

THE OPEN UNIVERSITY OF SRI LANKA  
LL.B. DEGREE PROGRAMME - LEVEL IV  
FINAL EXAMINATION - 2008 / 2009  
LAW OF CONTRACTS AND AGENCY -LWU 2311  
DURATION - THREE HOURS



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Date: 21<sup>st</sup> March 2009

Time: 9.30 a.m. – 12.30 p.m.

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Answer FIVE questions only.

Candidate will be penalized for illegible handwriting.

**PART 1- LAW OF AGENCY**

Answer one question only from this part.

1. (a) Explain the meaning of actual authority in relation to the Law of Agency with reference to decided cases.
- (b) What is meant by the concept of "subsequent authority" which results in agency by ratification?
2. (a) Saman authorized Ranil to negotiate the sale of his house on 60 perches of land and agreed to pay him a 3% commission on the sale, if he found a prospective buyer within three months, Ranil, within the period of three months introduced Saman to Ajith, who was willing to buy the property. Ajith made an offer at the time but withdrew subsequently when he discovered that the extent of the land was only 50 perches. Later Saman sold the property to another purchaser Lakshman, who was found by him. Ranil wishes to claim his commission from Saman.

Advise Ranil.

- (b) Fernando instructed Jayaweera to find a buyer for his estate and agreed to pay a 3% commission on the sale price. Jayaweera introduced Sirisena to Fernando as a prospective buyer. Later Fernando learned that Jayaweera was paid a commission by Sirisena for effecting the deal.

Advice Fernando.

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 CONTRACTS

**Answer four questions only from this part.**

4. Ranjith has decided to try and sell his car by parking it outside his house with a notice on the windscreen stating: 'For sale, In excellent condition—one owner Rs.750, 000 or nearest offer; please call at No.215, Stafford Street or telephone 5234269 only.'

On Monday at 9.00 a.m. Tissa sees the car, but as he is late for work, he is unable to stop. He telephones Ranjith from work and makes an offer of Rs.700, 000 which Ranjith says he will consider.

Sena calls at Ranjith's house on 'Monday at 11.00 a.m., but Rekha, Ranjith's daughter is the only person there. He therefore leaves a note reading,' Monday 11.05 a.m., Please keep the car for me—here is a cheque for Rs.750, 000, Sena'. Rekha leaves the note on Ranjith's desk in his office room.

On Monday afternoon, Ranjith decides to accept Tissa's offer and posts a letter at 2.30p.m to Tissa's business address, saying "I agree to sell on your terms. In view of the reduced price, Can you pay in cash?"

At 4:30 p.m. on Monday, Ranjith reads Sena's acceptance and immediately telephones Tissa's business address, leaving a message on the recorded answering service 'Ignore the letter you will receive – deal off. Ranjith'. Tissa is away on business and only listens to the tape on Wednesday evening.

At 2.15 p.m on Monday, Sarojini sees the notice and hurriedly posts a letter of acceptance and a cheque for Rs.750, 000 in time for 3.00 p.m postal collection. Unfortunately as Sarojini misaddresses her letter, it only arrives on Friday.

Advise each party as to their legal position.

5. Niranjana buys and sells paintings and antiques. He sees that Senaka, an art dealer has a painting for sale done by a great artist called Wijesinghe. Niranjana knows that Senaka would never sell the painting to him as Niranjana still owes a debt to Senaka from a previous contract. Niranjana therefore telephones Senaka and says: "This is Deshamanya

Kuruppu speaking, I am staying at the Royal Plaza Hotel. I would like to purchase the painting of Wijesinghe's that you have advertised for sale and will call at your premises tomorrow to see if a price can be agreed. Senaka finds out from the Manager of Royal Plaza Hotel that Deshamanya Kuruppu's name is on the hotel resident guests' list and therefore becomes happy that he has attracted a prestigious customer. In fact Niranjana is staying at the Royal Plaza Hotel in the name of Deshamanya Kuruppu having stolen the latter's cheque book.

The next day, Niranjana heavily disguised calls at Senaka's premises. A price for the painting is agreed. Senaka accepts a cheque from Niranjana and allows him to take the Wijesinghe painting with him. Niranjana displays the painting in his shop and sells it almost immediately to Jayantha, a private collector, who pays in cash. Senaka has now discovered that the cheque has been dishonoured and that Jayantha is in possession of the Wijesinghe painting.

Advise Senaka.

Would your advice differ in any way if Senaka had discovered that the cheque had been dishonoured before the sale to Jayantha and had informed the police?

6. (a) Can silence constitute misrepresentation?

(b) (i) In the negotiations for the sale of X's business to Y, X represented that his turnover was Three Million Rupees per year and produced documents to Y, which he said, bore out his statement bought the business without examining the documents. If he had examined them, he would have discovered that X's statement was false.

Advise Y.

(ii) In negotiating a sale of a transport business in February, B represented to A that his earnings were Rs.100, 000 a month. In July, when the contract was signed, the earnings had dropped to Rs.20, 000 a Month as a result of B's illness .B did not correct his representation by disclosing the fall in the earnings.

Discuss the legal position.

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

8. John as Secretary of Siripura cricket club hires a bus from Paramount Bus Company to take 50 members of the club to see the International cricket match between Deerland and Ruritania to be held in Colombo. A term of the contract provides; "This contract may be cancelled provided that notice of 3 working days is given to the Bus company, otherwise the full hire charge is payable"

Bus Company charges Rs.9000 for fares and John pays a deposit of Rs.5000 in advance. As the Bus Company guarantees the roadworthiness of all of its buses, the designated bus is properly serviced the day before its intended use. However, on the morning of the trip it is announced that the cricket match will not be played as political demonstrators have dug holes in the cricket grounds. John immediately claims that the contract has been frustrated and demands the return of the Rs.5000 deposit.

Advise the parties.

9. (a) "A donatio mortis causa is a special gift made in expectation of death, either generally or on a certain event, to be absolute only if and when the expected death occurred" Discuss with reference to the creation and determination of a donatio mortis causa.
- (b) Kithsiri and Wimala agreed to marry in a month's time. Wimala's father Silva, transferred one of his houses to Kithsiri by way of gift. Wimala gave Kithsiri a pen and a wrist watch as presents. Kithsiri subsequently refused to marry Wimala and assaulted Silva.

Silva wishes to recover the house and Wimala wishes to recover the pen and wrist watch.

Advise Silva and Wimala.

10. Write notes on any **two** of the following.

- (a) Undue influence
- (b) Fundamental breach of contract
- (c) Doctrine of Privity of Contract
- (d) Release or waiver
- (e) Measure of damages