



HKU | LAW

MID-YEAR EXAMINATION

Please read the following instructions carefully before you begin.

Instructions

Please ensure that you have switched on Zoom recording as required under the rules for self-proctored online assessments.

This examination consists of Questions 1 and 2. Answer both questions in a single MS Word document, making sure to start the answer for each question on a new page.

Please type your answers in size 12 Times New Roman font, using double spaced line spacing and one-inch margin on all sides.

Please insert page numbers at the bottom centre of every page. This can be done by clicking the 'Insert' tab, followed by the 'Page Number' icon. The page number should be in "Page X of Y" format. Your student number should also be printed at the top right-hand corner of every page. No other identifying information should be included.

Your answer for this examination should not exceed 2000 words. You are recommended to answer Question 1 in 800 words and Question 2 in 1200 words. Words over the limit will not be read. Footnotes count towards the word limit but will not be read. You must declare the total word count for your answer on the cover sheet provided separately on Moodle.

Please submit your answer through Moodle by Monday, 21 December, 12:30 p.m. Hong Kong Time. Your MS Word document should be named LLAW1001_[student number].

WARNING

The rules against plagiarism apply as always. Sources must be properly acknowledged and verbatim quotes indicated with quotation marks. Collaboration and solicitation of help are not permitted. All submissions must be your own original work. The Faculty takes violations of the examination regulations seriously and the consequences are severe. Offenders will not only fail the entire course but may also be subject to Faculty and the University sanction, including expulsion.

Question 1

Points: 30 Suggested Length: 800 Words Suggested Time: 1 hour

Sparkling Bright is a local outfit that specializes in cleaning office buildings. One of Sparkling Bright's customers is Sladden & Aldrich, or S&A, a prominent consulting firm. On 8 May 2020, Sparkling Bright concluded an agreement with S&A to clean its offices in Hong Kong, located at the Milestone Building in Central District. The one-year agreement, signed by representatives of both companies, provided for weekly cleaning and tidying of S&A's premises. The agreement was silent as to liability for property damaged in the course of cleaning.

On 15 May, Sparkling Bright's sanitary engineers serviced S&A's offices for the first time. After they finished their tasks, Sparkling Bright's supervisor asked S&A's office manager to sign a verification sheet confirming that the requested services had been provided to her satisfaction and she duly did so. At the bottom of the verification sheet, printed in small font, was the following statement: "All services provided under standard WMA conditions. Copies available on request." WMA refers to the Waste Management Association, a self-governing international federation of cleaning and waste management companies. Its standard conditions are freely available online. Among these conditions is a term that relieves service providers from liability for "any damages or losses the client might suffer as a result of any act or omission, however caused, by the service provider's employees, servants or agents".

In November 2020, facing a shortage of trained staff, Sparkling Bright wrote to S&A to ask whether it could temporarily reduce the frequency of deep cleanings to fortnightly. S&A replied that it would accept this reduced level of services for the rest of 2020 "so long as the office remains spick and span". Its burden lightened, Sparkling Bright assured its other, long-standing, customers that there would be no change to their cleaning schedules. At the same time, it instructed its sanitary engineers to make sure that S&A's offices were given special attention.

On 11 December, sanitary engineer Sam accidentally spilt soap water on a laptop while wiping the ceiling of a S&A office. This accident occurred because Sam tried to balance a large pail of water on the narrow steps of the ladder while taking a TikTok video for the "Mop on Head" challenge. The laptop was ruined beyond repair. On 12 December, the managing partner of S&A wrote to Sparkling Bright demanding compensation for the laptop and informing Sparkling Bright that weekly cleanings should resume immediately as the office was about to host a few important guests at very short notice.

Advise Sparkling Bright on whether it can successfully resist S&A's two demands.

Question 2

Points: 60 Suggested Length: 1200 Words Suggested Time: 2 Hours

Wong Kee Typhoon Shelter Crab is a famous restaurant in Causeway Bay. Wong Kee used to source the mud crabs for its signature dish from a number of purveyors. Since June 2013, however, it has purchased crabs exclusively from the Neptune Company. Between June 2013 and June 2018, dealings between the two companies were conducted on a regular but informal basis. Wong Kee would call Neptune with the number of crabs it required for the coming week. Neptune would then quote the prevailing market price over the phone and Wong Kee would place its order. It was understood by both companies that crabs were to be delivered on the next Monday following the order. Wong Kee's smallest weekly order during this period was for 728 kilograms and its largest, for over 2000 kilograms. The crabs delivered under each order consisted of a mix of sizes, ranging from medium to jumbo. The distribution of sizes generally conformed to the norms and practices of the seafood trade. Rules governing the distribution of sizes are known and followed by all crab restaurants and suppliers in Hong Kong who regard them as binding. Some allowance is made for variations in composition but there are strict upper and lower limits on the proportion of crabs in each size category.

As its business grew, Wong Kee decided that it should formalize its arrangement with Neptune to obtain a steady and predictable supply of crabs. In June 2018, after some initial discussions, Wong Kee sent Neptune a draft contract proposing that the latter supply all the former's requirements for a period of three years, the price to be fixed at the prevailing market rates. Neptune amended this draft by adding a "minimum quantity" clause that required Wong Kee to order its requirements or 1000 kilograms per week, whichever turned out to be higher. Neptune also added a "composition" clause which reserved to it "the absolute discretion to determine the size of mud crabs supplied under the Agreement". Finally, Neptune inserted a "Seller's Liability" provision at the end stating that:

The Seller hereby excludes all liability for any loss or damage arising from any defect in any seafood product supplied, however caused.

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or agreements, whether oral or written, between the parties respecting the within subject matter. No amendment or alteration of the terms hereof shall be binding unless the same be in writing, is dated subsequent to the date hereof, and is duly executed by the parties hereto.

This amended agreement was sent to Wong Kee the same month. The additional terms proposed by Neptune were acceptable to Wong Kee. However, Wong Kee's business manager was at an overseas conference and she neglected to sign and return the contract on her return. Nevertheless, transactions between Wong Kee and Neptune continued uninterrupted. Wong Kee's business took off and between July 2018 and November 2020, the restaurant asked Neptune for 1020 to 2600 kilograms of crabs per week. The mix of crabs delivered by Neptune did not vary from those previously tendered to and accepted by Wong Kee, except on one occasion when the crabs were a little smaller than usual. Wong Kee took delivery of those crabs without complaint.

In December 2020, Wong Kee placed an order for 1800 kilograms of crabs. To Wong Kee's surprise and dismay, Neptune fulfilled this order using only baby mud crabs, explaining that it had sold out of adult crustaceans. Wong Kee was unable to use these baby crabs for its "Typhoon Shelter Crab" because of their lack of meat and flavour. The unavailability of this signature dish resulted in financial losses and angry reviews from customers.

Advise Wong Kee on the potential claims it might have against the Neptune Company, including the legal significance, if any, of the "Seller's Liability" provision for these claims.