

UNIVERSITY OF LUSAKA

SCHOOL OF LAW

L120 – LAW OF CONTRACT

TUTORIAL MATERIALS

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STRUCTURE / FORMAT OF ANSWERING LAW EXAM QUESTIONS OR ASSIGNMENTS

Almost all law exam questions or problems / assignments raise more than one legal issue that you are required to deal with. Your answer should adopt the following structure or format.

1. Identify the issues raised by the question

This is of crucial importance and gives shape to the whole answer. It indicates to the examiner that you appreciate what he is asking you about. This is at least as important as actually answering the questions of law raised by that issue. The issues should be identified in the first paragraph of the answer.

2. Deal with those issues one by one as they arise in the course of the problem

This, of course, is the substance of the answer.

3. If the answer to an issue turns on a provision of a statute, CITE that provision briefly, but do not quote it in detail from any statute you may be permitted to bring into the examination hall

Having cited the provision, show how it is relevant to the question.

4. If there is no statute, or the meaning of the statute has been interpreted by the courts, CITE the relevant cases

'Citing cases' does not mean writing down the name of every case that happens to deal with the general topic with which you are concerned and then detailing all the facts you can think of. You should cite only the most relevant cases – there may perhaps only be one. No more facts should be stated than are absolutely essential to establish the relevance of the case. If there is a relevant case, but you cannot remember its name, it is sufficient to refer to it as 'one decided case'.

5. Whenever a statute or case is cited, the title of the statute or the name of the case should be underlined

This makes the examiner's job much easier because he can see at a glance whether the relevant material has been dealt with, and it will make him more disposed in your favour.

6. Having dealt with the relevant issues, summarise your conclusions in such a way that you answer the question

A question will often say at the end simply 'Advise A', or B, or C, etc. The advice will usually turn on the individual answers to a number of issues. The point made here is that the final paragraph should pull those individual answers together and actually give the advice required. For example, it may begin something like: 'The effect of the answer to the issues raised by this question is that one's advice to A is that ...' Make sure that you have answered the question completely. If the question says 'Advise A, B, C and D', don't leave D out. Don't get diverted into discussing advice to parties whom you are not required to advise.

We at University of Lusaka wish you the very best.

UNIT 2: OFFER

The offer is the first ingredient in the formation of a contract. Without an offer no contract can ever be formed. The distinction between an offer and an invitation to treat is important to be understood.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 3
The Law of Contract, Treitel – Chapter 2
Lecture Notes for Unit 1 & 2

1. OFFER

Bigg v Boyd-Gibbins Ltd [1971] 1 WLR 913; [1971] 2 All ER 183
Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256

2. INVITATIONS TO TREAT

(a) Generally

Bigg v Boyd-Gibbins Ltd (above)
Clifton v Palumbo [1944] 2 All ER 497
Gibson v Manchester CC [1979] 1 WLR 294; [1979] 1 All ER 972 (HL)
Harvey v Facey [1893] AC 552
Spencer v Harding (1870) LR 5 CP 561

(b) Display of goods

Fisher v Bell [1961] 1 QB 394
Pharmaceutical Society of GB v Boots [1953] 1 All ER 482

(c) Advertisements

Carlill v Carbolic Smoke Ball Co (above)
Grainger v Gough [1896] AC 325
Partridge v Crittenden [1968] 1 WLR 1204; [1968] 2 All ER 421

(d) Ticket cases

Chapelton v Barry UDC [1940] 1 KB 532
Thornton v Shoe Lane Parking [1971] 2 QB 163

(e) Auctions

Barry v Davies [2001] 1 All ER 944
Payne v Cave (1789) 3 Term R 148
Warlow v Harrison (1859) 29 LJ QB; (1859) 1 E and E 309

(f) Tenders

Blackpool and Fylde Aero Club v Blackpool BC [1990] 1 WLR 1195

Great Northern Railway v Witham (1873) LR 9 CP 16

Harvela v Royal Trust of Canada [1985] 2 All ER 966 (HL)

Spencer v Harding (above)

3. TERMINATION OF OFFER

(a) Revocation

Byrne v Van Tienhoven (1880) 5 CPD 344

Daulia v Four Millbank Nominees [1978] 2 All ER 557

Dickenson v Dodds (1876) 2 Ch D 463

Errington v Errington and Woods [1952] 1 KB 290

Payne v Cave (above)

Routledge v Grant (1828) 4 Bing 653

(b) Lapse of time

Ramsgate Victoria Hotel v Montefiore (1866) LR 1 Ex Ch 109

(c) Terminating condition

Financings Ltd v Stimson [1962] 1 WLR 1184

(d) Death

Bradbury v Morgan (1862) 1 H & C 249

Graves v Cohen (1929) 46 TLR 121

TEST QUESTIONS

1. Define the word 'offer' used in its contractual sense.
2. What was the offer in *Carlill v Carbolic Smoke Ball Co*?
3. Explain the meaning of an invitation to treat?
4. Explain the decision in *Partridge v Crittenden*.
5. How does *Partridge v Crittenden* differ from *Carlill*?
6. Why is the display of goods in a shop window an invitation to treat?
7. Why is the display of goods on supermarket shelves an invitation to treat?
8. What is a 'Notice for Reward' in contractual terms?
9. Can an offer be made to the world at large?
10. Who or what makes the offer in *Thornton v Shoe Lane Parking*?
11. At an auction who or what makes the offer?
12. What is an auction advertised as being 'without reserve'?
13. Must an acceptor have knowledge of the offer?
14. If services are rendered that coincidentally fulfil the terms of an offer but are performed in ignorance of that offer do contractual obligations arise?
15. How long does an offer remain open?
16. Explain the decision in *Routledge v Grant*.

UNIT 3: ACCEPTANCE

Introduction

Once an offer is made, an acceptance should/must follow for a valid contract to be formed. This unit examines the conditions relating to acceptance.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 3
The Law of Contract, Treitel – Chapter 2
Lecture Notes for Unit 3

Case Law

ACCEPTANCE BY CONDUCT

Brogden v Metropolitan Railway (1877) 2 App Cas 666
Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256
Daulia v 4 Millbank Nominees [1978] Ch 231; [1978] 2 All ER 557
Wettern Electric v Welsh Development Agency [1983] 2 All ER 629
Contract Law, McKendrick – Relevant Chapter(s)

COUNTER-OFFERS

Butler Machine Tool Co v Ex-cell-o Corp [1979] 1 WLR 401
Hyde v Wrench (1840) 3 Beav 334
Society of Lloyds v Twinn (2000) The Times 4 April (CA)

REQUEST FOR INFORMATION

Stevenson v McLean (1880) 5 QBD 346

MOTIVE FOR ACCEPTANCE

R v Clarke (1927) 40 CLR 227
Williams v Carwardine (1833) 5 Car and P 566

CROSS-OFFERS

Tinn v Hoffman & Co (1873) 29 LT 271

COMMUNICATION

(a) General rule

Entores v Miles Far East Corporation [1955] 2 QB 327; [1955] 3 WLR 48

(b) Exceptions

Entores v Miles Far East Corporation (above)
Powell v Lee (1908) 99 LT 284

(c) Instantaneous communications

Brinkibon v Stahag Stahl [1983] 2 AC 34; [1982] 1 All ER 293
Entores v Miles Far East Corporation (above)

(d) Postal rule

Adams v Lindsell (1818) B & Ald 681
Henthorn v Fraser [1892] 2 Ch 27
Holwell Securities v Hughes [1974] 1 WLR 155
Household Fire Insurance v Grant (1879) 4 Ex D 216

(e) Prescribed form of acceptance

Tinn v Hoffman & Co (above)

(f) Silence

Felthouse v Bindley (1862) 11 CBNS 869

(g) Revocation and the postal rule

A to Z Bazaars (Pty) Ltd v Minister of Agriculture [1974] (4) SA 392 (c)
Wenkheim v Arndt (1873) 1 JR 73 (NZ)

TEST QUESTIONS

1. Would the words 'I intend to take up your offer' operate as an acceptance?
2. Can acceptance of an offer be by conduct?
3. Will a qualified acceptance be an acceptance, a counter-offer or a revocation?
4. What is the 'last shot' doctrine?
5. How would you advise a client to avoid losing the 'battle of the forms'?
6. In a bilateral contract when is an oral acceptance effective?
7. In a bilateral contract when is a telephoned oral acceptance effective?
8. If the sound of an oral acceptance is drowned by a passing aircraft is there a contract?
9. If an offer is telexed to Bruce from Angela's office and the acceptance is telexed by Bruce to Angela's office during office hours but Angela's telex has run out of ink so no words appear, is there a contract?
10. Angel writes to Beda offering to sell a certain property at a stated price. Beda writes to Angel offering to buy the same property at the same price. The letters cross in the post. Is there a contract?
11. Alex sent a written offer to Bwalya in the next town. Bwalya posted a letter of rejection but then sent a telegram accepting the offer, which reached Alex before Bwalya's letter. Is there a contract?
12. Alex sent an offer to Bwalya in the next town by telegram. Bwalya posted a letter of acceptance but then sent Alex a telegram rejecting the offer which reached Alex before Bwalya's letter. Is there a contract?

13. If the offeror expressly stipulates that he will not be bound until actual delivery of a letter of acceptance will the rule in *Adams v Lindsell* apply?
14. If the written acceptance is lost in the post is there a contract?
15. If the written acceptance is lost in the post because it was wrongly addressed is there a contract?
16. When can silence be an effective acceptance?
17. Can a unilateral offer be revoked when performance has commenced?
18. What is the effect of a counter-offer on the original offer?
19. If the parties describe their transactions as offer and acceptance, will that be conclusive?
20. At an auction who or what makes the acceptance?

Exam Sample Questions

1. John places an advertisement in the local gazette advertising the sale of his BMW for K6.5 million. Bill calls John and wishes to see the car. Bill sees the car and is deeply impressed by the condition of the car. He offers John K5 million. John replies, 'On your bike!' Bill leaves and is deeply disappointed. Bill calls on John again and says he is willing to pay K5.7 million. John maintains he will accept no less than K6.2 million and Bill said he would get back to John the following day. Margaret sees Bill before he contacts John and says that John has sold the car on to somebody else. Advise Bill
2. James is trying to sell his computer and places a notice in his College. Ronald is interested and meets James offering him K4 million. James accepts. An hour later, James meets up with Ronald and says he has changed his mind. Discuss
3. Distinguish, by reference to decided cases, between unilateral and bilateral contracts.
4. Is it true to say that acceptance is the 'unconditional assent to the terms of the offer'? Discuss by reference to decided cases.
5. Sangwapo offers in writing to sell his motorbike to Mubita. Mubita writes back saying that he accepts at the price specified by Sangwapo. Although Mubita duly posts the letter, it gets lost in the post. Sangwapo is very angry and because he is in quick need of the money, sells the car onto someone else. Mubita is determined to sue Sangwapo insisting that there was a legally binding agreement. Advise Sangwapo.

UNIT 4: CONSIDERATION

Introduction

This unit looks at the role and function of consideration (the price of the promise, or something of value) in the enforceability of contracts. It also looks at the traditional benefit/detriment approach and the rules governing consideration.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston – Chapter 4
The Law of Contract, Treitel – Chapter 3
Lecture Notes for Unit 4

DEFINITION

Currie v Misa (1875) LR 10 Ex 153
Dunlop Pneumatic Tyre v Selfridge [1915] AC 847
Contract Law, McKendrick – Relevant Chapter(s)

MOVING FROM PROMISEE

Bolton v Madden (1873) LR 9 QB 55
De le Bere v Pearson [1908] 1 KB 280
Dickenson v Abel [1969] 1 WLR 295
Thomas v Thomas (1842) 11 LJ QB 104

NOT NECESSARILY TO PROMISOR

Tanner v Tanner [1975] 1 WLR 1346

PAST CONSIDERATION

Lampleigh v Braithwaite (1615) Hob 105
Pau On v Lau Yiu Long [1980] AC 614; [1979] 3 All ER 65 (PC)
Re Casey's Patents [1892] 1 Ch 104
Re McArdle [1951] Ch 669
Roscorla v Thomas (1842) 3 QB 234

SUFFICIENT NOT NECESSARILY ADEQUATE

(a) Adequacy

Arrale v Costain Civil Engineering Ltd [1976] 1 Lloyd's Rep 98
Callisher v Bischoffsheim (1870) LR 5 QB 449
Chappell v Nestlé [1960] AC 87
Midland Bank v Green [1981] AC 513
Pitt v PHH Asset Management [1993] 4 All ER 961 (CA)
White v Bluett (1853) 23 LJ Ex 36

(b) Duties owed by law

Collins v Godefroy (1831) 1 B & Ad 950
Glasbrook v Glamorgan CC [1925] AC 270
Ward v Byham [1956] 1 WLR 496

(c) Duties owed by contract with promisor

Hartley v Ponsonby (1857) 2 El & B 872
North Ocean Shipping v Hyundai Construction (The Atlantic Baron) [1979] QB 705;
[1978] 3 All ER 1170
Re Selectmove [1995] 2 All ER 531 (CA)
Stilk v Myrick (1809) 2 Camp 317
Williams v Roffey Bros & Nicholls Ltd [1990] 1 All ER 512 (CA)

(d) Duties owed to third parties

New Zealand Shipping v Satterthwaite (The Eurymedon) [1975] AC 154; [1974] 1 All ER 1015
Pao On v Lau Yiu Long (above)
Scotson v Pegg (1861) 6 H and N 295
Shadwell v Shadwell (1860) 9 CBMS 159

TEST QUESTIONS

1. What is meant by 'reciprocity'?
2. What was the consideration in *Thomas v Thomas*?
3. Who must offer a benefit for a promise to be enforceable?
4. Who must suffer a detriment for a promise to be enforceable?
5. For £100 A promises to deliver 100 plastic gnomes to B. What is the consideration for such a promise?
6. What is the ratio of *Chappell v Nestlé*?
7. In 1997 A gives B his car. In 1998 B promises A £1,000. Is that promise enforceable?
8. Will there be consideration for a guarantee given after the goods were purchased?
9. Why could Lampleigh enforce the promise from Braithwaite (*Lampleigh v Braithwaite* (1615))?
10. Has Lord Scarman's obiter dicta in *Pau On v Lau Yiu Long* ever been applied?
11. Did Lord Scarman's obiter dicta in *Pau On v Lau Yiu Long* change the law?
12. Is a promise not to sue on a valid claim consideration for any settlement of the claim?
13. If a person promises to do what he is already legally bound to do will that be good consideration?
14. Do you think the mother was really providing something extra to provide consideration in *Ward v Byham*?
15. Why was the promise to pay the police force good consideration in *Glasbrook v. Glamorgan CC*?
16. Explain the distinction between *Stilk v Myrick* and *Hartley v Ponsonby*.

