

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME- LEVEL 4
FINAL EXAMINATION -2021/2022
LLU4805 - LAW OF CONTRACT
DURATION- 3 HOURS



DATE: 10 January 2023

TIME: 1.30 p.m – 04.30 p.m

Total number of questions - 08

Students will be penalized for illegible handwriting.

Answer five (05) questions only selecting one (01) question from Part 1 and four (04) questions from Part II.

Part I - Law of Agency

Answer one (01) question only

1. In January 2022, Ramesh appointed Nimal as his agent and instructed him to sell his apartment which was in Colombo 7. According to the agency agreement, the apartment should be sold at a price of Rs.3 million within a period of six months as Ramesh needs money to migrate. Nimal was promised a remuneration of Rs. 250,000 if he could find a buyer within the stipulated time. Nimal advertised the premises for sale in various newspapers and websites and claimed twice the amount of the advertising fee from Ramesh. Ramesh paid the amount that Nimal was asking, with the impression that it was the original advertisement fee. Around May, Chamali agreed to buy the apartment for Rs. 2.5 million and told Nimal that she would pay him Rs. 150,000 if he could make this deal a success. Somehow Nimal convinced Ramesh to sell the apartment to Chamali for Rs. 2.5 million. As agreed, Chamali paid the commission to Nimal. Later Ramesh got to know the truth about Nimal and refused to pay his remuneration.

Ramesh seeks your advice on this matter.

Advise Ramesh by citing relevant case law authorities.

(20 Marks)

2. Discuss the validity of the following statements.
- The law of agency imposes certain duties on the principal.
 - To create an agency by necessity, there are some conditions to be satisfied.

Each part carries 10 marks

(10 x 2 = 20 Marks)

Part II - Law of Contract

Answer four (04) questions only

3. Reserving their life interest, Punchi Manike and Sumanapala gifted their estate called "Ambagahawatta" to their only daughter Rasangi, by including their son-in-law, Yasara as a co-donee in the Deed of Gift. They all lived together in the Ambagahawatta estate. As their marriage went on, Rasangi and Yasara felt that Rasangi's parents as a burden to them. Eventually, Rasangi refused to bare medical expenses of her parents. Rasangi prohibited Punchi Manike from doing household work, and asked Sumanapala to do all the cleaning and gardening works. Moreover, Sumanapala was severely beaten by drunken Yasara in several times. Punchi Manike and Sumanapala intend to revoke the gift they gave to their daughter Rasangi and seek your advice.

Advise Punchi Manike and Sumanapala with reference to the law relating to *donatio inter vivos*.

Cite relevant case laws and statutory provisions, if any, to support your argument.

(20 Marks)

4. Mahesha owns a beauty parlour in Colombo and deals with buying and selling cosmetics. She has been accused of entering some illegal contracts. Mahesha seeks your advice on whether the following contracts are illegal or not and the possible consequences of these contracts.

Advise Mahesha regarding each contract by citing relevant case law.

- Ganga, a former employee of Mahesha started her own parlour in Galle immediately after completing her employment period at Mahesha's parlour. Ganga's contract of employment with Mahesha included a clause that stated

"[A]fter the completion of the term of employment, you shall not work for any competitors and shall not start a parlour of your own anywhere within Sri Lanka for twelve years."

(08 Marks)

- b) Mahesha imported cosmetics worth Rs. 1,000,000 from a foreign country. However, she could not clear the cosmetics from customs due to travel restrictions imposed in the country at that time. After the travel restrictions were eased, Mahesha tried to clear the imported cosmetics from customs. However, the customs officers informed her that importation of cosmetics had been banned two days ago and seized her cosmetics.

(06 Marks)

- c) Mahesha got a license for selling cosmetics, which she initially obtained when she started the business. This license expired 6 months ago. However, Mahesha did not notice it and continued her business activities without halting. Namali bought cosmetics from Mahesha worth Rs. 65,000 for credit. Later, Namali refused to pay Mahesha after discovering that Mahesha had an expired license at the time of sale.

(06 Marks)

(8 + 6 + 6 = 20 marks)

5. Yasas rented a guest house online, from *tripNstay (Pvt) Ltd* for the year-end holiday trip to Nuwara Eliya. During the online booking process, he was asked to confirm that he read and understood all the terms and conditions of the contract. There was a hyperlink provided in the booking webpage, where he could download all the terms and conditions. Yasas did not bother to read or even download the terms and conditions but simply clicked the confirm button. When he reached Nuwara Eliya, at the gate of the guest house he was asked to sign a document containing the following clauses:

(a) "[R]enter confirms that he accepts all the terms and conditions of the contract which he read and confirmed while booking the guest house online."

(b) "[T]he tripNstay will not be liable for any damages or injuries caused to the renter as a result of any defect in the usage of equipment in the guest house."

Reema who stayed previously in the guest house incorrectly fixed the gas regulator and there was a gas leakage in the back room of the guest house which is used as a kitchen. Yasas who did not know about the gas leakage went to the backroom on the first night of his stay to turn the main power switch on. When Yasas turned on the power switch, the gas exploded, and he was badly injured. Yasas intends to claim damages from *tripNstay (Pvt) Ltd.*

Yasas appoints you as his lawyer. Advise Yasas. (You are not required to discuss laws relating to electronic contracts in your answer).

(20 Marks)

6. Milhan recently returned to Sri Lanka after completing his two years working contract as a Draftsman in Qatar. Milhan intended to start his own business in Sri Lanka by using his all savings. Nethmi, who has a small shop near Arugam Bay Beach agreed to rent it to Milhan for an annual payment of Rs. 175,000. Milhan was interested in wood carving and planned to open a souvenir shop in this rented place by targeting tourists. Nethmi's shop was previously rented to a food vendor, and this vendor was vacating the shop due to a lack of business in the area when Nethmi agreed to rent the shop to Milhan. Milhan was eager to ensure that he would get the shop ready for the holiday season, and thus, he put a condition in the contract with Nethmi stating that he could move into the shop by the 1st of December. In the meantime, he invested around Rs. 80,000 of his savings to buy wood carving stock to sell in the shop.

Due to a lack of knowledge, Milhan and Nethmi put the following clause while drafting the contract.

"In the event of a breach of this contract by Nethmi for whatever reason resulting in Milhan not being granted possession of the shop by December 1, the contract shall be considered terminated and Nethmi agrees to pay Milhan Rs. 85,000 or any amount Milhan may recover from returning or selling the stock he has purchased, as agreed upon damages."

As it transpired, Nethmi was unable to hand over the property to Milhan on the 1st of December as agreed.

Advise Nethmi as to whether the above clause is enforceable under contract law by referring to the relevant authorities.

(20 Marks)

7. "If a statement has been made which is true at the time, but which during the course of negotiations becomes untrue, then the person who knows that it has become untrue is under an obligation to disclose to the other the change of circumstances."

With v O'Flanagan (1936) Ch 575

Evaluate the above statement with reference to misrepresentation under contract law.

Support your answer with relevant case laws.

(20 Marks)

8. Write short notes on any two of the following:

- a. The relief of 'specific performance.'
- b. Economic duress.
- c. *Justa Causa* under Roman Dutch Law.

Each part carries 10 marks

(10 x 2 = 20 Marks)

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