

THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LL. B DEGREE PROGRAMME-LEVEL 4  
LWU2311/LLU4805 LAW OF CONTRACT  
FINAL EXAMINATION-2020/2021  
DURATION-THREE (03) HOURS



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DATE: 12 September 2021

TIME: 9.30 a.m – 12.30 p.m

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**General Instructions**

The question paper consists of **TWO** parts and **SIX (6)** questions. **PART I** consists of 2 questions and **PART II** consists of 4 questions.

Answer **FOUR (4) Questions** selecting **only ONE (1) question** from **PART I**.

Each question carries **25 marks**.

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**PART I**

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**Specific Instructions for PART I**

You can select **only ONE (1) question** from PART I.

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1. Kusal is a second-year student of the University of Visual and Performing Arts. He is used to draw paintings in his leisure time and sells them as his family does not have capacity to afford the cost of his studies. Kusal appoints Danushka to sell a painting of him. Kusal tells Danushka under no circumstances to sell the painting for less than Rs. 25,000. However, Kusal hopes to gain at least Rs. 35,000 from the painting.

Discuss liabilities of the parties in each of the following alternative circumstances. Support your answer with case law illustrations.

- a) Danushka sells the painting to Thanuja for Rs. 15,000.

**(12 marks)**

- b) Danushka buys the painting on his own account for Rs. 25,000 and subsequently sells it to Saman for Rs. 30,000.

**(13 Marks)**

2. Sunny called an insurance agent, Nalin and asked to insure her boyfriend, Ashan's super-luxury vehicle at his earliest. Nalin took initial actions accordingly. Meanwhile, Ashan also contacted another agent, Angi and agreed to insure his vehicle at Angi's company. Whereas Sunny came to know this one week later, she called Nalin and affirmed that the vehicle will be insured at Nalin's agency.

a) Nalin wishes to file a lawsuit against Sunny and Ashan on the basis of breach of duties as principals. To what extent will this action be successful? Support your answer with relevant statutory provisions, if any and case law.

**(13 marks)**

b) Ashan and Sunny seek your advice to as to what defences or remedies are available for them. Advise them.

**(12 marks)**

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## **PART II**

**You can select only THREE (3) questions from PART II.**

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### **Specific Instructions for PART II**

You are the newly appointed legal officer of the University of Milton in Kingsland. Vice-Chancellor of the University of Milton has asked you to prepare a Memorandum of Advice about the below legal issues concerning the contractual obligations.

Assume that Kingsland's law is similar to that of Sri Lankan law. You are required to cite relevant case law and statutory provisions (if any) regarding each legal issue.

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**Questions 3 and 4 are based on the following facts.**

The Faculty of Creative Industries of the University of Milton intended to hold a three-day concert to promote folksongs of Kingsland. Eddie is a famous singer in Kingsland with a proclivity of using folksongs in the modern music industry. The Assistant Registrar of the Faculty of Creative Industries sent a letter on January 1, 2021, inviting Eddie to perform at the concert for three evening shows from August 1 to August 3. The invitation proposed Rs. 600,000 as payment and a 10% share of the income from telecasting the last day of the concert. On January 5, 2021, Eddie replied by a letter, saying that he would be happy to

perform; however, he would only be available on August 2 and 3. On January 10, the Assistant Registrar posted a letter to Eddie suggesting that the Faculty would be happy to have him in the last two days of the concert, and they may find someone else to perform on the first day of the concert, which means August 1. On January 13, Eddie replied by a letter, stating that 'I am happy with the deal'. On January 16, the Assistant Registrar started an advertising campaign for the folksongs concert by paying Rs. 100,000 lump sum payment for ABC Advertising Company. On February 1, Eddie sent a letter to the Assistant Registrar advising that he changed his mind and decided that it was more important for him to work on his next album.

3. The vice-chancellor seeks your advice on whether the University of Milton has concluded a binding contract with Eddie.

Prepare your advice.

**(25 marks)**

4. Assume the following situations regarding the above facts and prepare your advice on each scenario.

a) What difference, if any, would it make if Eddie was 17 years old at the time of the exchange of letters?

**(7.5 marks)**

b) What difference, if any, would it make if the public performance of folksongs was prohibited under the Traditional Knowledge Protection Act of Kingsland at the time of the exchange of letters?

**(7.5 marks)**

c) What difference, if any, would it make if the Assistant Registrar made a false statement offering a 10% share of the income from telecasting the last day of the concert to induce Eddie to enter the contract? Would your advice differ if the Assistant Registrar had been negligent in making this statement?

**(10 marks)**

**Questions 5 and 6 are based on the following facts.**

Milton University entered into a contract with the South Bank Constructions on July 30, 2019, to build an auditorium for the University. According to clause 5 of this contract, the South Bank Constructions must finish the auditorium's construction before June 30, 2021. However, the

South Bank Constructions has been unable to finish the auditorium construction before the due date. The previous legal officer of Milton University had sent a letter of demand to the South Bank Constructions alleging that they have violated the contract being failed to finish the construction of the auditorium before the due date; thus, the company is liable to pay liquidated damage as per clause 5 of the contract. Replying to the letter of demand, the Legal Division of the South Bank Constructions submitted the following reasons why they were unable to finish the construction of the auditorium on the due date.

*Due to the 3<sup>rd</sup> outbreak of the COVID-19, the construction of Milton University's auditorium was badly hampered. Further, due to the travel restrictions and health guidelines imposed by the government of Kingsland at the end of April 2021, we were unable to maintain the necessary workforce at the construction site and supply the required material to continue construction. Therefore, we are not liable to pay any liquidated damages as per Clause 7.5 of the contract. Clause 7.5 of the contract states:*

*7.5 Force Majeure*

*7.5.1 Definition For the purpose of this contract, 'Force Majeure' means an event which is beyond the reasonable control of a Party and makes a Party's performance of its obligations under the contract impossible or so impractical as to be considered impossible under the circumstances.*

*7.5.2 No Breach The failure of Party to fulfil any of its obligations under the contract of shall not be considered a breach of or default under this contract in Contract so far; such inability arises from an event of Force Majeure ...*

5. The Vice-Chancellor seeks your advice on the following questions regarding the termination of contract between Milton University and the South Bank Constructions.

a) Is there any merit in the claim made by the South Bank Constructions referring to the Force Majeure Clause of the Contract?

**(15 marks)**

b) What other means are generally available to the parties to end the contract?

**(10 marks)**

6. The Vice-Chancellor seeks your advice on the following questions concerning the terms of the contract.

a) How and to what extent a warranty would differ from a condition of a contract?

**(10 marks)**

b) Does the following clause of the contract exclude the liability of the South Bank Constructions, which exceeds one million rupees, including the cases of any damages that occurred because of negligent actions or omissions of the South Bank Constructions?

*11.1 Exclusion Clause Our [South Bank Constructions] maximum total liability is limited to the Contract Price (one million rupees), whether in contract or tort, for any damage or loss whatsoever, including all direct or consequential loss.*

**(15 marks)**

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