

**THE UNIVERSITY OF HONG KONG
FACULTY OF LAW
2022 – 2023**

JD Law of Contract I (JDOC1001) Examination

Date: December 12, 2022

Time: 9:30 am – 11:30 am

Please read the following instructions carefully before you begin.

Instructions

1. This examination consists of one question, comprising two sub-parts, (a) and (b). All sub-parts are weighted equally. You have two hours for the examination, inclusive of reading time. Please allocate as much time to each sub-part as you deem appropriate.
2. Please write your answers legibly in the examination booklets provided. Start the answer to each sub-part on a new booklet. Please mark clearly on the cover of each booklet whether your answer is for subpart (a) or subpart (b). Failure to do so may result in your examination being partially graded.
3. No discussion is permitted during the examination. You may refer to any written or printed materials, including the textbook, lecture slides and class notes. You may not use any electronic device, including but not limited to laptops and phones.

Question 1

Nancy Leung is the sole proprietor and manager of Bookworm, a cosy bookstore located in Sheung Wan. Books are generally stocked by consignment, meaning they are owned by the publishers or distributors, not Bookworm. Bookworm receives a commission based on sales. Unsold books are returned by Bookworm, the consignee, to the publishers or distributors, the consignors. Bookworm obtains its stock-in-trade from several suppliers. One of Bookworm's suppliers is Imprint, an indie press wholly owned by Nancy's brother, Tony. Nancy and her brother grew up together and enjoy a close relationship.

The consignment agreement between Bookworm and Imprint was casually drafted by Nancy based on a template she downloaded from the internet. Under the agreement, "the Consignee shall receive a commission of 40% of the full purchase price of each sale as Consignment Fee", that "[o]n the fifteenth day of each month, the Consignee will deduct the Consignment Fee from the total sales of the previous month and send the balance to the Consignor via bank transfer", and that "interest will accrue at a monthly rate of 10% on all late payments". Another clause states that "goods subject to consignment will be identified and confirmed by the Parties prior to any consignment". In addition, the termination clause recites that the agreement "can be terminated without penalty by either party with written notice of 30 days".

Nancy's bookkeeping is messy and Bookworm frequently failed to make timely payments to Imprint. On several occasions, Nancy asked Tony if she could arrange for payment to be sent "sometime later". Tony invariably agreed and told Nancy not to worry about being late. Imprint never claimed interest on Bookworm's overdue payments. Because she could count on Tony's indulgence, Nancy always tallied the accounts for Imprint last.

Bookworm does not only offer books for sale. It also operates a reading club called "Nous". Nancy hoped that the reading club would raise the visibility of her bookstore and boost its sales. The reading club loans second-hand books to members for free. The advertisement for the reading club, pasted on the shop window, exclaims: "Knowledge wants to be free! Read everything, pay nothing". At the bottom of the poster, the advertisement continues, in smaller type, "Terms and conditions apply". The poster does not say where these terms and conditions could be found.

Customers do not pay a fee to subscribe to the reading club. All they have to do is provide their personal and credit card information on a simple application form, accompanied by a signature. The application form states that "[t]his Membership application is subject to review by Bookworm which has the sole discretion to approve or deny any applicant". Those who are approved receive a tote bag styled by Bookworm as a "welcome gift". The tote bag contains a variety of items, including bookmarks, a souvenir pen, catalogues and flyers for book events. Somewhere between the catalogues and flyers is also a white A4 sheet of paper that states, at the top, in bold letters and size 24 font, "Terms and Conditions of Nous". Under the header, in

regular and size 18 font is the statement: “By signing up to the programme, you agree to the following terms and conditions. You may terminate your Membership in Nous at any time by notice in writing to the Bookworm. Bookworm reserves the right to discontinue or modify the programme by giving 30 days’ notice.” Underneath the statement is six columns of terms, printed in regular, size 12 font. Among the terms is a loan clause which provides that “[the] Loan Period is fourteen calendar days and starts from the time the book is collected by the Member from the Bookworm” and that “the book has to be returned to the Bookworm before the end of the Loan Period”. The loan clause does not, however, explain how the fourteen calendar days are to be counted, i.e. whether the day of collection is day one or day zero. Finally, the loan clause specifies that “[i]f a book is not returned by the Member at the end of the Loan Period, it will be deemed to have been purchased by the Member at the ordinary retail price”. The loan clause is the only clause printed in red; all others are printed in black.

Becky is an avid reader and bargain-hunter who recently signed up to Nous. She received the welcome gift and took it home but did not read anything from the tote bag. Indeed, she did not think she was entering into any legally binding arrangements because membership in the book club was free. On 20 October 2022, she borrowed a copy of Carlsson van Damme’s international bestseller *Global Games*. According to usual practice, the store assistant on duty informed Becky that the book was due by 2 November. Because of a family emergency, Becky had to leave Hong Kong on short notice. She returned three weeks later to find that her credit card had been charged for the price of the book.

Meanwhile, in August 2022, Tony sold Imprint to a well-known publisher, Clarion. Nancy sent the payment for September to Imprint on 15 November without any comment. On 22 November, the new owners of Imprint sent a letter to Bookworm demanding interest for the late September payment. Imprint also proposed “because of the adverse impact of market conditions on [Imprint’s] profitability, to adjust [Bookworm’s] commission on consignment sales to 50%, with effect from 1 December 2022”. The letter from Imprint concluded that “by continuing to take books on consignment from Imprint, [Bookworm] agree[s] to this change in terms”.

- (a) Advise Becky on whether she is obliged to pay the purchase price of the book. *There is no need to consider misrepresentation.***
- (b) Advise Nancy on whether Bookworm is obliged to pay the interest being demanded by Imprint and on Bookworm's options in relation to the revised commission proposed by Imprint, taking into account Imprint's future behaviour where necessary. *There is no need to discuss remedies.***

Please use a separate booklet for your answer to each part.

End of Paper