

CONTRACT LAW

MODEL EXAM



LAWSKOOL.CO.UK

LAWSKOOL UK

IRAC method of completing exams

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Question One

Kester is a young man who migrated to England three years ago from China to attend university. He had been living with his grandparents, who recently passed away and bequeathed to him a large sum of money. Kester only speaks very basic English, he has few friends and has recently been prescribed anti-depressants to deal with the loss of his grandparents. He has limited business experience.

Kester is unsure what to do with his money and approaches his best friend and neighbour Julie, who has known him since he moved to England. Julie runs a

fashion outlet called “Pink Pathways”. Julie wants to start a bigger store in London, but she lacks the money. She offers to sell the business to Kester in July 2006 for £400,000 and assures him that she will run the business for another year. Kester remains sceptical, and during the negotiations Julie says to Kester:

“There is no risk to you of buying this business. We have consistently made £15,000 per month and with summer coming, if you expand to swimwear you could easily make at least £20,000 – I have studied the trends.”.....

Answer

Introduction

Kester will want to know whether or not there are any factors present which will enable him to terminate the contract or to receive compensation for his losses. A number of issues arise in his case:

- Breach of contract
- Misrepresentation
- Undue influence

Breach of contract

In order to establish that there has been a breach of contract, it is necessary for Kester to demonstrate that the oral statements made by Julie in the course of negotiations were terms to be incorporated into the contract (***Oscar Chess v. Williams***¹). However, the parole evidence rule may cause Kester difficulties. The rule operates to exclude all extrinsic evidence varying or adding to the written terms of the contract, where the contract is wholly in writing. However, in these circumstances, it is probable that Kester could argue that although Julie's oral statements were not incorporated into the contract as such, that they amounted to a collateral contract (separate contracts which could be enforced, separately but in addition to the main written contract). However, collateral contracts were a method the courts used to ensure fairness prior to the ***Misrepresentation Act 1967***, when it was very difficult to prove that there had been some kind of misrepresentation. Therefore, arguing that Julie has made misrepresentations

Question Two

Lois is a young businesswoman who has just graduated from University. She decides to start up a business, which organises conferences within the Newcastle region – seeing an opportunity in a niche market. Lois approaches Lex Luther Lending Corporation (“Luther”) about obtaining a loan to secure office premises. Luther is impressed by her business plan, but given her inexperience, is only willing to lend her £200,000 if the loan is guaranteed.

One evening, Lois and a representative from Luther go to visit Lois's mother Lana at a retirement village. Lana is seventy years old and she has been in the

¹ [1957] 1 All ER 325

retirement village for nine years after a car accident in which her husband was killed. As a result of the accident she suffered a major brain haemorrhage and has lost most memories of her life and suffers from some language comprehension difficulties. She is very passive as she was heavily reliant on her husband for emotional and financial support. She is now heavily dependent on Lois for emotional support. Lois shows her mother the contract and tells her:

“The bank just wants to make sure that everything will be okay with my new business. They just want to make sure that someone will pay them if it goes broke, but I’m sure it won’t come to that. Can you just sign here?”.....

Answers

1. Is Lois’s mother liable under the guarantee?

It is possible that Lois’s mother may not be liable under the guarantee for one of two reasons: lack of capacity and/or undue influence.

Lack of capacity

English law acknowledges that if an individual suffers from a recognised mental illness that rendered the said individual incapable of understanding the effect of signing a contract, the contract will be regarded as voidable if the other party to the contract was aware of the illness (*Imperial Loan Co. v. Stone*²). On the facts, it is apparent that Lois’s mother is mentally impaired. This will affect her ability to give effective consent, which means that it is probable that the court

² [1892] 1 QB 599

may not hold Lana to the contract. It should be noted, that if Lana is judged to have been lucid at the time the contract was signed, then the contract will be valid. On balance though, it is suggested that as she has some language comprehension difficulties that regardless of the fact she nodded her assent to the contract, the contract will probably not be valid.....

Question Three

Minh, a self-taught wiz-kid, started a small business manufacturing personal computers for home and office use. He constructed computers to fit the specifications required by individual customers. Minh expected that the Centium III would be a top seller for the home computer market. He contacted Brett who is a salesman for Hot Chips, a specialist supplier of computer chips and inquired whether he would be able to fill a standing order for a regular supply of Centium III computer chips. Minh emphasised to Brett that the chips needed to be fully compatible with the COMPUSHADE v2.0 software, which served as the interface which he used to programme his computers. Brett replied by saying that he would be delighted to become Minh's regular supplier and recommended that he consider the *Fasttrack* brand of chip. Brett also said - "No worries Minh. I guarantee that the *Fasttrack* chips will be compatible with the COMPUSHADE v2.0 interface". Minh was impressed with Brett's professional attitude and decided to finalise with Brett an order of 50 *Fasttrack* Centium III chips per month.....

ANSWER

Issues

What does Minh (M) want?

- A. M wants to be able to resist Brett (B)'s claim for £10,000 in damages. The issue is whether B was justified in terminating the contract due to M's repudiatory conduct in cancelling the supply of chips. A subordinate issue is whether there are any barriers to B terminating owing to the fact that the initial breach was due to him.
- B. M would like to be justified in terminating the contract due to a fundamental breach with respect to:
1. The size of the chips being different to the stated size in accordance with the express term as to the industry standard (condition of contract – not a major issue).
 2. The statement as to the full compatibility of the *Fasttrack* chip with the COMPUSHADE v2.0 software (this section contains the bulk of the answer).

The issue in this case is whether this statement was part of the terms of the contract. A subordinate issue is whether there was a barrier to termination because of M's conduct in not immediately informing B about the inappropriateness, which amounted to an implied representation to B that the chips were acceptable.....

◆◆◆◆

**To order the complete version of the lawskool Contract Law Model Exam
please visit www.lawskool.co.uk**