

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL.B DEGREE PROGRAMME – LEVEL 6
FINAL EXAMINATION – 2020/2021
OPEN BOOK TEST (OBT)
LLU 6716/LWU4324- COMMERCIAL LAW
DURATION – 3 HOURS



Date : 10th SEPTEMBER 2021

TIME : 9.30 a.m. – 12.30 p.m.

Total No of Questions – Five (5)

Answer Four (4) Questions only.

Candidates will be penalized for illegible hand-writings.

1. Nisal hired a motor car from Colson Company, a leading Financing Company in Sri Lanka, pursuant to a hire-purchase agreement dated 10th April 2021. Nisal agreed to pay Rs. 800,000/- as an initial deposit and the balance Rs. 3,600,000/- with interest to pay in ‘60 monthly instalments’. After paying the two instalments consecutively, Nisal ceased to make further payment as he found that the car was of defective condition and by letter dated 30th June 2021, he informed his intention to reject the vehicle.

Within two weeks’ time, the vehicle was, taken over by Colson Company and the Company has identified the following defects with the motor car:

- a) Resetting the mileage on the odometer after the agreement was made;
- b) Missing of the navigation disk;
- c) Hearing a strange noise while driving;
- d) Cracks in the windscreen; and
- e) Brake system failure.

Since Nisal had done a test drive before hiring the car, Colson Company is of the view that the Company is not liable for any defects of the car and Nisal is solely responsible for all the defects identified above. Colson Company further demands repair cost from Nisal.

Nisal believes that he has validly terminated the hire purchase agreement and he can recover the initial payment and two monthly instalments that he had already paid to the Colson Company.

Advise the parties focusing on the relevant provisions of Sri Lankan Consumer Credit Act No. 29 of 1982 and relevant case law.

(25 Marks)

2. Amid the devastating health impact of Covid 19, Subramaniam was willing to get a health insurance policy worth of Rs. 500,000/= from 'Curero' Insurance Company covering most of the medical, surgical and hospitalization expenses. The Company was introduced to Subramaniam by Ajantha, an agent of Curero Company.

The printed proposal form, drafted by the Company in the English language, contained a number of questions which the applicant for insurance was required to answer "fully and distinctly in his own hand writing". A similar requirement appears with regard to the questions in the "Personal Statement" which was to be answered before his examination by a Medical Referee nominated by the Company. Subramaniam could sign his name in English, but otherwise he is illiterate in that language. Statements in the proposal were translated to Tamil and explained to Subramaniam by Ajantha and filled also by Ajantha. Subramaniam has signed the printed declaration at the foot of the proposal form in both English and Tamil language which stated "all statements in the proposal shall be the basis of the contract." The personal statement was also printed in English and was also signed by both languages in the presence of a Medical Referee after the medical examination.

The personal statement states that the medical condition of Subramaniam is perfectly good as those of healthy persons generally of the same age. The company had accepted his proposal.

The given below is a part of the proposal.

“1. Have you ever suffered from any of the diseases as typhoid, influenza, elephantiasis of leg, or any other fever?

2. Have you within the past five years consulted any medical doctor for above diseases, not necessarily confining you to your house? If so, give details and state names and addresses of medical doctor consulted.”

Even though it has stated ‘No’ to above two questions in the proposal Subramaniyam had suffered from dengue last year. Two months after receiving the health insurance policy Subramainyam was infected with Covid-19 and stayed at a private hospital for 14 days. When the hospital charges are claimed under the insurance policy ‘Curero’ Company refused to pay the claim citing the reason that Subramaniyam is in the breach of insurance contract.

Advise Subramaniyam as to his legal position and what remedies, if any, are available to him. Substantiate your answer with relevant case law.

(25 Marks)

3. “The ongoing COVID-19 pandemic presents an exceptional and unprecedented challenges for competent authorities with responsibilities for national food safety control systems to continue conducting routine functions and activities in accordance with national regulations and international recommendations.”

Food and Agriculture Organization of United Nations (2020)

In light of the above statement, examine the adequacy or otherwise of provisions of the Food Act No.26 of 1980 (as amended) and Consumer Affairs Authority Act, No. 09 of 2003 to deal with the challenges created by the new normal situation created by Covid-19 pandemic.

(25 Marks)

4. Discuss the legal consequences of the following scenarios.

a) A blank cheque crossed and signed by Mahinda was given to Namal to be used for the payment of electricity bill amounting to Rs. 100,000/- of his office. Namal has used it to pay Rs. 1,000,000/- for repairing his house. (8 Marks)

b) A bill worth of Rs. 25,000/= drawn by Kasun in favor of Yohan, was lost after it has been signed in blank by Yohan. Kalum who found it produced it to Kasun to receive the money. (8 Marks)

c) Sajith drew a cheque on Merit Bank in favor of Aruna for payment of a debt. Aruna crossed the cheque, endorsed it and negotiate it to Rasika for stationaries received from him. Rasika deposited the cheque in his account at Windy Bank and Windy Bank has mistakenly deposited the collected money in another's account. (9 Marks)

5. “ Where the buyer defaults in his principal obligation, that is in payment of the price, the seller has, of course, his personal action on the contract itself, but if the seller was always compelled to fall back on this remedy, his position would be in many respects unsatisfactory.”

-Atiyah's Sales of Goods, John N Adams and Hector Macqueen (Twelfth Edition)2010

Critically analyze the validity of above statement in light of the Law relating to Sale of Goods in Sri Lanka. Support your answer with case law.

(25 Marks)

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