

THE OPEN UNIVERSITY OF SRI LANKA

LL.B. DEGREE PROGRAMME – LEVEL IV

FINAL EXAMINATION – 2005/2006

LAW OF CONTRACT AND AGENCY – LWU 2311

DURATION – 3 HOURS

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Date: 17.03.2006

Time: 1.30p.m. to 4.30p.m.  
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Illegible handwriting will be penalized.

Answer FIVE questions only

Part I – Law of Agency

Answer ONE question only from this part

1. (a) Explain the doctrine of ‘necessary authority’ in the Law of Agency with reference to decided cases.  
(b) Discuss briefly the meaning of the doctrine of estoppel in relation to the Law of Agency.
2. (a) Discuss the maxim “ delegatus non potest delegare” in relation to the Law of Agency.  
(b) Sarath engaged a specialist car sales firm, Olympic Motors, to sell his car at the highest possible price. Unknown to Sarath, Olympic Motors had entrusted this task to an incompetent broker named Nimal. Nimal was not able to find a suitable buyer and the vehicle had to be sold later at a loss.  
Advise Sarath.
3. State the rights of a principal against a third party by distinguishing between the concepts of disclosed and undisclosed principals.



**Part II – Law of Contract**

Answer **FOUR** questions only from this part

4. On Wednesday Gunapala offers to sell 200 Tonnes of wheat flour to Jinasena at Rs. 5000 per tonne. The offer to Jinasena states “ please telephone an acceptance by noon today. Delivery will take place next Monday.” Jinasena faxes an acceptance at 10.00 a.m., the fax machine informing the clerical assistant that the message has been relayed to Gunapala. Unfortunately Gunapala’s fax machine has not been fitted with a new printing cartridge, so the acceptance is not received. As Jinasena believes that a firm contract exists, he enters into a binding contract with Dhanapala to supply 10,000 loaves of bread, using the anticipated delivery of wheat flour on Monday.

Advise Jinasena whether there is a binding contract with Gunapala.

Would your advice differ in the following circumstances.

- (a) Jinasena faxed a withdrawal of his acceptance before noon, by which time Gunapala’s fax machine was operating properly.
- (b) Jinasena telephoned an acceptance to Gunapala in the afternoon.
- (c) Instead of a telephone acceptance, Gunapala’s offer had specified ‘please notify us of your acceptance by registered post sent before noon.’ Jinasena sent a letter of acceptance before noon by ordinary post which was never received by Gunapala.
5. Describe with reference to case law the twin concepts of innocent and fraudulent misrepresentation together with the remedies available to an aggrieved party under each misrepresentation.
6. “ The principles relating to the consequences of illegality are contained in two Latin maxims. They are, *ex turpi causa non oritur actio*, which lays down the rule that no action can be founded upon a tainted transaction and in *pari delicto potior est conditio defendantis*, which means that where guilt is equal the defendant’s position is superior.”

Explain.

7. Critically analyse the rules that have been formulated by courts in order to mitigate the harshness of the problems connected with imperfect performance.

8. Discharge under the doctrine of frustration is based on the premise that if the further fulfillment of the contract is brought to an abrupt end by some irresistible and extraneous cause for which neither party is responsible, the contract shall terminate forthwith and the parties to be discharged.”

Discuss this statement with special reference to decided cases and the theories behind the doctrine.

9. (a) “ Although a donation made during the lifetime of a donor (*donatio inter vivos*) is as a general rule irrevocable, the donor may, under special circumstances, set aside such a donation with the sanction of a court order”.

Discuss.

- (b) “ A *donatio mortis causa* is a special kind of gift which has characteristics of both contract and legacy.”

Discuss

10. Write notes on any TWO of the following.

- (a) Undue Influence
- (b) Documents mistakenly signed and the plea of non est factum.
- (c) Release or Waiver
- (d) Novation
- (e) Liquidated damages and Penalty.