

UNIVERSITY OF HONG KONG
FACULTY OF LAW

JDOC1002 LAW OF CONTRACT II

2024-2025 SEMESTER 2

SEMINAR QUESTIONS: TERMINATION

Question 1

Please read the hypothetical below and answer the question that follows.

Gussie Fink-Nottle is a globally renowned pianist. Gussie signed a written agreement with Chuffy (the proprietor of the historic Chuffnell Hall) to give a series of recitals at Chuffnell Hall (the “Event”).

The written agreement contained two parts, Part 1 and Part 2.

Part 1 of the agreement set out matters such as price and dates of the recitals. In Part 1, Chuffy promised Gussie a lump sum payment of \$100,000. Gussie would also be entitled to 10% of the gross receipts from the concerts, to be computed and paid after all the recitals had been performed. These sums were to be paid within one week of the completion of the Event. Part 1 of the agreement also provided that the recitals would be held on three nights on 12, 13 and 14 March.

Part 2 of the agreement set out a number of clauses under the heading “Special Terms and Conditions”. The clauses included the following:

“10. Best efforts.

10.1. It is a condition of this contract that Chuffy must use best efforts to promote and conduct the Event.

10.2. Without limiting the generality of clause 10.1, Chuffy must:

- (a) place advertisements in two major local publications for a consecutive period of no less than fourteen days in the month preceding the Event; and
- (b) prominently display banners publicizing the Event on the visage of Chuffnell Hall from 1 March to 14 March.”

11. First-class venue.

11.1. It is a condition of this contract that Chuffy must manage Chuffnell Hall in a manner befitting a first-class venue.

11.2. Without limiting the generality of clause 10.2, Chuffy must provide first-class standards in:

(a) the operation of the box office; and

(b) the engagement of house staff and their provision of customer services.”

After the contract was signed, Chuffy ordered from Custom Printers banners announcing the dates and times of the recitals and featuring the silhouette of Gussie at the piano. Chuffy also placed advertisements for the concerts in the two Hong Kong newspapers with the largest circulations. These advertisements ran from 14 February to 28 February by which time tickets were sold out. On 28 February, Custom Printers emailed Chuffy to let him know that to their eternal regret the banner would not be ready before 31 March. A fire had broken out at their factory and they asked if Chuffy would consider cancelling the order. Chuffy agreed.

On the evening of 12 March, Gussie arrived at Chuffnell Hall and was a little miffed not to see any banners on display. But as the time for the performance was fast approaching, he said nothing and proceeded to the stage. Halfway through the first recital, the sound system started emitting screeches, causing some murmurs and a commotion among the audience. Gussie was very upset by this disruption but completed his performance despite the screeches occurring intermittently in the remainder of the performance.

Later that night, Gussie confronted Chuffy and protested the absence of a banner and the abysmal quality of the sound system. Gussie requested that Chuffy look into the sound issues and repair or replace the system as necessary in time for the next night's performance. Chuffy rebuked Gussie, saying he was too “high strung” and that there was no need to look at the sound system as there was nothing wrong with it. Gussie then told Chuffy that he was fed up with him and that since he was not going to do anything about the sound system, then he, Gussie, would not be returning the next day. “Well, don't expect to be paid,” Chuffy replied.

Where do the parties (Gussie and Chuffy) stand? Are either of these two parties liable for breach of contract?

Question 2

Please read Parts I, (pages 83–87), III (pages 92–100) and V (pages 105–107) of the article from R Brownsword, “Retrieving Reasons, Retrieving Rationality? A New Look at the Right to Withdraw for Breach of Contract” (1992) 5 *Journal of Contract Law* 83. Then answer the following questions.

- (a) What is Brownsword’s suggested test on whether an innocent party should be entitled to withdraw (ie terminate) for the other party’s breach of contract?
- (b) What are six grounds that Brownsword suggests would satisfy his proposed test for termination?
- (c) Do you agree with Brownsword’s test? Why or why not?