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. ‘Clearly the third party cannot qualify as a plaintiff under the bargain theory. He has suffered no detriment at the request of the promisor.’

Critically evaluate the principles of privity of contract.

2. Claudine is a builder and requires materials for a conservatory roof she is building. She is informed by Roofit & Co that they can provide the materials and suggest that Claudine use glass incorporating the latest technology: glass that is only 5mm in thickness but which provides all the heat and security benefits of glass that is 50mm in thickness. In order to ensure that this glass is appropriate for the conservatory roof, Claudine telephones the glass manufacturers, Pilkers Ltd, and their salesman confirms its suitability. Roofit & Co possess the most recent manual for this type of glass which notifies the reader that this glass is not suitable for conservatory roofs. However, Roofit & Co have never read this manual. Claudine also has a copy of this manual but has never read it either. Claudine is impressed by this type of glass and decides to order all her materials from Roofit & Co, who offer her a 20% discount for a bulk order. However, after fitting it to the roof, a bird sits on the glass and the glass shatters into pieces, falling onto Claudine and injuring her badly. She is prevented from working for six months and her customer refuses to pay. This leads to Claudine losing a lucrative contract and future business.

Advise Claudine on her claim against Roofit & Co.

3. Hettie bought a ticket to see Les Mondes at the theatre, starring her favourite actress, Carol Prince. Carol Prince developed a sore throat eight days before the show and her understudy replaced her in all performances for the next two weeks. Hettie tried to cancel the cheque she had sent and called the theatre to explain she no longer needed the ticket as Carol was not performing. The theatre owner said that they would hold her seat for her having presented the cheque for payment and no refund would be paid.

However, the night before the show the theatre was flooded when a water main in the road outside burst and the show was cancelled. The theatre still refuse to refund her ticket price.

Advise Hettie on any claims she may have against the theatre and any issues which may arise.

How, if at all, would your answer be different if the flood was caused by the doorman smoking in the auditorium and being unable to turn off the sprinklers that were set off by the smoke?
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. ‘There are not two alternative measures of damage, at opposite poles, but only one: namely the loss truly suffered by the promisee.’ (Lord Mustill, Ruxley Electronics & Construction Ltd v Forsyth (1995))

Critically evaluate how damages are awarded in light of the above statement.
6. Rose runs an organic food shop, FreeFrom, and leases her premises from Holly for £2,000 per month. In December, she accidentally slips over and badly breaks her ankle. She is advised by the doctor to stay away from work for six months and needs to employ a temporary shop assistant to work in the shop for six months. This will put her in financial difficulty and means that she will struggle to pay the rent on her shop until she is back at work in July. Rose telephones Holly saying: ‘I will not be able to pay the full rent for the next six months, can I pay a reduced amount of £1,000 per month until I return to work in July?’ Holly agrees to accept the reduced rent since Rose’s shop also sells some of the vegetables Holly grows on her allotment and she does not want the shop to close.

Rose contracts with Ivy to work in FreeFrom for a period of six months, whilst her ankle recovers. Rose’s daughter, Grace, often helps out in the shop and always gets paid by her mother. She spends two weeks working in the shop helping Ivy to learn about the business. Rose is delighted and at the end of the fortnight tells Grace she will give her £500. As a result of her reduced rent, Rose is also able to spend £3,000 on refurbishment to the shop.

Holly accepts the reduced rent of £1,000 for three months and then asks Rose to start paying the full amount of £2,000 again and to repay immediately the £3,000 that she owes for the first three months. Rose tells Holly that she will not accept her demands. She is so worried about her financial difficulties that she tells Grace that she cannot pay her the £500 she promised.

Advise Rose.
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 Freshco 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 Rita 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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