17. Explain the difference between *Stilk v Myrick* and *Williams v Roffey Bros & Nicholls*.
18. If A is bound by an existing contract to B and B promises A something new in return for the existing contractual duties can A enforce that promise?
19. If a person promises to do what he is already bound by contract with a third party to do will that be good consideration?
20. What was the consideration in *Scotson v Pegg*?

EXAM SAMPLE QUESTIONS

1. Champa is on trial for murder. Monica, a close friend of hers, visits her in prison one day. Monica says that she has received a subpoena to attend court to give evidence. Monica does not wish to give evidence because she is afraid of attending court. Champa promises to pay her K1 million if she attends. Monica duly attends and there is an acquittal. Champa is now refusing to pay. Advise Monica
2. (a) With reference to case examples explain whether past consideration is valid consideration?

(b) Bona is a keen Kabwe Warriors supporter, but his son Mutale prefers Zanaco Football Club. Bono told Mutale that he would give him K2 million if he did not support Zanaco Football Club for a year. Mutale stopped going to Zanaco Football Club's home games and never wore his scarf in the team colours for a whole year. Secretly, however, he always hoped that Zanaco Football Club would win their games. Mutale is now demanding the K2 million from Boniface.
3. 'Consideration need not be adequate but must be sufficient'. Discuss the validity of this assertion.
4. Which of the following is true of consideration?
 - (i) It must be adequate and of sufficient value;
 - (ii) It must move from the promisee;
 - (iii) It must never be past;
 - (iv) It must be given in every binding agreement;
 - (v) It may be performance of an existing obligation
5. Alex organizes a musical concert in a local field, and complies with all legal requirements. He is informed by the police that there will be a charge for the supervision of the crowds of people likely to be attracted to the event. He goes ahead with the concert but, on the day of the event, the weather is exceptionally cold and only a small crowd attend. The police are now claiming their money for attending the concert, but Alex is reluctant to pay because he says the police have only performed a public duty for which they are not entitled to payment. Advise Alex.
6. Critically analyse the main principles applicable in the law of consideration.

UNIT 5: EQUITABLE ESTOPPEL

Introduction

This study unit analyses the evolution of the concept of promissory (or equitable) estoppels and its impact on the doctrine of consideration.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 4
The Law of Contract, Treitel – Chapter 3
Lecture Notes for Unit 5

COMMON LAW POSITION

Foakes v Beer (1884) 9 App Cas 605
Pinnel's Case (1602) 5 Co Rep 117a
BIRTH OF PROMISSORY ESTOPPEL
Central London Property Trust v High Trees House [1947] 1 KB 130
Hughes v Metropolitan Railway (1877) 2 App Cas 439
Jordan v Money (1854) 5 HL Cas 185

SUBSEQUENT DEVELOPMENT

(a) Nature of promise

HIH Casualty v AXA Corporate Solutions [2002] Lloyds Rep IR 325
Scaptrade, The [1983] 2 All ER 763
Taylor v Lancashire [2001] NPC 34
Woodhouse v Nigeria Produce [1972] AC 741

(b) Shield not sword

Baird Textiles v Marks & Spencer [2002] 1 All ER (Comm) 737
Combe v Combe [1951] 2 KB 215

(c) 'Clean hands' doctrine

D & C Builders v Rees [1966] 2 QB 617

(d) Reliance

Ajayi v Briscoe (above)
Alan v El Nasr [1972] 2 WLR 109; [1972] 2 All ER 127
Central London Property Trust v High Trees House (above)
Goldsworthy v Brickell [1987] 1 All ER 853
Societe Italo-Belge v Palm Oils (The Post Chaser) [1982] 1 All ER 19
Tool Metal v Tungsten Electric [1955] 1 WLR 761; [1955] 2 All ER 657

(e) Suspensive or extinctive

Ajayi v Briscoe (above)

Alan v El Nasr (above)

Central London Property Trust v High Trees House (above)

D & C Builders v Rees (above)

Tool Metal v Tungsten Electric (above)

(f) Relationship with proprietary estoppel

Baird Textiles v Marks & Spencer (above)

Crabb v Arun DC [1976] Ch 179

ESTOPPEL BY CONVENTION

Amalgamated Investment and Property Co v Texas Commerce International Bank
[1981] 3 All ER 577

Keen v Holland [1984] 1 All ER 75

TEST QUESTIONS

1. What is the meaning of the word 'estoppel'?
2. Is a creditor bound by an undertaking to accept part-payment in full settlement of a debt?
3. A owes B £10 to be paid on June 1st. A pays B £5 on May 30th in full satisfaction of the debt. Can B sue for the remainder?
4. Why did Mrs Beer succeed in her claim against Dr Foakes (*Foakes v Beer* (1884))?
5. Why could *D & C Builders* enforce the original contract price of £482 after accepting £300 in full satisfaction?
6. Do the courts allow a cause of action of breach of an estoppel?
7. If the plaintiff in *Foakes v Beer* could go back on her promise not to ask for interest, why could the plaintiffs not go back on their promise and ask for full rent during the war years in *High Trees*?
8. What would have been the position if the landlord had given reasonable notice during the war of the termination of the agreement for a reduced rent in the *High Trees* case?
9. Is it true to say that the landlord's rights to full rent during the war years were extinguished by the estoppel?
10. What is the concept of equitable forbearance mentioned by Lord Cairns in *Hughes v Metropolitan Railway*?
11. How does Lord Denning deal with the conflicting case of *Jordan v Money*?
12. What is the ratio of *Tool Metal Engineering v Tungsten*?
13. What is meant by the description of estoppel in *Combe v Combe* as a shield and not a sword?
14. Can a promissory estoppel create new rights?
15. Does the party hearing the representation not to insist on strict legal rights have to act to his detriment in order to enable the estoppel to work?
16. Has *High Trees*, and in particular, Denning LJ's obiter, ever been applied?

17. What is proprietary estoppel?
18. How is the decision in *WJ Alan v El Nasr* reconciled with that of *D & C Builders*?
19. How far is it true to say that a promise given without consideration has no effect in law?
20. What are the disadvantages for the law of contract of the doctrine of promissory estoppel?
21. What do you understand by 'estoppel by convention'?

EXAM TEST QUESTIONS

1. 'The principle of promissory estoppel is a shield but not a sword' Discuss the validity of this assertion.
2. Sefuke owes K1 million to Matilda. Matilda has agreed to accept K700,000 from Sefuke in full settlement of Sefuke's debt. Two weeks later when Sefuke is in a position to pay Matilda, she changes her mind and insists on full payment of the outstanding amount. Advise Sefuke.
3. To what extent is it possible to argue that the doctrine of promissory estoppel will prevent a party to a contract from enforcing his or her legal rights?
4. Mudenda had asked Monde, a garage proprietor and qualified mechanic, to do some repairs on his Toyota Corolla insisting it needed to be completed within '4 months'. When the time was drawing to a close Monde called Mudenda saying that the car would not be done in time, and Mudenda therefore agreed to give a further 2 months. Monde assured him the work would be complete. Two months later the work still had not been done, and Mudenda gave Monde notice that if the work would not be done in 2 weeks he would cancel. The work was still not done and Mudenda refused to accept the car. Advise Monde

UNIT 6: INTENTION TO CREATE LEGAL RELATIONS

Introduction

This unit looks at two types of agreements namely social and domestic agreements, and commercial agreements and their legal significance as regards the intention to create legal relations between the parties.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 5
The Law of Contract, Treitel – Chapter 4
Lecture Notes for Unit 6

SOCIAL AND DOMESTIC AGREEMENTS

Balfour v Balfour [1919] 2 KB 571
Gould v Gould [1970] 1 QB 275
Hardwick v Johnson [1978] 1 WLR 683
Jones v Padavatton [1969] 1 WLR 328
Merritt v Merritt [1970] 1 WLR 1211
Pettit v Pettit [1970] AC 777
Ramnarace v Lutchman [2001] 1 WLR 1651
Simpkins v Pays [1955] 1 WLR 975

COMMERCIAL AGREEMENTS

Edwards v Skyways Ltd [1964] 1 WLR 349
Esso Petroleum v Customs & Excise Commissioners [1976] 1 WLR 1; [1976] 1 All ER 117
Evans v Merzario Ltd [1976] 1 WLR 1078
Kleinwort Benson Ltd v Malaysia Mining Corp Bhd [1989] 1 All ER 785
Percy Trentham Ltd v Archital Luxfer Ltd [1993] 1 Lloyd's Rep 25
Pitt v PHH Asset Management [1993] 4 All ER 961 (CA)
Walford v Miles [1992] 2 WLR 174; [1992] 1 All ER 453

HONOUR CLAUSES

Jones v Vernon Pools Ltd [1938] 2 All ER 626
Rose and Frank v Crompton [1925] AC 445

TEST QUESTIONS

1. Does the law assume that mutual promises are intended to be enforceable?
2. What is a domestic agreement?
3. What is a commercial agreement?

4. How does the law determine whether or not the parties intended to make a legally binding contract?
5. Could two businessmen entering into an agreement to further their business interests ensure it is binding in honour only?
6. What is meant by 'a rebuttable presumption'?

EXAM TEST QUESTIONS

1. Explain whether or not an intention to create legal relations is an essential element in a binding contract.
2. Jason and Mutinta have been married for 3 years' now. Jason promises to pay Mutinta K1million per month to cover her expenses and those of their 2 year old girl. They then end up separating and Jason refuses to pay Mutinta any further. Advise Mutinta.

UNIT 7: CAPACITY OF PARTIES

Introduction

Incapacity — minors' liability examines the exceptions to the general rule that the law presumes everyone has legal capacity to contract.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 13
The Law of Contract, Treitel – Chapter 12
Lecture Notes for Unit 7

Statutes

Infant Relief Acts
Sale of Goods Act 1890

Case Law

VALID CONTRACTS

(a) Necessary goods

Fawcett v Smethurst (1914) 84 LJ KB 473
Nash v Inman [1908] 2 KB 1

(b) Necessary services

Chapple v Cooper (1844) 13 M & W 252
Roberts v Gray [1913] 1 KB 520

(c) Employment contracts

Chaplin v Leslie Frewin [1966] AC 71
Clements v L & NW Railway [1894] 2 QB 482
De Francesco v Barnum (1890) 45 Ch D 430
Doyle v White City Stadium [1935] 1 KB 110

(d) Trading contracts

Cowern v Nield [1912] 2 KB 419

VOIDABLE CONTRACTS (IE: VALID UNTIL REPUDIATED)

Steinberg v Scala (Leeds) Ltd [1923] 2 Ch 452

LIABILITY IN TORT

Balsett v Mingay [1943] KB 286
Fawcett v Smethurst (above)

TEST QUESTIONS

1. What is the present age of majority?
2. What two principles are involved in the legal intervention in minors' contracts?
3. Is a contract for necessities valid?
4. Explain the effect of the Minors' Contracts Act 1987.
5. Can the purchase of a ring to give as a gift to a friend be a necessary?
6. Why did the tailor's action fail in *Nash v Inman*?
7. What price must an infant pay for necessary items?
8. Explain the effect of s3(2) and s3(3) of the Sale of Goods Act 1890.
9. Can minors be sued on executory contracts?
10. Why was the contract in *De Francesco v Barnum* not binding?
11. Why was the contract in *Doyle v White City Stadium* binding?
12. Why was the contract in *Chaplin v Leslie Frewin (Publishers)* binding?
13. What are the four types of contract that are voidable when entered into with an infant?
14. Can an infant repudiate a contract to lease land?
15. Is a contract to own shares in a company binding on an infant?
16. What is the effect of repudiation before reaching full capacity?
17. On reaching full age when must a person decide to repudiate the contract?

SAMPLE EXAM QUESTIONS

1. In March Hambotwe promised his 17-year-old son Taonga K500,000 if he obtained high grades in his Grade 12 examinations and was able to take up the place at medical school which had been offered to him conditionally upon his attaining specified grades. In May Taonga felt that his revision was going badly, and he agreed with Swift Progress Ltd to take a 20 week correspondence course in 'How to Improve Your Concentration', paying a deposit of K500,000 and agreeing to pay a further K10,000 each week for the duration of the course. He also bought on credit an Encyclopaedia of Basic Medical Science worth K25,000 and a second-hand motor cycle for K250,000, the price being payable in five equal instalments over 10 months. Taonga is now dissatisfied with all these transactions. He has only made one weekly payment to Swift Progress Ltd and only paid one instalment on the motor cycle. He has not paid anything for the Encyclopaedia. He knows that his Grade 12 has been disappointing and that he will probably not obtain the necessary grades when the results are announced in August. Advise Taonga.
2. Linda left school last year at the age of 16. She took a job as a trainee kitchen assistant in a hotel. Her wages are K200,000 a week, and she is required to give three months' notice to terminate her employment. She recently agreed to buy an 'Osaka' motorcycle so that she could spend more time with her boyfriend

Malcolm, who is mad about motorcycles. She also signed a written agreement to buy a one quarter share in a racing greyhound called Dingo. Linda has now been offered a job as a cook in a restaurant at K600,000 a week, provided she can start immediately. She has failed to pay for the motorcycle or the share in Dingo. Advise Linda.

3. Adam, who is seventeen years old, entered into the following contracts:
 - (a) he bought a Maserati sports car – price K15 million;
 - (b) he enrolled for an evening course in ‘How to be a racing driver’ (price K3 million);
 - (c) he agreed to work for one year on Saturdays and Sundays as a waiter at the Tushete Restaurant at a wage of K500,000 per week.Adam gave up the course after three weeks and left Tushete Restaurant after a month. He has not paid either for the car or the course. Advise Adam as to his legal liabilities, if any.
4. Linda is seventeen years old and a first year student of fashion design. Believing it would help her with her studies she enrolled for a series of lessons at a private modelling school for a fee of K2 million. She also purchased a de luxe sewing machine for K3 million and, at the suggestion of her tutor Morgan, bought 100 shares from Morgan in a company run by Morgan’s wife, Nomosa, which manufactures handbags. Linda has now given up the modelling lessons. She failed to pay the K2 million and the school is demanding payment. Linda would also like to cancel the transactions concerning the sewing machine and the shares, and have her money back. Advise Linda.
5. Referring to infants’ contracts it has been said that ‘The law on this topic is based on two principles. The first, and more important, is that the law must protect the infant against his own inexperience, the second principle is that the law should not cause unnecessary hardship to adults who deal fairly with infants.’ (Treitel) Explain how the law gives effect to these principles and consider how, if necessary, the law might usefully be reformed.

