playhouse, a local children’s play centre, in order to enquire if she can hire it as a venue for the party. She meets Kamil, an employee, who tells her that the play centre is the best in the neighbourhood with a wide range of facilities. He reassures her that the party will be a great success. He says, ‘The children will be talking about it for months!’ Kamil suggests that he show Wendy all the facilities available at the play centre, but Wendy refuses as she is late for a hairdressing appointment. Wendy notices that the play centre is offering a discount if she books that day. She therefore decides not to delay and books Pirate Playhouse for Violet’s party. As she is leaving, Wendy asks Kamil whether Pirate Playhouse can accommodate 100 children. Kamil has only just started working at the play centre and is not sure of its capacity. He consults his ‘Employee Handbook’ and reads: ‘the play centre should not allow entrance to more than 200 children.’ Kamil informs Wendy that there is more than enough room for 100 children.

On the day of the party, things do not go to plan. Pirate Playhouse is extremely basic with very few play facilities. The children get extremely bored and complain to their parents. In addition, unbeknown to Kamil, the Employee Handbook is out of date and since its publication Pirate Playhouse has sold off half of its estate, thereby reducing its capacity considerably. The Pirate Playhouse can now only hold 80 children and many of Violet’s friends cannot enter the Playhouse. The result is disastrous. As a result, Wendy believes that her chances of attracting potential customers for her new business have been ruined. It can only accommodate a maximum of 80 children and many of Violet’s friends are prevented from entering. Wendy believes that the disastrous party has ruined her chances of attracting potential customers for her new business.

Advise Wendy.

4. ‘If the law of contract is to be coherent and rescued from its present unsatisfactory and unprincipled state, the House has to make a choice: either to uphold the approach adopted in Cundy v Lindsay and overrule the decisions in Phillips v Brooks Ltd and Lewis v Averay, or to prefer these later decisions to Cundy v Lindsay.’ [Shogun Finance Ltd v Hudson (2003) per Lord Nicholls]

Discuss.
5. ‘The rule that a third party cannot acquire rights under a contract to which he is not a party is a controversial one and courts created numerous exceptions to this rule. The use of such exceptions, and the development of new exceptions, will diminish following the enactment of the Contracts (Rights of Third Parties) Act 1999.’

Discuss.
6. Khan is the owner of a small flat. He has been posted abroad for two years and wants to rent out his flat. He visits Houzz, a local home rental agency, and discusses his situation with Miranda, the owner. Khan agrees with Miranda that she will find tenants for his flat and ensure that the property remains safe during the period of his absence. It is also agreed that any rent received from the property will be paid directly to the bank which holds the mortgage on the property, to satisfy Khan’s mortgage payments. Miranda asks Khan for a £200 cheque and informs him that this represents the first two months’ commission for Houzz’s services at £100 per month. Khan also supplies Miranda with his bank details so that they can arrange for monthly payments direct from his bank account to cover Houzz’s services. Miranda gives Khan a glossy brochure entitled ‘Welcome to Houzz’ and tells him that he will find everything he needs within.

Six months later, Khan notices that he has very little money in his bank account. He investigates and realises that Houzz have been increasing their monthly fees considerably. His latest monthly payment was £900. That same day, Khan receives an email from Miranda informing him that Peter, her cousin, was helping her out with the business last weekend. Unfortunately, when he visited Khan’s property he didn’t lock the door. As a result, a burglar entered and stole Khan’s audiovisual equipment worth £3,000.

Khan is furious and telephones Miranda. Miranda informs Khan that she will be terminating his contract in seven days and that he must consult the brochure she sent. Khan does so and finds the following terms and conditions:

1. The commission charges for managing your property are variable and may fluctuate depending on a number of factors including such things as the value of your home, the time period of rental, the Bank of England interest rate and average commission charges of competing home rental agencies in a 4.5 kilometre radius from Houzz.

2. Houzz are not liable for any loss or damage caused by the negligence of their employees.

3. Houzz reserve the right to terminate the contract with the provision of one week’s notice. Houzz’ clients must provide six month’s notice for termination of the contract.

Advise Khan.
7. Adam was a supplier of fireworks who was registered as required by the (fictitious) Firework Supply and Distribution Act 2003. Adam supplied 150 boxes of fireworks to Bernadette, without the statutory invoice recording the sale, as required by the Act. However, he did not include the statutory invoice recording the sale, as required by the Act, since Bernadette told him that, as between friends, such formalities were unnecessary. Bernadette now refuses to pay Adam for the fireworks.

Adam delivered to Charlotte 100 boxes of fireworks. The boxes were accompanied by the required statutory invoice. Charlotte used the fireworks to celebrate events at her brothel. Charlotte now refuses to pay Adam for the fireworks.

Adam delivered to Dana 20 boxes of fireworks to be used at a private party at her house. Although the delivery was accompanied by the relevant statutory invoice, the fireworks were poorly assembled and caused damage to Dana’s house. Dana is required to pay £2,000 to fix the damage caused.

Advise Adam.

To what extent, if any, would your advice differ if Adam’s registration had expired before the above transactions were entered into, although Adam was unaware of this?
8. Boris Buses are planning a new business venture in London. They want to operate a tourist bus service around the main tourist attractions of central London. In addition to the sightseeing experience, passengers will be able to dine at the gourmet restaurant that will be on every bus. Boris Buses are expecting to make most of their money from restaurant diners, rather than from the ticket sales for the tourist bus route.

Boris Buses contact Ken, a supplier of red double-decker buses, and arrange to buy 30 buses from him at a cost of £6,000,000. £4,000,000 is payable immediately and the balance is due on delivery of all the buses. Boris Buses also contract with Cameron, who will equip the buses with compact kitchens on their top decks. Boris Buses agree to pay £1,000,000, the total of which is payable immediately. Cameron orders the kitchen equipment in advance at a cost of £150,000 and starts building the kitchens.

One day after Boris Buses have received all of their buses from Ken, the Mayor of London introduces, with immediate effect, regulations on public transport emissions. Environmental regulation had been a key element of the Mayor’s recent election manifesto. All public transport that does not meet the required level of nitrogen oxide emissions is banned from entering the central London zone. The prohibition starts immediately. Boris Buses’ new buses do not meet the nitrogen oxide requirements as set out in the regulation. Boris Buses are therefore unable to follow their planned tourist route and are instead restricted to an outer London route that offers no tourist attractions.

Boris Buses are furious. They wish to cancel their contracts with Cameron and Ken. Both refuse and demand that Boris Buses pay them what they owe.

Advise Boris Buses.

END OF PAPER