Elements of the Law of Contract

Tuesday 19 May 2015: 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.

Permitted materials
A student is permitted to bring into the examination room the following specified document: either one copy of Blackstone’s Statutes on Contract, Tort & Restitution (OUP) or one copy of Core Statutes on Contract, Tort & Restitution (Palgrave Macmillan).
1. ‘We should emphasise that we do not wish our proposed legislation...to hamper the judicial development of third party rights.’ Law Commission Report 1996 (para 5.10)

Critically evaluate the success of the Law Commission’s aims in light of the above statement.

2. Alex, a builder, requires a crane for a building project. Alex negotiates with Mehmet, a supplier of building machinery, to hire all his building machinery including the crane. During the negotiations Mehmet states that he can supply all Alex's crane needs for the project, including the DC100 crane which can carry a weight of up to three tonnes. Mehmet has checked the tonnage capacity of the DC100 both in the crane’s manual stored in his office and in the online register. Both confirm that the DC100 is suitable for Alex’s requirements. Alex’s surveyor has also quickly checked the manual and sees that it is suitable. A week before the contract is agreed Mehmet receives an email from the manufacturer with the subject heading ‘DC100 tonnage: error in manual’s tonnage capacity’. He does not bother to read the email. This email would have told Mehmet that the carrying capacity was only one tonne. Alex decides to hire his machinery from Mehmet; he is especially pleased that Mehmet offers him a 10% discount on the hire. Nothing in the written contract refers to the weight capacity of the DC100. However, when using the DC100 to lift two tonne concrete blocks, the crane is unable to support the weight and drops one of the concrete blocks, which crashes into the roof of the building, a specially commissioned stained glass worth £1 million. Alex has to halt his building project whilst he waits for a new glass panel to be delivered. As a result, he is extremely late on completing the project and makes a loss of £1,200,000. His delay also means that the main contractor does not hire him for a subsequent project. This would have resulted in a £40,000 profit for Alex. Alex discovers that the DC100 only has a weight capacity of one tonne and wishes to sue Mehmet.

Advise Alex.
3. In November 2014, Lottie booked a holiday to do a bungee jump and sports activity based adventure in March 2015. The cost of the holiday was £1,100. Lottie paid £100 deposit with the remaining £1,000 to be paid in two instalments; £500 on 28 February, one month before the holiday, and £500 upon arrival. On 21 February, five weeks before the holiday, Lottie discovers that the bungee jump has been cancelled and so Lottie calls to cancel the holiday. The Adventure Centre tell Lottie that there are still all the other activities available and they will keep her place open and expect full payment. Lottie is very annoyed but, on reflection, she decides she will go. She makes the payment of £500 on 28 February.

On 26 March, two days before Lottie’s holiday is due to start, the Adventure Centre is hit by food poisoning and is closed for inspection. It is discovered that the poisoning is due to contaminated milk being sent from the manufacturer and used in the puddings.

Advise Lottie on any claims.

How would your answer be different if the food poisoning was caused by the chef storing the butter uncovered on the same plate as raw meat?
4. Seema places an advert in her local shop window, ‘Five goblets for sale: each £10. Available only to the first five people who pay me this amount by Saturday 1st May’.

Ali sends Seema £10 in the post on Tuesday 27th April and says he will collect one goblet on Monday 3rd May. The letter gets lost in the post.

In the morning of Thursday 29th April Chet telephones Seema and asks if he can buy two goblets for £15. Seema says she needs time to think about this and Chet tells her to let him know by Saturday at 10am. On Thursday evening Seema calls Chet and leaves a message on his answering machine saying, I agree you can have two goblets for £15.’ Chet does not hear the message until Saturday morning.

Being disappointed by the response to the advert, Seema decides to place the remaining three goblets in an auction on Friday 30th April. Seema places a note in her window stating that the goblets are no longer for sale and that they are going to auction.

Chet attends the auction and is delighted to see the goblets for sale. He makes a successful bid and buys the three for £15. He sees Eduord, Seema’s partner, at the auction and says ‘What a bargain I’ve got! I’m glad that Seema didn’t respond to my telephone call’. Eduord calls Seema immediately. She is furious as she was keeping two goblets for Chet. In anger she takes two goblets to a charity shop on Friday evening.