UNIT 8: CONTENTS AND TERMS OF THE CONTRACT

A. Certainty of Contract; Contents of Contract - Express Terms

Introduction

Certainty of contracts examines and illustrates the need for contracts to be certain and unambiguous. If contracts are too vague they cannot be enforced.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter
The Law of Contract, Treitel – Chapter
Lecture Notes for Unit 8

CERTAINTY

Baird Textiles v Marks & Spencer [2002] 1 All ER (Comm) 737
Campbell v Edwards [1976] 1 WLR 403
Foley v Classique Coaches [1934] 2 KB 1
Forrester v UYCF Ltd [2000] NPC 141
Hillas v Arcos (1932) 147 LT 503
Mamidoil-Jetoil Greek Petroleum v Okta Crude Oil Refinery [2001] 2 All ER (Comm) 193
Manatee Towing Co v Oceanbulk Maritime SA [1999] 2 All ER (Comm) 306
May & Butcher v R [1934] 2 KB 17
Scammel v Ouston [1941] AC 251
Sudbrook Trading Estate Ltd v Eggleton [1983] 1 AC 444; [1982] 3 All ER 1
Walford v Miles [1992] 2 WLR 174; [1992] 1 All ER 453

INCORPORATION OF TERMS

(a) Strength of statement

Schawel v Reade [1913] 1 IR 81

(b) Importance of statement

Bannerman v White (1861) 10 CB (NS) 844
Couchman v Hill [1947] KB 54

(c) Relative knowledge

Dick Bentley Productions Ltd v Harold Smith Motors [1965] 1 WLR 623; [1965] 2 All ER 65
Harling v Eddy [1951] 2 KB 739
Oscar Chess v Williams [1957] 1 WLR 370

(d) Reduction to writing

Routledge v McKay [1954] 1 WLR 615; [1954] 1 All ER 855

(e) Lapse of time

Bannerman v White (1861) 10 CB (NS) 844

Routledge v McKay [1954] 1 All ER 855

(f) Overall test

Heilbut, Symons v Buckleton [1913] AC 30

COLLATERAL CONTRACTS

City & Westminster Properties v Mudd [1959] Ch 129

De Lasalle v Guildford [1901] 2 KB 215

Esso Petroleum v Mardon [1976] QB 801; [1976] 2 All ER 5

Evans v Merzario Ltd [1976] 1 WLR 1078

Eyre v Measday [1986] 1 All ER 488

Heilbut, Symons v Buckleton (above)

Pitt v PHH Asset Management [1993] 4 All ER 961 (CA)

Shanklin Pier v Detel Products [1951] 2 KB 854

Thake v Maurice [1986] 1 All ER 497

PAROL EVIDENCE RULE

Goss v Lord Nugent (1833) 5 B & Ad 58

EXCEPTIONS

City & Westminster Properties v Mudd (above)

Couchman v Hill (above)

Pym v Campbell (1856) 6 E & B 370

TEST QUESTIONS

CERTAINTY OF CONTRACT

1. Distinguish *May & Butcher v R* from *Foley v Classique Coaches*.
2. Why was there no contract in *Scammel v Ouston*?
3. What does the expression 'subject to contract' mean?
4. Why is it so important to solicitors that their letters marked 'subject to contract' should not be of legal effect?
5. Does the law recognise an agreement to agree something?
6. What is an express term of contract?
7. What is a 'mere puff'?
8. Is a pre-contractual statement likely to be a term if the person making it expressly asks the other party to verify its truth?
9. Is a pre-contractual statement likely to be a term where its importance is such that, if it had not been made, there would have been no contract formed?
10. Distinguish *Oscar Chess v Williams* from *Dick Bentley Productions v Harold Smith Motors*.

11. Why was the defendant's statement as to the age of the motorcycle not a term of the contract in *Routledge v McKay*?
12. What is the ratio of *Heilbut Symons v Buckleton*?
13. What is a collateral contract?
14. What is the consideration for a collateral contract?
15. What is the parol evidence rule?
16. Where a contract is written will extrinsic evidence be allowed to show when the contract should begin to operate?
18. Where a contract is written will extrinsic evidence be allowed to show in what capacities the parties contracted?
18. Is the parol evidence rule still good law at present?
19. Why did the Court of Appeal not allow the defendants to rely on their printed standard terms for carrying the goods above deck in *Evans v Merzario*?
20. How does a mere representation become an express term?

B. CONTENTS OF CONTRACT – IMPLIED TERMS

Contents of contracts look at the terms and representations that form the contract. Implied terms are one of two types of terms that are implied into contracts by either the courts, custom or by the parties themselves. Primarily these terms give the contract business efficacy or commercial sense.

TERMS IMPLIED BY INTENTION OF PARTIES

Ali and Others v Christian Salvesan Food Services Ltd [1997] 1 All ER 721 (CA)
Equitable Life Assurance Society v Hyman [2002] 1 AC 408 (HL)
Eyre v Measday [1986] 1 All ER 488
Luxor v Cooper [1941] AC 108
Moorcock, The (1889) 14 PD 64
Reigate v Union Manufacturing Co [1918] 1 KB 592
Shell UK v Lostock Garages [1976] 1 WLR 1187
Shirlaw v Southern Foundries [1940] AC 701 (HL)
Times Newspapers v George Weidenfeld & Nicolson [2002] FSR 463

TERMS IMPLIED FROM RELATIONSHIP BETWEEN PARTIES

Alghussein Establishment v Eton College [1991] 1 WLR 587; [1991] 1 All ER 267 (HL)
Harvela v Royal Trust of Canada [1985] 2 All ER 966 (HL)
Lister v Romford Ice & Cold Storage [1957] AC 555
Liverpool CC v Irwin [1977] AC 236 (HL)
Malik v BCCI [1997] 3 WLR 95; [1997] 3 All ER 1 (HL)
Wettern Electric v Welsh Development Agency [1983] 2 All ER 629

TERMS IMPLIED BY CUSTOM

British Crane Hire v Ipswich Plant Hire [1975] QB 303
Hutton v Warren (1836) 1 M & W 466

TERMS IMPLIED UNDER SALE OF GOODS LEGISLATION

Marimpex Mineralöl Handelgesellschaft MbH v Louis Dreyfus GmbH [1995] 1 Lloyd's Rep 167

Saphena Computing Ltd v Allied Collection Agencies Ltd [1995] FSR 616 (CA)

Wilson v Best Travel [1993] 1 All ER 353

TEST QUESTIONS

1. What is the ratio decidendi of *The Moorcock*?
2. What is the 'officious bystander' test?
3. What remedies are available for breach of an implied term?
4. Why is the decision in *Shell UK v Lostock Garages* of great importance?
5. Explain the decision in *Lister v Romford Ice*.
6. Is *Lister v Romford Ice* good law today?
7. Explain briefly the effect of s14 of Sale of Goods Act 1893.
8. What term is implied by s12 of Sale of Goods Act 1893?
9. What is a custom?
10. Explain the decision in *British Crane Hire v Ipswich Plant Hire*.
11. How is a term implied into a contract?
12. Give a case where the courts have implied a term into a contract for reasons of public policy.
13. Give a case where the courts have refused to imply a term into a contract for reasons of public policy.

C. RELATIVE IMPORTANCE OF CONTRACTUAL TERMS

The relative importance of contractual terms looks at the nature of contractual terms and distinguishes between mere representations and legally binding (contractual) terms. It also examines the various situations in which express or implied terms may be present in a contract.

CONDITIONS

Barber v NSW Bank plc [1996] 1 All ER 906 (CA)

Behn v Burness (1863) 3 B and S 751

British & Commonwealth Holdings v Quadrex [1989] 3 WLR 723

Bunge v Tradax Export SA [1981] 1 WLR 711; [1981] 2 All ER 513

Contract Law, McKendrick – Relevant Chapter(s)

Head v Tattersall (1871) LR7 Ex7

Mihalis Angelos, The [1971] 1 QB 164

Poussard v Spiers (1876) 1 QB 410

Pym v Campbell (1856) 6 E & B 370

WARRANTIES

Bettini v Gye (1876) 1 QB 183

INNOMINATE TERMS

Cehave v Bremer Handelgesellschaft (The 'Hansa Nord') [1976] QB 44
Federal Commerce & Navigation Co v Molena Alpha Inc [1979] AC 757
Hong Kong Fir Shipping v Kawasaki Kisen Kaisha [1962] 2 QB 26
Reardon Smith v Hansen-Tangen [1976] 1 WLR 989; [1976] 3 All ER 570

INTERPRETATION

Lombard North Central plc v Butterworth [1987] 1 All ER 267
Schuler v Wickman Machine Tools [1974] AC 235 (HL)

TEST QUESTIONS

1. What is a warranty?
2. What is a condition?
3. What remedy is available to the innocent party for breach of a warranty?
4. What remedy is available to the innocent party for breach of a condition?
5. Distinguish *Poussard v Spiers* from *Bettini v Gye*.
6. Why was the innocent party not entitled to terminate in the *Hong Kong Fir* case?
7. On the facts of *Hong Kong Fir* what would have been the decision if the voyage had been delayed for 12 months?
8. What is an 'intermediate stipulation' in a contract?
9. What classification of terms is used in the Sale of Goods legislation?
10. Why did Lord Denning MR decide that the 'expected ready to load clause' in the *Mihalis Angelos* was a condition?
11. Why did the court not give effect to the parties 'intentions' in *Schuler v Wickman*?
12. Why did the court not allow repudiation in *Reardon Smith v Hansen-Tangen*?
13. In *Bunge v Tradax* what was the underlying reason as far as the House of Lords was concerned for allowing repudiation?
14. What was the 'innominate term' in the *Hansa Nord* case?
15. How has the law developed since the *Hong Kong Fir* case?
16. How can a party find out if his breach is such as to excuse all further performance?

SAMPLE EXAM QUESTIONS

1. 'Whether a breach of contract discharges the contract or not depends upon the nature of the term broken.' Discuss.
2. 'The remedies open to the innocent party for breach of a contractual stipulation no longer depend upon the classification of the stipulation as a "condition" or a "warranty".' Explain and comment.
3. 'The attempt by some judges to define the provisions of a contract in terms other than that of conditions and warranties is no more than a romantic exercise in semantics.' Discuss.
4. 'Not all contractual terms are treated as conditions or warranties. In the past few decades it has been recognised that the classification of terms into conditions and

warranties is somewhat unsatisfactory.’ ‘Commercial certainty requires that business people should know what risks they are undertaking. This can only be achieved by classifying contractual terms at the time of the contract.’ Consider how these views have been reflected in recent case law.

5. Jane made a contract with Kabwe, a builder, for Kabwe to build an extension to Jane’s house for a price of K20 million to be paid on completion. The contract stated: ‘It is a condition of this contract that all work will be performed with proper skill and care and that the house will remain habitable throughout the period of the works.’ The work was estimated to take six weeks to complete. Two weeks after work started Jane learned that other local builders would have done the same job for K18 million. A week after that Larry, a labourer employed by Kabwe, carelessly fractured a water pipe: the house was flooded and Jane and her family were forced to leave it for three days. Jane informed Kabwe that she regarded the contract as cancelled, but Kabwe wishes to complete the job. Advise Kabwe.
6. In January Pompwe appointed Rex as his personal assistant for three years at a salary of K6 million per month. Rex’s service agreement included the following provisions:
 - (a) Rex will work such hours as are required;
 - (b) Rex will not consume alcohol when on duty;
 - (c) it is strictly understood – and it is a condition of the agreement – that Rex will maintain a credit balance in his bank account at all times.Pompwe has just discovered that Rex occasionally drinks a can of light ale at the office when working late at night and that Rex’s bank account was overdrawn by K2 million for four days last week. Advise Pompwe, who thinks he could now find a suitable personal assistant at a salary of K4 million.

UNIT 9: EXEMPTION / EXCLUSION CLAUSE

Introduction

Exclusion clauses, and their incorporation and construction, examines how a party can deny or reduce liability by using exclusion or limitation clauses as a term in the contract. The position at common law is also analyzed.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 6
The Law of Contract, Treitel – Chapter 7
Lecture Notes for Unit 9

(a) Reasonable notice

Geier v Kujawa [1970] 1 Lloyd's Rep 364
Parker v SE Railway (1877) 2 CPD 416
Sugar v London, Midland & Scottish Railway [1941] 1 All ER 172
Thompson v LM & S Railway [1930] 1 KB 41
Vine v Waltham Forest Borough Council [2000] 4 All ER 169

(b) Unusual terms

Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1988] 1 All ER 348
Spurling v Bradshaw [1956] 1 WLR 461; [1956] 2 All ER 121
Thornton v Shoe Lane Parking Ltd [1971] 2 QB 163

(c) Time of notice

Olley v Marlborough Court Hotel [1949] 1 KB 532
d) Course of dealing
British Crane Hire Corporation v Ipswich Plant Hire [1975] QB 303; [1974] 1 All ER 1057
Henry Kendall v William Lillico [1968] 2 All ER 444
Hollier v Rambler Motors [1972] 2 QB 71; [1972] 2 WLR 401
McCutcheon v David MacBrayne [1964] 1 WLR 125; [1964] 1 All ER 430

(e) Documents

Chapelton v Barry UDC [1940] 1 KB 532

(f) Effect of signature and misrepresentation

Curtis v Chemical Cleaning Co [1951] 1 KB 805
L'Estrange v Graucob [1934] 2 KB 394

CONSTRUCTION OF EXCLUSION CLAUSES

(a) Part written/part oral

Couchman v Hill [1947] KB 54

Evans v Merzario Ltd [1976] 1 WLR 1078

(b) Contra proferentem rule

Wallis Son & Wells v Pratt & Haynes [1911] AC 394

(c) Liability for negligence

Alderslade v Hendon Laundry Ltd [1945] KB 189

Smith v South Wales Switchgear [1978] 1 WLR 165

(d) Fundamental breach

Ailsa Craig Fishing Co Ltd v Malvern Fishing Co [1983] 1 WLR 964; [1983] 1 All ER 101

George Mitchell Ltd v Finney Lock Seeds Ltd [1983] 2 AC 803; [1983] 2 All ER 737

Photo Productions v Securicor Transport [1980] AC 827; [1980] 1 All ER 556 (HL)

Suisse Atlantique [1967] 1 AC 361

TEST QUESTIONS

1. What is a limitation clause?
2. What is an exclusion clause?
3. How many ways can an exclusion clause be incorporated into a contract?
4. Why was the exclusion clause not incorporated in *Chapelton v Barry UDC*?
5. Was the exclusion clause incorporated in *McCutcheon v David MacBrayne*?
6. Why were the exclusion clauses not incorporated in *Thornton v Shoe Lane Parking*?
7. Why was the exclusion clause not incorporated in *Olley v Marlborough Court Hotel*?
8. Does the nature of the document containing the exclusion clause determine incorporation?
9. Would railway tickets be considered contractual documents today?
10. In *Thornton v Shoe Lane Parking* Denning MR said 'some clauses I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient.' Explain this comment.
11. What is the 'contra proferentem' rule?
12. Why did the clause not apply in *Hollier v Rambler Motors*?
13. Why are there special considerations for the exclusion of negligence liability?
14. What is the ratio decidendi of *Suisse Atlantique*?
15. Can liability for a very serious breach be excluded by a carefully worded clause?
16. Can liability for a fundamental breach be excluded by a carefully worded clause?
17. Why were Securicor protected by the limitation clause in *Photo Productions v Securicor*?

