

Examination 2 Major Issues

Question 1

- **Implied Term and Incorporation**
 - What contractual obligations, express or implied, does Sparkling Bright owe to S&A?
 - Section 5 of the Supply of Services (Implied Terms) Ordinance, “[i]n a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill”.
 - Does the exemption clause printed on the verification sheet negate the implied term? Was the exemption clause incorporated by notice?
 - Was the verification sheet intended to have contractual effect?
- **Consideration**
 - Did Sparkling Bright provide consideration for S&A’s promise to accept a reduced level of services for the rest of 2020?
- **Promissory Estoppel**
 - Is S&A estopped from insisting on weekly cleanings?
 - Was there a clear promise and reliance on the promise such that it would be inequitable for the promisor to go back on the promise?
 - Would the effect of promissory estoppel in this case be suspensive or extinctive?

Question 2

- **Acceptance by Conduct**
 - Does the written agreement give rise to contractual obligations?
 - Did Wong Kee objectively manifest acceptance to Neptune?
 - Did Wong Kee’s positive conduct indicate acceptance, notwithstanding its silence?
- **Implied Terms**
 - Assuming the exchange of documents between the parties did not ripen into a contract, what are the terms governing Wong Kee’s December order of 1800 kilograms of crabs?
 - Section 16 of the Sales of Goods Ordinance implies a condition of reasonable fitness for purpose into a contract for goods sold in the course of a business and where the buyer, expressly or by implication, has made known to the seller the particular purpose for which the goods are being bought.
 - Can the norms and practices of the seafood trade be implied by custom?
 - Assuming the exchange of documents between the parties ripened into a contract, what are the terms governing Wong Kee’s December order of 1800 kilograms of crabs?

- Are there any implied terms controlling the express discretion granted to Neptune under the “composition” clause?
- **Exemption Clause**
 - Does “Seller’s Liability” provision operate to insulate Neptune from a claim for damages?
 - Does the clause exempting Neptune from liability for “for any loss or damage arising from any defect in any seafood product supplied, however caused” cover the size of crabs?
 - Assuming that the clause does cover the alleged breach, is it void under Section 11(3) of the CECO?
 - Was the clause reasonable at the time it was made?