Having seen the advert Diego arrives at Seema’s house on Saturday morning with £10 and is very annoyed to see the note as he planned to give a goblet to his mother as a present. Ali arrives on Monday to collect his goblet.

Advise Seema.

5. ‘It would seem that the courts are intent on preserving to themselves a degree of remedial flexibility and the measure of recovery in any particular case may therefore be a matter of some uncertainty.’ (McKendrick, Contract Law)

Explain and critically evaluate how damages are assessed by the courts in light of the above statement.
Roger has a food catering business and has agreed with Dawn, the manager at Nippers Nursery, to supply lunches for the nursery children for a period of one calendar year. He is to be paid £2,000 per month, a price that reflects providing a main course and dessert for each child daily. Unfortunately, due to increased electricity costs, Roger finds himself in financial difficulty. He says to Dawn: 'Unless you increase my monthly fee to £2,500 I will not be supplying any desserts as part of the lunchtime meal for the children.' Dawn is disappointed as Roger’s desserts are far healthier than the desserts of his competitors. She believes that a more healthy option will result in positive reviews of the nursery and thereby increase her funding from the government. She agrees to the price rise.

Roger buys his food supplies from Amy. However, his recent financial problems have made it difficult for him to pay Amy and he is £3,000 in debt. Amy is in love with Roger and says to him: 'Don’t worry, just pay me £500 and we can forget about the rest.' Roger pays the £500. He is delighted and he books tickets for him and his new girlfriend, Kate, to go away on holiday together.

Both Amy and Dawn hear about Roger’s impending holiday with Kate. Dawn refuses to pay him the extra monthly fee and Amy demands the full repayment of the debt.

Advise Roger.
7. Agatha telephones Brian to order a ‘Betahouse’ food blender, the latest device for perfect baking. Brian mishears this and thinks she wants a ‘Bekahaas’, the standard blender. Brian tells Agatha that he has one for £200 and Agatha is delighted at this price as this is much less than the normal cost of a ‘Betahouse’ blender, which is £800. She tells Brian to put it aside for her and she will be in at 5pm that day to collect it.

Later Agatha, who runs a shop selling antiques, receives a telephone call from someone claiming to be Polly Petty, a famous antiques collector and television celebrity and the host of a television programme about antiques. ‘Polly Petty’ asks if Agatha’s wonderful Russian Blue clock is for sale as she would like to buy it to make an episode of her television show about it. Agatha is very flattered and delighted as ‘Polly Petty’ is willing to pay top price. In fact, ‘Polly Petty’ is a rogue called Hetty.

When ‘Polly Petty’ arrives Agatha is so star struck that she asks for publicity shots to be taken, which Polly happily agrees to. Agatha loads the clock into Polly’s car and then Polly produces her cheque book. Although Agatha is reluctant to take a cheque for such a large amount she does not want to miss the opportunity for such good publicity.

Agatha then arrives at Brian’s shop and discovers that a Bekahaas has been set aside for her and she refuses to accept it. Then later, at the bank she discovers that the cheque is a forgery. On the way home she sees her Russian Blue clock in Zayn’s second hand shop. She goes in and demands he return it to her.

Advise Agatha.
8. Simone has a dairy farm business and attends a meeting with Rita, the manager at Freshco, a large national supermarket to whom Simone wishes to sell her milk. Rita is impressed by Simone and wants to do business with her. Rita agrees to contract with Simone for a period of six months. She hands Simone the standard Fresco order form which details the quantity of milk Simone is required to supply each week and the dates on which it is to be delivered to the supermarket. Simone is thrilled to have this business opportunity and signs the order form immediately. Unbeknown to her, on the back of the order form, in very small print, it reads:

Clause 1.1 ‘Freshco reserves the right to cancel the order at any time.’

Cause 1.2 ‘Freshco limits its liability for any damage whatsoever and howsoever caused in the performance of its contractual obligations to £100.’

After two weeks, Simone receives a telephone call from Polly telling her that Freshco wishes to cancel all future orders with immediate effect. Simone is extremely upset and slams the phone down. Rita decides to drive over to Simone’s farm to check that she is alright. As she arrives, however, her car slips in the mud and crashes into Simone’s barn, causing £5,000 worth of damage.

Advise Simone.

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