18. Why were *Malvern Fishing* protected by the limitation clause in *Ailsa Craig Fishing v Malvern Fishing*?
19. Is *Suisse Atlantique* still good law?
20. Why are limitation clauses in a contract between businessmen dealing at arm's length encouraged?

SAMPLE EXAM QUESTIONS

1. Kaonga advertised in a local newspaper that he had a Toyota Corolla 1997 car for sale for K25 million. The vehicle was described as in excellent condition. Jo went to the address which Kaonga had given. After a test drive Jo agreed to buy the car. Two days later, when Jo's wife was driving the car, a wheel came off; the car crashed through the window of a police station and Jo and his wife were injured. The agreement between Kaonga and Jo contained the following clauses: (a) It is agreed that Kaonga has not made any statement which has induced the contract; (b) The parties agree that there is no undertaking of quality or fitness for purpose; (c) There is a limit of K5 million for damages for breach of contract by Kaonga; (d) There is no liability for consequential loss.' Advise Jo. What difference, if any, would it make to your advice if Kaonga had sold the car in the course of his business?
2. Richard, a car dealer, agreed to sell a car to S for £5,000 after S had examined the car on the garage forecourt. The document on the car windscreen indicated the price and in large letters said, 'All our cars are in tip top condition!' Later in small print was a clause which read, 'we accept no legal responsibility for the condition of the vehicle. For terms of sale see the notice in the office and the details in the sale agreement.' In the office, where there was a large notice on the wall indicating all the major provisions, S signed the agreement to purchase the car. It contained the following provisions: 'It is agreed that there is no warranty, condition, or statement about the condition of the car and that no statement was made which persuaded the purchaser to enter into the contract. It is agreed that the maximum damages payable for breach of contract shall be £2,500. There is no express term, implied term (statutory or otherwise) or warranty or statement about the vehicle which is to have any legal effect. There is no promise about the condition of the vehicle.' Two days later, when S's wife was driving the car which S had given to her as a birthday present, the car crashed because the brakes were defective. Mrs S was injured and off work for six months causing her to lose £14,000 in wages. The car was a write off. Advise S.
3. Urban, a window cleaner, hired a ladder from Vitus Equipment Hire Ltd to use while painting the outside of his house. He paid a deposit of £20 and was given a receipt on which was stated: 'Conditions of hire. Vitus accepts no responsibility for any loss or damage suffered as a result of the use of the equipment. Hirers use the equipment at their own risk.' Because of a defective rung on the ladder, Urban fell off it and landed on an expensive radio that he was listening to while he worked. Urban suffered a broken and leg and the radio was badly damaged.

Advise Urban. How would your answer differ if he had hired the ladder for use in cleaning windows and had been doing that when the accident happened?

4. Last May Gavin, an estate agent, bought a coffee machine for his office and a freezer for his home from Omnivend Stores. Gavin placed the orders by telephone. When the goods were delivered Gavin was in each case given a sales note, on which it was stated that the goods were guaranteed by Omnivend against all defects notified in the first six months from the date of delivery but that, apart from that, Omnivend accepted no liability for any loss or damage, however caused. In August the coffee machine overheated and exploded: Gavin was badly scalded and was off work for three weeks. Soon afterwards the freezer developed a fault with the result that £200 worth of frozen meat thawed out and had to be thrown away. Advise Gavin.
5. K was a car dealer, who advertised his 1990 Sierra for sale for £5,500. He said that the car had travelled 35,000 miles with only one owner. L, a mini cab driver, saw the car, and K said to L, 'It is a good little bus. I'd buy it if I were you.' L agreed to purchase the vehicle for £5,500. The agreement contained the following clauses: (a) It is agreed that no statements made by K to L influenced the making of the contract; (b) There is no warranty, guarantee or undertaking about the fitness of the vehicle; (c) No implied condition or warranty, statutory or otherwise, is to be implied into the contract; (d) There is no liability for breach of contract, fundamental or otherwise.' Three days after L took the car the brake system failed and L and his fare paying passenger were injured. Advise K. What difference, if any, would it make to your advice if K had been a private individual selling the car?
6. Sarah owned a small engineering business and recently bought a new Ford Mondeo. She bought it from Mr Patels Garage, and she purchased it for both business and private use. The contract of sale excluded the implied terms in the Sale of Goods Act 1979. Sarah went on a touring holiday in the car with her husband Adnan. The car kept on breaking down. Sarah then booked into The Shish Mahal Hotel, which was part of a national chain. Whilst there Sarah's laptop was stolen from their room which was locked. She complained, and on doing so was referred to the booking conditions that she had been given at reception. On the back it said, '... no liability is accepted for loss or damage to items not deposited in the safe.' Sarah had not read the conditions. Adnan hired two deckchairs from the Council and was given a ticket which stipulated on the front 'no liability for injury'. When Adnan sat on his chair it collapsed due to a defect and he was injured. Advise Sarah and Adnan of any actions they may have in Civil Law

UNIT 10: MISTAKE

Introduction

Mistake at common law looks at how a mistake made by one or both parties will affect the contract. It also analyses the different types of mistakes and the distinction between void and voidable contracts.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 8
The Law of Contract, Treitel – Chapter 8
Lecture Notes for Unit 10

UNILATERAL MISTAKE

(a) Mistake as to person

Citibank v Brown Shipley [1991] 2 All ER 690
Cundy v Lindsay (1878) 3 App Cas 459
Kings Norton Metal v Edridge Merritt & Co (1897) 14 TLR 98

(b) Mistake as to person inter praesentes

Ingram v Little [1961] 1 QB 31
Lake v Simmons [1927] AC 487
Lewis v Averay [1972] 1 QB 198
Phillips v Brooks [1919] 2 KB 243
Shogun Finance v Hudson [2002] QB 834

(c) Mistake as to subject matter

Raffles v Wichelhaus (1864) 2 H & C 906
Scriven v Hindley [1913] 3 KB 864

(d) Mistake as to terms

Clarion Ltd v National Provident Institution [2000] 2 All ER 265
Hartog v Colin & Shields [1939] 3 All ER 506

(e) Mistake as to quality

Smith v Hughes (1871) LR 6 QB 597

BILATERAL MISTAKE

(a) Mistake as to quality

Associated Japanese Bank Ltd v Credit du Nord SA [1988] 3 All ER 902
Bell v Lever Bros [1932] AC 161
Great Peace Shipping v Tsavliris Salvage (International) [2002] 3 WLR 1617
Harrison & Jones v Bunten & Lancaster [1953] 1 QB 646
Leaf v International Galleries [1950] 2 KB 86
Nicholson & Venn v Smith Marriott (1947) 177 LT 189

(b) Mistake as to existence of subject matter

Barrow Lane & Ballard v Phillips [1929] 1 KB 574
Couturier v Hastie (1856) 5 HL Cas 673
Galloway v Galloway (1914) 30 TLR 531
McRae v Commonwealth Disposals Commission (1950) 84 CLR 377
Scott v Coulson [1903] 2 Ch 249

(c) Mistake as to title

Bell v Lever Bros (above)
Cooper v Phibbs (1867) LR 2 HL 149

(d) Mistake as to the possibility of performing the contract

Sheik Bros v Ochsner [1957] AC 136

NON EST FACTUM

Gallie v Lee [1971] AC 1004 (HL)
Gillman v Gillman (1946) 174 LT 272
Lewis v Clay (1898) 67 LJQB 224
Norwich & Peterborough Building Society v Steed [1992] 3 WLR 669; [1993] 1 All ER 330 (CA)

TEST QUESTIONS

1. What is the difference between a void contract and a voidable contract?
2. Will a mistake as to quality generally have any effect on the contract?
3. What was the 'mistake' in *Bell v Lever Bros*?
4. Explain the ratio decidendi of *Bell v Lever Bros*.
5. Why did Leaf have no remedies open to him in *Leaf v International Galleries*?
6. Why was the contract in *Nicholson & Venn v Smith Marriott* void?
7. In *Couturier v Hastie*, did the House of Lords base their decision on the effect of the mistake?
8. Why was the contract in *McRae v Commonwealth Disposals Commission* not void?
9. What is the effect of s6 of the Sale of Goods Act 1890?
10. Why was the contract void in *Cundy v Lindsay*?
11. Will a mistake as to credit worthiness generally affect the contract?
12. What is meant by a mistake 'inter praesentes'?
13. What steps did Phillips take to establish the identity of Sir George Bullough (*Phillips v Brooks* (1919))?
14. Distinguish *Lewis v Averay* from *Ingram v Little*.
15. Is *Ingram v Little* still good law today?
16. Why was there no contract between the parties in *Raffles v Wichelhaus*?
17. Why was there no contract in *Boulton v Jones*?
18. What is meant by the expression 'the mistake must be operative'?
19. What is meant by the expression 'fundamental' in the context of mistake?
20. What was the 'mistake of law rule' and what is the effect on it of *Kleinworth Benson v Lincoln City Council*.

SAMPLE EXAM QUESTIONS

Note: some questions may raise issues involving misrepresentation (see unit 11).

1. 'Where both parties enter into a contract in the belief that certain assumed facts are true, and it turns out that they are not true, the contract is void for mistake.' To what extent is this an accurate statement of the law?
2. (a) X Ltd owned a disused warehouse which was built in the early nineteenth century. X Ltd entered into a contract for the sale of the warehouse to Y Ltd, knowing that Y Ltd intended to demolish the warehouse and build offices on the site. Unknown to either X Ltd or Y Ltd, however, the warehouse was, shortly before the conclusion of the contract, listed as being of outstanding historic importance, so that it became unlawful to demolish it. Advise Y Ltd.

(b) S Ltd agreed to sell to T Ltd 500 tons of peanuts 'now on board the SS City of Plains en route from India to Durban to Lusaka'. When the City of Plains docked in Durban it was discovered that the peanuts had never been shipped. The market price of peanuts has risen sharply since the contract was made. Advise T Ltd, which has suffered heavy losses because of the non-delivery of the peanuts.
3. 'A common mistake has no effect whatsoever at common law unless it is such as to eliminate the very subject-matter of the agreement, in other words, unless it empties the agreement of all content.' (Cheshire and Fifoot). Discuss, with reference to decided cases.
4. (a) Mulenga, who closely resembled the well known politician Mr Mobile Lungu, went into a camera shop in Lusaka and selected a camera priced at K1 million. The shopkeeper, Mabvuto, said, 'Hello, Mr Lungu, I thought the press treated you disgracefully during your election campaign. As it is you, I'll let you have that camera for K900,000.' Mulenga smiled and said that he did not have his cheque book with him. Mabvuto said, 'Don't worry, I'll send the bill to you at the National Assembly.' Mulenga took the camera away and later that day pawned it to Mubita. Mabvuto later managed to trace it back to Mubita. Advise Mabvuto.

(b) sangwapo, an auctioneer, sold a collection of paintings by auction. Each painting was fully described in the catalogue. When Sangwapo invited bids for Lot 15 – described as 'Country Scene, artist unknown' – his assistant Muzo inadvertently held up Lot 16 instead for the bidders to see. Lot 16 was described in the catalogue as 'Village Life, (?) school of Brushman', but Banda, who was sitting in the front row, immediately recognised it as a lost masterpiece by Brushman himself. No other bidders noticed Muzo's error and Banda's bid of K500,000 was accepted by Sangwapo. When Sangwapo realised what had happened he refused to let Banda have the painting, which is worth K5 million. Advise Banda.

5. (a) 'Mistake as to the attributes of the other contracting party does not make the contract void.' Explain and comment.

(b) Monica walks into Ng'anjo's art gallery and expresses interest in a painting for sale at K10 million. Monica says she would like to have that painting and tells Ng'anjo that she is Lady Maggie Chikamoneka and that she represents the well-known firm of Chikamoneka & Co Ltd. Monica produces a cheque book with Chikamoneka & Co Ltd's name on it (which she had stolen earlier that day) and Ng'anjo allows her to take the painting away in return for a cheque signed by her on behalf of Chikamoneka & Co Ltd. The cheque has now been dishonoured and Monica has disappeared, after selling the painting to Jo Pompwe for K9 million. Advise Ng'anjo.

6. (a) Mistake is said to negative consent when it leads to a misunderstanding between the parties, so that they are at cross purposes ... It cannot be too strongly emphasised that in this type of case a mistake ... will not normally affect the validity of the contract at all ... the mistake will only impair the validity of the contract in a number of somewhat exceptional situations.' (Treitel) Explain and illustrate the above passage with reference to the relevant case law.

(b) A computer firm with whom he has had previous dealings writes to 'Professor J Nkalamo, University of Life', offering a consultancy contract worth K15 million. The letter is forwarded to Professor John Nkalamo in the Faculty of Science. In fact the firm had meant it to go to Professor John Nkalamo in the Faculty of Technology. John Nkalamo replies accepting the offer but the firm are now refusing to honour it. Advise him.

UNIT 11: MISREPRESENTATION

Introduction

What constitutes an actionable misrepresentation in law? This unit examines the different categories of misrepresentation, and their respective remedies in both common law and statute.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 9
The Law of Contract, Treitel – Chapter 9
Lecture Notes for Unit 11

Statute

Misrepresentation Act, Cap 69

Case Law

NATURE OF STATEMENT

(a) Fact not law

Andre et Cie v Ets Michel Blanc [1977] 2 Lloyd's Rep 166
Pankhania v London Borough of Hackney [2002] NPC 123
Contract Law, McKendrick – Relevant Chapter(s)

(b) Fact not opinion

BG plc v Nelson Group Services (Maintenance Ltd) (unreported April 2002)
Bissett v Wilkinson [1927] AC 177
Brown v Raphael [1958] Ch 636
Dimmock v Hallett (1866) LR 2 Ch App 21
Smith v Land & House Property Corp (1884) 28 Ch D 7

(c) Fact not intention

Edgington v Fitzmaurice (1885) 29 Ch D 459

(d) Representation falsified by subsequent events

Spice Girls Ltd v Aprilla World Service BV [2000] EMLR 478
With v O'Flanagan [1936] Ch 575

INDUCEMENT TO CONTRACT

(a) No reliance on own investigations

Attwood v Small (1838) 6 Cl and F 232

(b) Means of verification irrelevant

Redgrave v Hurd (1881) 20 Ch D 1

(c) Extent of reliance

Edgington v Fitzmaurice (above)

JEB Fasteners v Marks, Bloom and Co [1983] 1 All ER 583

(d) Materiality

Museprime Properties v Adhill Properties [1990] 36 EG 114

FRAUDULENT MISREPRESENTATION

Derry v Peek (1889) 14 App Cas 337

Goose v Wilson Sandford (No 2) [2001] Lloyd's Rep PN 189

NEGLIGENT MISREPRESENTATION AT COMMON LAW

Hedley Byrne v Heller Partners [1964] AC 465; [1963] 2 All ER 575 (HL)

MISREPRESENTATION ACT

Howard Marine v Ogden & Sons [1978] QB 574

REMEDIES: DAMAGES

(a) Fraudulent misrepresentation

Chef Aquitaine SARL v Laporte Materials (Barrow) Ltd [2000] 3 All ER 493 (CA)

Downs v Chappell [1996] 3 All ER 344 (CA)

Doyle v Olby (Ironmongers) [1969] 2 QB 158

East v Maurer [1991] 2 All ER 733

Smith New Court Securities Ltd v Citibank NA [1997] AC 254 (HL)

Standard Chartered Bank v Pakistan Shipping Corpn (No 2) [2002] 3 WLR 1547

(b) Negligent misrepresentation at common law

Esso Petroleum Co Ltd v Mardon [1976] QB 801

(c) Misrepresentation Act

Floods of Queensferry v Shand Construction (No 3) [2000] BLR 81

Royscot Trust v Rogerson [1991] 3 WLR 57; [1991] 3 All ER 294

Sindall (William) v Cambridgeshire CC [1994] 1 WLR 1016; [1994] 3 All ER 932 (CA)

Zanzibar v British Aerospace [2000] 1 WLR 2333

REMEDIES: RESCISSION

Car & Universal Finance v Caldwell [1965] 1 QB 525

LIMITS TO RESCISSION

Leaf v International Galleries [1950] 2 KB 86

Lewis v Averay [1972] 1 QB 198

Long v Lloyd [1958] 1 WLR 753

Peyman v Lanjani [1985] Ch 457; [1984] 3 All ER 703

Vadasz v Pioneer Concrete Ltd (1995) 130 ALR 570 (Australia)

REMEDIES: INDEMNITY

Whittington v Seale Hayne (1900) 82 LT 49

MISREPRESENTATION AND EXCLUSION CLAUSES

EA Grimstead v McGarrigan [1998-99] Info TLR 384 (Noted (2002) NLJ 1898)

Thomas Witter v TBP Industries [1996] 2 All ER 573

Watford Electronics v Sanderson [2001] 1 All ER (Comm) 696

TEST QUESTIONS

1. What is a representation?
2. What is a misrepresentation?
3. Is a statement of opinion a representation?
4. Is a misrepresentation of law actionable?
5. Can an action for misrepresentation be brought where the misrepresentation is one of silence?
6. In what circumstances does English law impose a duty to disclose facts?
7. What does *uberimae fidei* mean?
8. Explain the case of *Attwood v Small*.
9. What is a fraudulent misrepresentation?
10. What types of misrepresentation give rise to the possibility of rescinding the contract?
11. What are the bars to rescission?
12. Can a party to the contract be allowed to exclude liability for misrepresentation under section 4 of the Misrepresentation Act?
13. If damages are awarded under section 3 of the Act, on what scale are they measured – contractual or tortious?
14. Explain the ratio decidendi of *Howard Marine v Ogden & Sons*.
15. If the court decides to award damages under section 3(2) of the Act, on what scale are they measured?

SAMPLE EXAM QUESTIONS

1. Mudenda is the chairman of Macro Ltd a company which designs computer software. Mudenda, who needs more staff, interviews Sadie. During the interview Sadie asks Mudenda how the company is doing and Mudenda replies 'In my opinion we are doing phenomenally well and will be declaring huge dividends at the next year end'. Sadie is offered the job and accepts. On the strength of Mudenda's comments Sadie invests her savings in Macro shares. Soon afterwards Macro gets caught up in a copyright dispute which prevents it from launching its latest software. Shortly after the company collapses. Discuss
2. M & M and Co, who are auctioneers, auctioned an area of land described in the particulars of sale as 'A prime site in the middle of a rapidly growing industrial zone'. Mudenda, who was looking for a new site for a factory, bid for the site and his bid was accepted. After signing a document confirming the sale, Mudenda discovered that the site was designated as one of outstanding beauty for which planning permission would not be available. He is now refusing to go ahead with

the purchase. The document signed by Mudenda repeated a provision in the particulars of sale which he read prior to the auction stating 'no error, misstatement or omission in these particulars shall annul the sale nor has the purchaser relied on any representation regarding the subject matter of the contract'. Advise Mudenda.

3. It is very difficult to distinguish between law, fact and opinion. Discuss the validity of this assertion.

UNIT 12: DURESS AND UNDUE INFLUENCE

Introduction

This topic examines the effects of duress and undue influence on the enforceability of contracts.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapter 9
The Law of Contract, Treitel – Chapter 10
Lecture Notes for Unit 12

Sources of Law

Case Law

DURESS

Alf Vaughan & Co Ltd (In Receivership) v Royscot Trust plc [1999] 1 All ER (Comm) 856
Atlas Express v Kafco Ltd [1989] 1 All ER 641
B & S Contracts v Green [1984] ICR 419
CTN Cash & Carry Ltd v Gallaher Ltd [1994] 4 All ER 714 (CA)
Dimskal Shipping v ITF [1991] 4 All ER 871
DSND Subsea v Petroleum Geo Services ASA [2000] BLR 530
North Ocean Shipping v Hyundai Construction (The Atlantic Baron) [1979] QB 705
Occidental Worldwide Investment Corp v Skibs A/S Avanti (The Sibeon and the Sibotre) [1976] 1 Lloyd's Rep 293
Pao On v Lau Yiu Long [1980] AC 614; [1979] 3 All ER 65 (PC)
Universe Tankships v ITF [1982] 2 All ER 67
Vantage Navigation v Suhail Saud & Bahwan [1989] 1 Lloyd's Rep 138

UNDUE INFLUENCE

(a) Express influence

Williams v Bayley (1886) LR 1 HL 200

(b) Presumed influence

Barclays Bank v O'Brien [1994] 1 AC 180; [1993] 3 WLR 786; [1993] 4 All ER 417 (HL)
CIBC Mortgages v Pitt [1994] 1 AC 200; [1993] 3 WLR 802; [1993] 4 All ER 433
Coldunell v Gallon [1986] QB 1184
Goldsworthy v Brickell [1987] 1 All ER 853
Naidoo and Another v Naidu and Others (2000) The Times 1 November

National Westminster Bank v Amin [2002] 1 FLR 735
National Westminster Bank v Morgan [1985] 1 All ER 821
Royal Bank of Scotland plc v Etridge (No 2) [2002] 2 AC 773

(c) Rebutting the presumption

Hammond v Osborn [2002] WTLR 1125
Inche Noriah v Shaik Allie bin Omar [1929] AC 127

HARSH AND UNCONSCIONABLE BARGAINS

Barclays Bank v Schwartz [1995] TLR 452 (CA)
Cresswell v Potter [1978] 1 WLR 255

INEQUALITY OF BARGAINING POWER

Avon Finance v Bridger [1985] 2 All ER 281 (CA)
Lloyd's Bank v Bundy [1975] QB 326
National Westminster Bank v Morgan [1985] 1 All ER 821

TEST QUESTIONS

1. If a contract was made under duress is it voidable, or void at common law?
2. What is now meant by duress?
3. What was the duress in *The Atlantic Baron*?
4. Why was relief not granted in *The Atlantic Baron*?
5. Was there duress in *Pao On*?
6. What is meant by undue influence?
7. Give examples of types of special relationship that would give rise to a presumption of undue influence.
8. Why was the mortgage not enforceable in *Lloyds Bank v Bundy*?
9. What is meant by 'inequality of bargaining power'? Is it per se a ground of challenge to a contract?
10. What is the effect of the Court of Appeal decision in *Goldsworthy v Brickell*?
11. After *Etridge (No 2)* what must a claimant do in order to raise the presumption of undue influence?
12. When will a bank be placed on notice of the potential existence of undue influence?

SAMPLE EXAM QUESTIONS

1. Sibeso, who is a member of a modern sect known as 'Ukulyamo' persuades her husband, Chintomfwa, to join. Chintomfwa soon becomes dominated by Sangwapo, the leader of the sect, part of whose teaching is that a husband is in all ways inferior to his wife. Sangwapo persuades Chintomfwa to hand over his mansion in Kabulonga to the sect as their headquarters. Sibeso then persuades Chintomfwa to transfer to her all his stocks and shares. Six months after these events, Sibeso leaves Chintomfwa and at the same time Sangwapo tells Chintomfwa to leave the mansion in Kabulonga, which he does. Now, one year later, Chintomfwa hears that Sangwapo has put the mansion up for sale. Advise Chintomfwa, who is penniless, as to his legal rights, if any.

2. (a) In what circumstances will the law permit contracts obtained by improper pressure to be set aside?

(b) Chonta, intending to benefit his niece Cleo, offers to sell her his rare collection of traditional Zambian paintings for K15 million. Hamudebwe, Chonta's nephew, is furious when he hears of this. Hamudebwe takes Chonta a written contract of sale made out between himself and Chonta and tells Chonta that it is the agreement between Chonta and Cleo. Chonta, not feeling very well, and having forgotten his glasses, signs the paper and accepts Hamudebwe's offer to bank a cheque for K15 million, made out by Hamudebwe, but which Chonta believes to be Cleo's payment for the collection. Hamudebwe has since sold the collection for K40 million and Chonta and Cleo have just discovered the truth. Advise Chonta as to his legal rights, if any.

3. (a) 'Economic pressure is what contractual negotiations are all about: it is futile for the courts to try to intervene.' Discuss.

(b) Rona is a strong-willed and domineering woman. Sombe, the man with whom she lived, left all financial decisions to her. Last year Sombe inherited a holiday apartment in Livingstone from his aunt Naomi. Rona insisted that Sombe signed an agreement giving Rona the exclusive use of the apartment and the right to receive all rent from lettings in exchange for Rona's shares in Mopane plc. Rona and Sombe have now separated. Sombe wants to go and live in the apartment but Rona will not permit him to use the apartment. The shares in Mopane plc have increased in value. Advise Sombe.

UNIT 13: ILLEGALITY AND PUBLIC POLICY

Introduction

Illegality examines another element that is capable of declaring a contract void. It also looks at the circumstances in which a contract is declared illegal.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapters 11 & 12
The Law of Contract, Treitel – Chapter 11
Lecture Notes for Unit 13

Statute

Case Law

A. ILLEGALITY

(a) Contracts illegal as formed

Archbalds v Spanglett [1961] 1 QB 374; [1961] 1 All ER 417
Langton v Hughes (1813) 1 M and S 593
Contract Law, McKendrick – Relevant Chapter(s)
Mahmoud & Ispahan, Re [1921] 2 KB 716; [1921] All ER Rep 217
Mohamed v Alaga & Co (A Firm) [1999] 3 All ER 699 (CA)

(b) Contracts illegal as performed

Anderson v Daniel [1924] 1 KB 138
Ashmore, Benson, Pease & Co v A V Dawson [1973] 1 WLR 828
St John Shipping v Joseph Rank [1957] 1 QB 267

(c) Contracts involving the deliberate commission of a civil wrong

Begbie v Phospate Sewage Co Ltd (1875) LR10 QB 491

(d) Contracts involving the deliberate commission of a crime

Bigos v Boustead [1951] 1 All ER 92

(e) Contracts contrary to public policy

(i) The promotion of sexual immorality
Pearce v Brooks (1866) LR 1 Ex 213
(ii) The promotion of corruption in public life
Parkinson v Royal College of Ambulance [1925] 2 KB 1
(iii) Damaging to UK's foreign relations
Regazzoni v Sethia [1958] AC 301

THE RECOVERY OF BENEFITS TRANSFERRED UNDER ILLEGAL CONTRACTS

(a) Generally

Shanshal v Al Kishtaini [2001] 2 All ER (Comm) 601 (at 610 per Mummery LJ)

(b) Exceptions

(i) Mistake of fact

Oom v Bruce (1810) 12 East 225

(ii) Misrepresentation

Hughes v Liverpool Victoria Legal Friendly Society [1916] 2 KB 482

(iii) Repudiation of illegal purpose

Taylor v Bowers (1876) 1 QBD 291

(iv) Contract illegal for protection of claimant

Kiriri Cotton v Dewani [1960] AC 192

(v) Tort

Bowmakers v Barnet Instruments [1945] KB 65

(vi) Restitution

Mohamed v Alaga [1999] 3 All ER 699

(vii) Quantum meruit

(viii) Collateral contract

Strongman v Sincoc [1955] 2 QB 525

TEST QUESTIONS

1. Does the law of contract interfere with a person's moral behaviour?
2. Is a contract to commit a deliberate civil wrong illegal?
3. A contract lawful in itself but performed unlawfully will be illegal. True or false?
4. Why was the contract upheld in *St John Shipping v Joseph Rank*?
5. What is the significance of ss1–2 Law Reform (Miscellaneous Provisions) Act 1970 in this context?
6. What tests have the courts used to determine the effect of a statute on the illegality or otherwise of a contract?
7. Explain the decision in *Pearce v Brooks*.
8. Will a court ever grant specific performance of an illegal contract?
9. Can a 'guilty party' to an illegal contract enforce the contract?
10. What is the meaning of 'in pari delicto potior est conditio possidentis'?
11. Why did the plaintiff succeed in suing for the value of the whisky in *Archbalds v Spanglett*?
12. How did the builders succeed in *Strongman v Sincoc*?
13. If a person repents of the illegal contract will this alter the court's attitude to the available remedies?
14. Why did Bowmakers succeed in their action in conversion against Barnet Instruments (*Bowmakers Ltd v Barnet Instruments*)?
15. Does title to property normally pass under an illegal contract of sale?
16. To what extent is it true to say that neither party to an illegal contract may recover any property which has passed under that contract?
17. Can a person recover back money paid or property transferred under an illegal contract if he entered into the contract as a result of the other party's fraudulent misrepresentation that the contract was legal?

EXAM SAMPLE QUESTIONS

1. Jo Pompwe, wanting to win the first prize of K5 million in the Muckie Bar Caber Tossing Championships, approaches Dr. Evil, a caber constructor. Jo Pompwe asks Dr. Evil to construct for him a caber which, at the flick of a concealed switch, will weigh only half as much as a proper caber. Dr. Evil realises that this is impossible but nevertheless agrees to do so for K1 million, demanding K200,000 as a down payment. On the day of the Championships, Jo Pompwe decides not to use the Dr. Evil caber and instead uses an ordinary one. Jo Pompwe loses. Jo Pompwe now wishes to return the special caber to Dr. Evil and recover his K200,000. Dr. Evil is demanding payment of the outstanding K800,000. Discuss.
2. Choolwe was a registered supplier of mango ink. A statute provides that, because it is poisonous, the ink can be supplied only by registered suppliers and only to licensed recipients. Each delivery has to be accompanied by a statutory invoice describing the contents. Choolwe supplied 20 gallons of ink to Dickson, a licensed recipient, but Choolwe failed to deliver a statutory invoice because Dickson had said that he did not require one. Choolwe sold and delivered 10 gallons of ink with a statutory invoice to Eugen who was not a licensed recipient. Choolwe supplied 10 gallons of ink to Fabian who was a licensed recipient. Fabian knew that Choolwe had failed to provide an invoice when the ink was delivered. Choolwe sold and delivered 15 gallons of ink to Gimmy, a licensed recipient, when, unknown to Choolwe, his registration had expired. None of the recipients paid for the ink. Advise Choolwe.
3. To what extent is it true to say that neither party to an illegal contract may recover any property which has passed under that contract?
4. Mudenda is a licensed game meat dealer. On Monday 15 August Moshu telephoned Mudenda and expressed an interest in buying two of Mudenda's alligators. Under statutory regulations any sale of alligators is illegal unless both buyer and seller have a licence. Moshu told Mudenda that he did not have a licence at the moment but would buy one by Friday 19 August and then come directly to Mudenda's farm to negotiate a contract. Moshu was so busy during the week that he forgot to buy a licence. Nevertheless he still went to Mudenda's farm on Friday to agree a contract. Mudenda offered to sell two alligators to Moshu for K20 million each. Moshu said he would pay this provided Mudenda undertook to deliver one of the alligators to Moshu's friend Zombe by 3 o'clock on Sunday 21 August. Moshu told Mudenda that he needed the trophy to reach Zombe on Sunday because Zombe had already paid him K10 million for the right to display the alligator in Zombe's zoo for a month. Moshu told Mudenda he did not need to deliver the second alligator as he (Moshu) would arrange to pick up that alligator in his own time. Mudenda agreed to Moshu's terms and Moshu accordingly wrote Mudenda a cheque for K30 million. Mudenda delivered the alligator to Zombe as arranged. Zombe was delighted to receive the animal because he believed this extra attraction would enable him to raise the price of

admission to the zoo from K150,000 to K200,000 for adults. Mudenda presented Moshos's cheque on the following Monday to find that it would not be honoured. Then on Wednesday Mudenda also found out that Moshos had bought the alligators without a licence. Advise Mudenda and Zombe of their rights against Moshos.

5. (a) 'English law allows plaintiffs to sue on illegal contracts if they can show just cause why their claim should not be defeated by their illegality.' Discuss.

(b) Shamakamba entered into a contract with Mumbi in which Mumbi agreed to transport 100 cows by road for Shamakamba from Monze to Kitwe for K10 million. Shamakamba hoped to sell his cows in Kitwe for K2 million each. Statutory regulations provide that no person may transport cows by road in the Zambia unless they have a licence from the Department of Health. Shamakamba did not know that Mumbi did not have a licence. During the journey 50 cows died because of the inhumane conditions in which they were forced to travel. When the cows arrived in Kitwe they were in such a poor state that Shamakamba could only sell them for K300,000 each. Advise Shamakamba as to his rights and liabilities against Mumbi.

6. Lewis was a supplier of antique clocks who was registered as required by the (fictitious) Antique Clock Dealers Act. Lewis supplied a Queen Anne clock to Mutale, without providing the statutory invoice describing the clock as required by the Act, after Mutale had said that as far as he was concerned none was necessary. The agreed price was K2 million, but Mutale subsequently refused to pay for the clock. To Norma he delivered a grandmother clock for K1.5 million. Again Lewis failed to provide a statutory invoice. Two weeks later the clock stopped and cost K500,000 to restore to working condition. Lewis supplied a French clock to Agatha for K500,000. Agatha ran a brothel though Lewis did not know this. Agatha refused to pay for the clock which she had put in the room where she received clients. Advise Lewis. What difference, if any, would it make to your advice if Lewis's licence had expired before the above transactions were entered into though Lewis was unaware of this?

B. RESTRAINT OF TRADE

Restraint of trade examines a specific type of term in a contract that creates an obligation on a party, even after the contract is discharged or terminated. These terms are particularly found in contracts of employment.

Statute

Competition and Fair Trading Act , Cap 417

Case Law

CONTRACT OF EMPLOYMENT

(a) Area of restraint

Hollis & Co v Stocks [2000] IRLR 712

Mason v Provident Clothing & Supply Co Ltd [1913] AC 724

Contract Law, McKendrick – Relevant Chapter(s)

(b) Time

Fellows v Fisher [1976] QB 122

Fitch v Dewes [1921] AC 158

(c) Trades forbidden

Attwood v Lamont [1920] 3 KB 571

(d) Solicitation of customers

Bridge v Deacons [1984] 2 All ER 19

Laphorne v Eurofi [2001] UKCLR 996

SALE OF A BUSINESS

British Reinforced Concrete v Schelff [1921] 2 Ch 563

Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co (above)

FRANCHISES

Convenience Co v Roberts [2001] FSR 35

RESTRICTIVE TRADING AGREEMENTS

English Hop Growers v Dering [1928] 2 KB 174

Kores Manufacturing v Kolok Manufacturing [1959] Ch 108

TSC Europe (UK) Ltd v Massey [1999] IRLR 22

SOLUS TRADING AGREEMENTS

Alec Lobb (Garages) Ltd v Total Oil [1985] 1 All ER 303

Esso Petroleum v Harpers Garages (above)

SEVERANCE

Attwood v Lamont (above)

Goldsohl v Goldman [1915] 1 Ch 292

TEST QUESTIONS

1. What is a covenant in restraint of trade?
2. Are such covenants prima facie valid or void?
3. What are the normal interests that merit protection between employer and former employee?
4. What is the normal interest meriting protection between a vendor and a purchaser of a business?
5. What was the interest in the *Nordenfelt* case?
6. When will a restraint of trade covenant be reasonable?
7. When will an 'area covenant' be unreasonable?
8. Why was the covenant in *Mason v Provident Clothing Supply* not enforceable?
9. How do the courts determine if the duration of the restraint is reasonable?
10. Was the covenant enforceable in *Home Counties Dairies v Skilton*?
11. In what way did the approach in *Briggs v Oates* differ from the traditional analysis of restraint of trade clauses?
12. What was the alternative ground for the decision in *Briggs v Oates*?
13. What was the decision of the House of Lords in *Esso v Harpers*?

EXAM SAMPLE QUESTIONS

1. Bumba and Tembo were in partnership as surveyors and valuers. Each covenanted with the other that he would not, during the time they were in partnership or within five years thereafter, practise within eight miles of their present office or any other office in which the other should thereafter practise. Bumba later took Mumena as an articulated clerk and Mumena covenanted that he would not, whilst employed by Bumba or within 10 years of ceasing to be so employed, practise within eight miles of Bumba's office or any office which Bumba should thereafter practise as a surveyor, valuer or estate agent. A year ago the partnership was dissolved and Mumena ceased to be employed by Bumba. Both Tembo and Mumena are now practising within eight miles of Bumba's office. Advise Bumba.
2. 'In administering the doctrine of restraint of trade, the courts try to maintain a balance between the freedom of the individual and the protection of the employer.' Discuss this statement in the light of decided cases.
3. Joan Ndamoneka, aged nineteen, entered into a contract with Beauty Fashion Ltd of Lusaka whereby she was to be trained as a model for three years. The contract provided that on completion of her training Joan would not work in any other fashion house in the Zambia for a period of ten years. Joan has now completed her training and has been offered a very good contract with the fashion house of Diamond Ltd in Kitwe. Advise Joan as to her legal position.

4. 'An employer is not permitted to protect himself by contract against competition as such on the part of his former employees, but he may enforce any agreed restrictions which are necessary to protect his legitimate interests.' Explain and comment.
5. Poney Ltd carry on business as insurance brokers, with branches throughout the Zambia. Last year Quintino agreed to work for Poney Ltd for five years as head of sales and marketing, and his contract contained a covenant that he would not be directly or indirectly concerned in any business acting as insurance brokers anywhere in Lusaka or Copperbelt for two years after leaving his employment with Poney Ltd. Quintino has been approached by Ricky Ltd, another firm of insurance brokers, who have asked him to become head of their sales and marketing at twice his present salary. Advise Quintino.
6. 'The doctrine of restraint of trade is one to be applied to factual situations with a broad and flexible rule of reason.' (Per Lord Wilberforce) Explain the factual situations to which the doctrine has been applied and the principles upon which it operates.

UNIT 14: PRIVACY OF CONTRACT

Introduction

The traditional rule of the privity of contract states that only parties to a contract can acquire rights and /or liabilities in respect of that contract. However, the law provides some exceptions that allows or confer benefits on third parties who may enforce contracts to which they were not privy initially.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapters 15
The Law of Contract, Treitel – Chapter 14
Lecture Notes for Unit 14

THE BASIC RULE

Darlington BC v Wiltshire Ltd [1995] 1 WLR 68; [1995] 3 All ER 895 (CA)
Dunlop v Selfridge [1915] AC 847
New Zealand Shipping Co v Satterthwaite (The Eurymedon) [1975] AC 154; [1974] 1 All ER 1015
Port Jackson Stevedoring v Salmond and Spraggon (The New York Star) [1981] 1 WLR 138
Scruttons v Midland Silicones [1962] AC 446
Southern Water Authority v Carey [1985] 2 All ER 1077
Taddy v Sterious [1904] 1 Ch 354
Tweddle v Atkinson (1861) 1 B & S 393

RULE NOT APPLICABLE

(a) Collateral contracts

Alicia Hosiery v Brown Shipley [1970] 1 QB 195
Shanklin Pier v Detel [1951] 2 KB 854

(b) Multi-party agreements

Clarke v Earl of Dunraven [1897] AC 59

EQUITY IMPOSING LIABILITY

Bendall v McWhirter [1952] 2 QB 466
Port Line v Ben Line [1958] 2 QB 146
Tulk v Moxhay (1848) 2 Ph 774

EQUITY CREATING BENEFITS

Flavell, Re (1883) 25 Ch D 89
Schebsman, Re [1944] Ch 83
Vandepitte v Preferred Accident Insurance [1933] AC 70

SUING IN ANOTHER CAPACITY

Beswick v Beswick [1968] AC 58

DAMAGES

Jackson v Horizon Holidays [1975] 1 WLR 1468

Woodar Investments v Wimpey Construction [1980] 1 WLR 227; [1980] 1 All ER 571

TEST QUESTIONS

1. Why could Dunlop not enforce the price clause with Selfridge (*Dunlop v Selfridge* (1915))?
2. In *Beswick v Beswick* did the House of Lords mitigate the doctrine of privity?
3. Are there any statutory exceptions to the doctrine of privity of contract?
4. Privity of contract has been described as 'a blot on our law and most unjust'. Do you agree?
5. How has the Contracts (Rights of Third Parties) Act 1999 changed the previous law?
6. What are its main provisions?

EXAM SAMPLE QUESTIONS

1. Frank is an internationally recognized architect. He was engaged by Global plc to act as supervising architect for their prestigious new shopping centre development. Global agreed to pay a fee of K100 million to Holding's Ltd, a company wholly owned by Frank's children, in return for Frank's services, on the completion of the centre. Immediately after the centre is completed, and before the fee is paid, Frank dies from a heart attack. Global are refusing to pay the K100 million to Holdings Ltd. Advise Holdings Ltd

UNITS 17, 18, & 20: DISCHARGE OF CONTRACTS BY PERFORMANCE, AGREEMENT & BREACH

Introduction

This topic analyses the way in which contracts can be discharged or brought to an end. Primarily, it can be achieved in three ways: performance, agreement and breach.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapters 18 & 20
The Law of Contract, Treitel – Chapter 17 & 18
Lecture Notes for Unit 17, 18 & 20

PERFORMANCE

(a) General rule

Cutter v Powell (1795) 6 Term Rep 320
Raiffeisen-Zentralbank Osterreich AG v Cross-Seas Shipping Ltd & Others (2000) The Times 1 February (CA)

(b) Performance prevented

Planché v Colburn (1831) 8 Bing 14

(c) Acceptance of partial performance

Sumpter v Hedges [1898] 1 QB 673

(d) Whether time is of the essence

Union Eagle Ltd v Golden Achievement Ltd [1997] 2 All ER 215 (JCPC)

AGREEMENT

Eodem modo quo oritur, eodem modo dissoluitur

BREACH

(a) Actual breach

Bettini v Gye (1876) 1 QBD 183
Hong Kong Fir Shipping v Kawasaki Kisen Kaisha [1962] 2 QB 26
Modahl v British Athletic Federation Ltd (1999) The Times 23 July (CA)
Poussard v Spiers & Pond (1876) 1 QBD 410

(b) Anticipatory breach

Afovos Shipping v Pagnan [1983] 1 All ER 449
Alfred C Toepfer International GmbH v Itex Itagrani Export SA [1993] 1 Lloyd's Rep 360
Avery v Bowden (1855) 5 E and B 714
Clea v Bulk Oil [1984] 1 All ER 129
Federal Commerce & Navigation v Molena Alpha [1979] AC 757
Fercometal Sarl v Mediterranean Shipping Co SA [1988] 2 All ER 742

Frost v Knight (1872) LR 7 EX 111
Hochster v De la Tour (1853) 2 E & B 678
Mersey Steel & Iron v Naylor Benzon (1884) 9 App Cas 434
Vitol SA v Norelf Ltd (The Santa Clara) [1996] 3 WLR 107; [1996] 3 All ER 93 (HL)
White & Carter (Councils) v McGregor [1962] AC 413
Woodar v Wimpey [1980] 1 WLR 227; [1980] 1 All ER 571

TEST QUESTIONS

1. If a party fully performs his obligations under a contract, is it discharged?
2. What is a condition precedent?
3. If A agrees to work for B at £50 per week payable in arrears, when does B's liability arise?
4. What is a concurrent condition?
5. Is there a general requirement of substantial failure to perform before the victim of the breach can terminate?
6. What is meant by an entire obligation in contract law?
7. Explain the decision in *Cutter v Powell*.
8. Explain the decision in *Sumpter v Hedges*.
9. What are severable obligations?
10. What is the distinction between *Woodar v Wimpey* and *Molena Alpha*?
11. If one of the parties to a contract, before the time fixed for performance is fixed, states he will not perform his obligations, what type of breach has he committed?
12. What choice has the victim of an anticipatory breach?
13. In *Hochster v De la Tour* did the plaintiff elect to affirm the contract?
14. Explain the decision in *Avery v Bowden*.
15. What are the disadvantages of affirming the contract after an anticipatory breach?
16. After termination by breach is the victim still bound to perform his obligations?
17. After an affirmation of a contract is the victim still bound to perform his obligations?

EXAM SAMPLE QUESTIONS

1. What remedies are available to the innocent party to a contract where, before the time for its performance, the other party declares that he will refuse to perform the contract at the due time?
2. John entered into a contract with Harry to hire Harry's helicopter for a two month survey of the Kafue National Park, to take place in December of this year. John has just been told by Harry that Harry will need the helicopter himself during that period. There is a rumour that surveys such as that planned by John may shortly be banned. Advise John as to his legal rights, if any.
3. In June Jumbe entered into a contract to buy 10,000 bags of 25kg mealie-meal Tulye Milling Ltd for K1 billion. The 10,000 bags were to be delivered on 18th November. Jumbe immediately agreed to resell the 10,000 bags to Shimanga in

Democratic Republic of Congo (DRC) for K4 billion. On 16th October Tulye Milling Ltd told Jumbe that they would not be able to fulfil the order. Jumbe knows that if Tulye Milling Ltd continue to produce bags of mealie-meal at their present rate they will be able to meet the commitment, but Jumbe has also heard a rumour that the government might ban the export of mealie-meal to neighbouring countries including DRC. Jumbe could probably obtain the bags of mealie-meal from Tanzania but these would cost him K2 billion. Advise Jumbe as to his legal position.

4. 'A party who does not perform the whole of the contract is not entitled to any payment.' Discuss.

UNIT 19: DISCAHRGE UNDER THE DOCTRINE OF FRUSTRATION

Introduction

This topic examines the doctrine of frustration which, when it materialises, has the effect of bringing the performance of the contract to a complete halt. The ways in which frustration may occur is also analysed.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapters 20
The Law of Contract, Treitel – Chapter 19
Lecture Notes for Unit 19

Sources of Law

Statutes

Law Reform (Frustrated Contracts) Act, Cap 73
Sale of Goods Act 1893

Case Law

OLD LAW

Paradine v Jane (1647) Aleyn 26
Taylor v Caldwell (1863) 3 B and S 826

CURRENT FORMULATION

Davis Contractors Ltd v Fareham Urban District Council [1956] AC 696
National Carriers v Panalpina (Northern) Ltd [1981] AC 675
Pioneer Shipping Ltd v BTP Tioxide [1982] AC 724

PERFORMANCE IMPOSSIBLE

(a) Subject matter destroyed

Taylor v Caldwell (above)

(b) Party dead

Graves v Cohen (1929) 46 TLR 121

(c) Subject matter unavailable

Jackson v Union Marine Insurance (1873) LR 10 CP 125

PERFORMANCE ILLEGAL

Denny Mott & Dickson v James Fraser [1944] AC 265

OBLIGATIONS RADICALLY DIFFERENT

Herne Bay Steamboat v Hutton [1903] 2 KB 683
Krell v Henry [1903] 2 KB 740

LIMITS TO FRUSTRATION

(a) Reduced profitability

Davis Contractors Ltd v Fareham UDC (above)
Tsakiroglou v Noblee Thorl [1962] AC 93; [1961] 2 All ER 179

(b) Self-induced frustration

Joseph Constantine Steamship Line Ltd v Imperial Smelting Corp [1942] AC 154
Lauritzen AS v Wijsmuller BV [1990] 1 Lloyd's Rep 1
Maritime National Fish v Ocean Trawlers Ltd [1935] AC 524

(c) Contractual provision

Metropolitan Water Board v Dick Kerr [1918] AC 119

(d) Leases

Cricklewood Properties v Leightons Investments [1945] AC 221
National Carriers v Panalpina (Northern) Ltd [1981] AC 675

EFFECTS OF FRUSTRATION

(a) Common law

Fibrosa v Fairbairn Lawson Ltd [1943] AC 32

(b) Statute

BP Exploration v Hunt [1982] 1 All ER 925

TEST QUESTIONS

1. Why was the defendant bound to pay the rent in *Paradine v Jane*?
2. Why was the hirer of the music hall not able to claim damages in *Taylor v Caldwell*?
3. Must a frustrating event be unforeseen by both parties?
4. What is meant by 'impossible' to perform in this context?
5. Explain the decision in *Jackson v Union Marine*.
6. Is there a distinction between *Krell v Henry* and *Herne Bay Steamboat v Hutton*?
7. Why was the contract frustrated in the *Fibrosa* case?
8. What is the effect of self-induced frustration?
9. Explain the decision in *Maritime National Fish v Ocean Trawlers*.
10. Does the doctrine of frustration apply to leases?
11. When a contract is frustrated what happens to the unperformed obligations of the parties?
12. If a contract is frustrated is it void ab initio?
13. On what ground did the Polish company recover its money back in the *Fibrosa* case?
14. When does the Law Reform (Frustrated Contracts) Act, Cap 73 apply?
15. Does the court have a discretion to award compensation for partial performance where a contract has been frustrated?
16. Following *BP v Hunt* how do you assess the 'valuable benefit' under the Act?

EXAM SAMPLE QUESTIONS

1. Zombe, the manager of The Rocking Roll, a pop group, agreed with Xaviour, for a fee of K10 million, that the group would perform two weeks later at a concert organised by Xaviour. The lead singer of the group, JD, took drugs on the day before the concert and as a result was unable to perform properly as he was in a dazed state. Although he started to perform he was booed off the stage. As a result Xaviour, who had paid K30 million to hire the venue, had to return K40 million to dissatisfied fans. Advise Xaviour. What difference, if any, would it make to your advice if JD's beer had been laced with the drug by some unknown third party?
2. Domba contracted to take a group of children on a five day coach trip to Livingstone. He hired a coach for K5 million (and paid K2 million in advance), and booked accommodation in his name at a hotel. The parents of the children paid him the cost of the holiday. The day before the party was due to depart all coach drivers came out on strike in sympathy with their friends who had been dismissed a month ago. Domba cancelled the holiday. The hotel are claiming damages for loss of profit from him, and the parents and children are extremely disappointed. Advise Domba.
3. (a) 'Even if there is a radical change of circumstances a contract is not necessarily frustrated.' Comment.

(b) Lombe, a retired law lecturer, arranged with Fred to give Fred's son, Simon, a course of two one hour lessons a week for ten weeks to prepare him for his Law of Contract examination. It was agreed that Fred would pay Lombe K1 million at the beginning of the course and a further K2 million at the end. After five lessons Simon had a nervous breakdown and was obviously not going to be able to take the examination. Fred therefore cancelled the rest of the course. Lombe had spent a considerable amount of time preparing the classes and had bought the latest edition of the set text books. Advise Lombe.
4. Don Mosho, who wishes to celebrate his daughter's wedding in style, arranges an open air pop concert in Blossom Park, in Ibex Hill, Lusaka. On 1 February he engages a famous group 'The Wild Best' to appear for K10 million. He is obliged to pay them K2 million immediately, the balance to be payable on 1 July, the day of the concert. On 1 March he engages a catering firm 'Tulye Outdoor Catering Ltd' to provide 500 lunches for the event at Blossom Park for K20 million, payable on 1 July. On June 1 foot and mouth disease, which has been affecting neighbouring districts for the previous six months, breaks out in Lusaka. The disease cannot be contracted by human beings but can be spread by them. The Minister of Agriculture and Co-operatives appeals to residents of Lusaka, on a 'voluntary basis', to cancel any outdoor events. Don Mosho immediately cancels the celebrations and informs the group and the caterers that their services are no longer required. The group has spent considerable sums of money setting up an elaborate stage whilst the caterers have incurred considerable expense in

preparations. Advise 'The Wild Best' and 'Tulye Outdoor Catering'. How would your advice differ, if at all, if the bride had been killed in an accident a week before her wedding day?

5. Maimbo owns a holiday cottage in Siavonga. In May he agreed to let it to Chibwe from 1–15 August. Chibwe paid a deposit of K1 million. On the afternoon of 31 July, after Chibwe and his family had set off from their home in Lusaka, a landslide rendered the cottage uninhabitable. Maimbo, who had recently spent K3 million on redecoration in preparation for Chibwe's visit, was unable to contact Chibwe, and Chibwe only found out what had happened when he arrived at the cottage. Chibwe spent K500,000 on hotel accommodation for the night before returning home next day. Chibwe and his family were very disappointed at not having the holiday they had planned. Chibwe is now demanding that Maimbo should return his deposit and pay him compensation. Advise Maimbo. What difference, if any, would it make if the damage to the cottage had been caused by a fire carelessly started by Maimbo?
6. Mobile Travel Ltd specialises in tours to Republic of Ruritania. In March this year Mwambo booked a two week tour for himself and his wife, Hilda, in August and paid a deposit of K1 million. Republic of Ruritania has always been a peaceful country with a stable government but a revolution in nearby Britanya in April led to widespread rioting in Ruritania. As a result of the uncertain situation Mobile Travel Ltd took no more bookings for tours to Ruritania. In July it informed Mwambo that it was cancelling the August tour and would not be able to return his deposit, as it had paid K4 million in non-refundable charter fees for seats on flights to Ruritania. Hilda was so disappointed and outraged at this 'high-handed treatment' that she insisted that Mwambo should ask Mobile Travel Ltd to provide seats for them on a scheduled flight to Ruritania and two weeks hotel accommodation for the balance of the cost of the original tour, which Mwambo tendered. Advise Mobile Travel Ltd. Would your answer be different if on 31 July the Ruritania government banned all tourists from entering the country until further notice?

UNIT 21: REMEDIES FOR BREACH OF CONTRACT – DAMAGES

Introduction

This topic examines the common law remedy of damages available in the event of a breach of contract.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapters 21
The Law of Contract, Treitel – Chapter 20
Lecture Notes for Unit 21

Sources of Law

Case Law

ASSESSMENT OF DAMAGES

Anglia TV v Reed [1972] 1 QB 60
Attorney-General v Blake, Jonathan Cape Ltd, third party [2000] 4 All ER 395
Banque Bruxelles SA v Eagle Star Insurance Co Ltd [1996] 3 WLR 87 (also reported as *South*)
Australia Asset Management Corp v York Montague Ltd [1996] 3 All ER 365 (HL)
Bence Graphics International Ltd v Fasson UK Ltd [1998] QB 87
C & P Haulage v Middleton [1983] 1 WLR 1461
CCC Films (London) Ltd v Impact Quadrant Films Ltd [1984] 3 WLR 245
Panatown Ltd v Alfred McAlpine Construction Ltd [2000] 4 All ER 97
Ruxley Electronics and Construction Ltd v Forsyth; Laddingford Enclosures Ltd v Same [1995] 3 WLR 118; [1995] 3 All ER 268 (HL)
Watts v Morrow [1991] 1 WLR 1421
White Arrow Express Ltd v Lamey's Distribution Ltd [1995] TLR 430 (CA)

REMOTENESS OF DAMAGE

Chaplin v Hicks [1911] 2 KB 786
Cory v Thames Ironworks (1868) LR 3 QB 181
Hadley v Baxendale (1854) 9 Exch 341
Heron II, The [1969] 1 AC 350
Jackson v Royal Bank of Scotland [2000] CLC 1457
Parsons v Uttley Ingham [1978] 1 All ER 525; [1978] QB 791
Victoria Laundry v Newman Industries [1949] 2 KB 528

CAUSATION

County Ltd v Girozentrale Securities [1996] 3 All ER 834
Monarch, The [1949] AC 196

MITIGATION

Brace v Calder (1895) 2 QB 253

British Westinghouse v Underground Electric [1912] AC 673

CONTRIBUTORY NEGLIGENCE

Barclays Bank plc v Fairclough Building Ltd [1994] 3 WLR 1057; [1995] 1 All ER 289 (CA)

Gran Gelato Ltd v Richcliff Ltd [1992] 1 All ER 865

TEST QUESTIONS

1. Is an action for damages available as of right to the victim of a breach of contract?
2. What are unliquidated damages?
3. What is the general traditional basis of assessment of contract damages?
4. Are punitive damages normally awarded for breach of contract?
5. What basis of assessment did the court use in *Anglia TV v Reed*?
6. Must the breach have caused the loss that is being claimed?
7. Can judges apportion the blame for breach of contract and make a party liable for 30 per cent of the damage only?
8. What is the test of remoteness laid down in *Hadley v Baxendale*?
9. Why did the mill owners not recover for the loss of profits suffered when the mill stood idle (*Hadley v Baxendale*)?
10. Does *Victoria Laundry* add anything to the test laid down in *Hadley v Baxendale*?
11. Why were the boiler makers not liable for the loss of the lucrative contract with the Ministry of Supply (*Victoria Laundry*)?
12. If the contract with the Ministry had been disclosed to the boiler makers would they have been liable for its loss (*Victoria Laundry*)?
13. Is the test of remoteness of damages in tort the same as the test of remoteness in contract?
14. In the *Heron II* were the shipowners liable for the loss resulting from the fall in price of the sugar market?
15. Why did Scarman LJ and Orr LJ hold the defendants liable for the loss of the pigs in *Parsons v Uttley Ingham*?
16. Can the victim recover damages for losses he could have avoided by taking reasonable steps?
17. Explain the decision in *Brace v Calder*.
18. Must the plaintiff give credit for benefits accruing to him as a consequence of the breach?
19. Is it correct to say that the victim of a breach is under a duty to mitigate his loss?

EXAM SAMPLE QUESTIONS

1. Freddy bought a house which needed complete redecoration before he could move in with his family. Freddy engaged George to redecorate the house and the contract provided that the work would be finished in twelve weeks. George in fact

took fifteen weeks to finish the work. Advise Freddy whether he may claim damages in respect of:

- (a) hotel bills for himself and his family for the additional three weeks (K5 million);
- (b) the rates and mortgage interest paid by him during the three weeks (K2 million);
- (c) the destruction of his furniture, during the additional three weeks, by a fire at the warehouse in which it had to be stored because he was unable to move in to the house (K10 million).

2. 'The principle that the damage must not be too remote is difficult to apply and often causes hardship to the plaintiff.' Discuss.
3. In January, Bupe, a successful business executive living and working in Ndola, was appointed manager of a firm in Lusaka, commencing on April 1. Having found a house she liked in Lusaka, Bupe engaged Pandala, a builder, to do some renovation to it, the contract providing that the work would be completed by March 31 at the latest. In breach of contract Pandala did not complete the renovation until May 31 and Bupe was unable to move into the house until June. During April and May, Bupe continued to live in Ndola at the weekends, flying to Lusaka and back each week, and stayed in a five star hotel in Lusaka during the week. She also engaged a nanny to look after her two small children during her absence. Bupe is now claiming that Pandala should pay her air fares between Ndola and Lusaka, the hotel bills, the cost of the nanny and a 'substantial sum' to compensate her for the emotional distress of being separated from her family. Advise Pandala.
4. (a) 'The rule of common law is that where a party sustains a loss by breach of contract, he is, so far as money can do it, to be placed in the same position as if the contract had been performed.' Discuss.

(b) Bwembya, a business tycoon, contacted a hire firm who provided chauffeured executive cars and booked a car for 6 am the following day to take him to Lusaka International Airport from where he was booked to travel to London with the intention of signing a multi-million dollar contract. The driver lost his way and arrived so late that Bwembya missed the flight and the opportunity of obtaining the contract. Advise Bwembya.
5. Arwin Ltd employ Bimbe Ltd to build a multi-purpose sports complex. Bimbe Ltd engage subcontractors, Chanengena Ltd, who use cement which turns out to be highly unsuitable for the purpose for which it is used. Soon after completion and occupation of the building cracks begin to appear. The complex has to close for expensive repairs and a lot of revenue is lost. Arwin Ltd had also put in a bid, which has to be withdrawn, to host the regional sports competition which would have produced large amounts of revenue. Advise Arwin Ltd.

6. 'The plaintiff must be compensated for all the damage flowing from the breach, provided that it is not too remote.' Explain.

INJURY TO REPUTATION

(a) Reputation of company

Anglo-Continental Holdings v Typaldos Lines [1967] 2 Lloyd's Rep 61

(b) Reputation of individual

Addis v Gramophone Co [1909] AC 488

Malik v BCCI [1997] 3 WLR 95; [1997] 3 All ER 1 (HL)

NON-PECUNIARY LOSS

(a) Discomfort, vexation, disappointment, injury to feelings

Addis v Gramophone Co [1909] AC 488 (HL)

Alexander v Rolls Royce Motor Cars Ltd [1995] TLR 254 (CA)

Farley v Skinner [2001] 3 WLR 899 (HL)

Hayes v James and Charles Dodd [1990] 2 All ER 815

Jackson v Horizon Holidays [1975] 1 WLR 1468

Jarvis v Swan Tours [1973] 2 QB 233

Johnson v Unisys [2001] 2 WLR 1076 (HL)

Watts v Morrow [1991] 1 WLR 1421; [1991] 4 All ER 937

(b) Lost future prospects

Dunk v George Waller [1970] 2 QB 163

(c) Loss of a chance

Chaplin v Hicks [1911] 2 KB 786

LIQUIDATED DAMAGES/PENALTY CLAUSES

Cellulose Acetate Silk v Widnes Foundry [1933] AC 20

Cenargo v Empresa [2002] CLC 1151

Dunlop Pneumatic Tyres v New Garage [1915] AC 79

Jobson v Johnson [1989] 1 WLR 1026

Lordsvale Finance plc v Bank of Zambia [1996] 3 WLR 688; [1996] 3 All ER 156

Philips Hong Kong Ltd v AG of Hong Kong (1993) *The Times* 15 February

TEST QUESTIONS

1. What is the object of an award of damages?
2. Where a breach of contract has caused injury, is that recoverable?
3. Where a breach of contract has caused mental distress, is that recoverable?
4. Explain the decision in *Jarvis v Swan Tours*. Why is it unusual?
5. What is a liquidated damages clause?
6. What is a penalty clause?
7. If the parties have made a genuine attempt to estimate the loss likely to flow from the breach will their figure be upheld?
8. Do the rules of remoteness apply to a liquidated damages clause?
9. Do the rules of mitigation apply to a liquidated damages clause?

10. In *Dunlop Pneumatic Tyre* was the clause held to be penal?
11. If a clause stipulates a sum that is extravagant and unconscionable will it be a penalty clause?
12. Why do the courts refuse to apply penalty clauses?
13. Why did the court not use an actual loss basis for assessing the damage in *Cellulose Acetate v Widnes Foundry*?
14. Do the rules of remoteness apply on an action for an agreed sum?
15. Why did *White and Carter (Councils)* recover the full price of the contract from *McGregor*?

EXAM SAMPLE QUESTIONS

1. 'Damages for breach of contract can only be awarded in respect of loss of a financial kind.' Discuss.
2. In June, Mubita agreed to sell Mambo his BMW car for K30 million. The date for delivery was 19th July and it was agreed that if Mubita failed to make delivery, then he was to pay Mambo K5 million damages. Mubita failed to make delivery, but by good fortune Mambo was able to purchase another BMW for K35 million. Mambo is now claiming the K5 million from Mubita. Advise Mubita as to his legal position.
3. 'Damages for breach of contract do not include compensation for disappointment, injured feelings or injury to reputation caused by the breach.' Consider how far this is an accurate statement of the law.
4. Eric, an architect, was engaged to design building premises for Fabian's business. Eric was to be paid a fee of K10 million a month plus 'reasonable expenses'. Eric worked on the design for six months during which time Eric received only his fee payments from Fabian. Fabian then wrote to Eric saying that, because of financial difficulties, he was postponing Eric's contract. In fact, Fabian did not like the design which Eric had produced and used the financial difficulties as an excuse for terminating Eric's contract. Fabian refused to pay the expenses which Eric had incurred, arguing that they were not reasonable. In the letter accepting appointment Eric had enclosed her 'Standard terms' which stated:
 - (a) It is agreed that in matters of judgment Eric's decision shall be final;
 - (b) In the event of a client not paying expenses when due, that client shall pay double the amount due as expenses'. Advise Eric.
5. In March Xaviour engaged Miss Yande for three years as his research assistant at a salary of K36 million under a written agreement which included the following clauses: (a) The research assistant will dress smartly at all times. It is understood that trousers are not an acceptable form of dress under any circumstances. (b) The research assistant will work whatever hours are

necessary to complete the assignments given to her.' On 1 June Xaviour asked Yande to produce certain statistics for a meeting with an important client at 9 am on 2 June. In spite of staying in the office until midnight, Yande was not able to complete the statistics on 1 June. She returned to the office at 6 am on 2 June but had still not quite finished the work when Xaviour arrived at 8.30 am. Xaviour was angry. He then noticed that Yande was wearing trousers and told her, in front of several colleagues, that her contract was terminated. Yande was extremely upset and humiliated; she is now receiving medical treatment for depression. Advise Yande.

UNIT 22: EQUITABLE REMEDIES & RESTITUTION

Introduction

This topic examines the remedies that are available in equity. These remedies are given at the exclusive discretion of the courts.

Essential Reading

Law of Contract, Cheshire, Fifoot and Furmston - Chapters 11 & 12
The Law of Contract, Treitel – Chapter 11
Lecture Notes for Unit 13

Case Law

SPECIFIC PERFORMANCE

Beswick v Beswick [1968] AC 58
Co-op Insurance Co Ltd v Argyll Stores Ltd [1997] 2 WLR 898 (HL)
Patel v Ali [1984] 1 All ER 978

Posner v Scott-Lewis (1987) *The Times* 12 December
Price v Strange [1978] Ch 337; [1977] 3 All ER 371
Quadrant Visual Communications v Hutchison Telephone (1991) *The Times* 4 December
Ryan v Mutual Tontine Assoc [1893] 1 Ch 116
Shell UK v Lostock Garages [1976] 1 WLR 1187
Walters v Morgan (1861) 3 De GF and J 718

INJUNCTIONS

Evening Standard v Henderson (1986) *The Times* 15 November
Page One Records v Britton [1968] 1 WLR 157
Warner Bros v Nelson [1937] 1 KB 209
Wolverhampton Corp v Emmons [1901] 1 QB 515

DAMAGES AND EQUITABLE REMEDIES

Johnson v Agnew [1980] AC 367

RESTITUTION

Aiken v Short (1856) 1 H & N 210
Barclays Bank v Simms and Cooke [1980] QB 677; [1979] 3 All ER 522
Butterworth v Kingsway Motors [1954] 1 WLR 1286
Fibrosa v Fairbairn Lawson [1943] AC 32
Foley v Classique Coaches [1934] 2 KB 1
Griffin v Weatherby (1868) LR 3 QB 753
Halifax Building Society v Thomas [1995] TLR 385 (CA)
Kerrison v Glyn, Mills, Currie & Co (1912) 81 LJKB 465
Kiriri Cotton Co v Dewani [1960] AC 192
Kleinwort Benson Ltd v Lincoln City Council and Other Appeals [1998] 4 All ER 513
Meates v Westpac (1990) *The Times* 5 July
Planché v Colburn (1831) 8 Bing 14
Portman Building Society v Hamlyn Taylor Neck (A Firm) [1998] 4 All ER 202
Regalian Properties plc v London Docklands Development Corporation [1995] 1 WLR 212; [1995] 1 All ER 1005 (Ch D)
Westdeutsche Landesbank v Islington LBC [1996] 2 All ER 961 (HL)

TEST QUESTIONS

1. If a court orders specific performance of a contract, what happens to the contract?
2. Why are damages not normally considered an adequate remedy for a contract for the sale of land?
3. Are building contracts specifically enforceable?
4. What is meant by saying a contract lacks mutuality?
5. Why was specific performance refused in *Shell UK v Lostock*?
6. Can a contract of employment be specifically enforced by the courts?
7. Why was specific performance refused in *Ryan v Mutual Tontine Assoc*?
8. What is a voluntary contract?

9. What is an interlocutory injunction?
10. What is a prohibitory injunction?
11. Can a breach of contract be prevented by an injunction?
12. If an injunction amounts to indirect specific performance will the court grant it?
13. What alternative employment was available to Bette Davis when the injunction was granted to prevent her acting for anyone other than Warner Bros (*Warner Bros v Nelson*)?
14. Why was the injunction not granted in *Page One Records v Britton*?
15. What was the principal change introduced by s2 Chancery (Amendment) Act 1858?
16. When would it be advantageous for a plaintiff to use the court's jurisdiction to award damages in lieu of/in addition to an equitable remedy?
17. What principles of assessment govern damages awarded in lieu of specific performance?
18. What is the ratio decidendi of *Johnson v Agnew*?
19. In what circumstances may money paid under a mistake of fact be recovered?
20. Is money paid under duress recoverable?
21. Explain the concept of unjust enrichment.
22. Why did the common law traditionally refuse to allow recovery for mistake of law?
23. What is the present state of the law (see *Kleinwort Benson v Lincoln City Council*)?
24. Would it be desirable to enact statutory provisions setting out the general principles of recovery for mistake of fact and mistake of law?
25. Is it a defence to a restitutionary claim that the defendant has changed his position in reliance on the receipt of the mistaken payment?
25. In what circumstances may a quantum meruit action be brought? Explain the basis of the decision in *Planché v Colburn*.

EXAM SAMPLE QUESTIONS

1. When will a court order specific performance of a contract?
2. Jo Zaza, a dealer, agreed to hire a small tractor to Kabwe for K2 million per week for eighteen months and a miniature engine to Mudenda for K3 million per week for 26 weeks. After three months Jo Zaza sold the tractor for K50 million. Lubinda, who required immediate delivery, refused to give it up as he needed it as an attraction for his circus. Mudenda fell ill after six weeks and Jo Zaza agreed to accept half rent until Mudenda recovered. Six weeks later Mudenda recovered and refused Jo Zaza's demand for payment of the arrears of the rent. Advise Jo Zaza. In relation to the tractor, what difference, if any, would it make to your advice if the tractor was the only surviving example of a particular model, which Lubinda wanted for his tractor museum?
3. What do you understand by the concept of unjust enrichment? Illustrate your answer by reference to case law.