

UNIVERSITY OF HONG KONG
FACULTY OF LAW

JDOC1002 LAW OF CONTRACT II

2024-2025 SEMESTER 2

SEMINAR QUESTIONS: REMEDIES

Question 1

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

Nellie owns an organic vegetable farm in the New Territories.

The farm required new fencing. Nellie contracted with George for George to erect a new fence around the perimeters of the farm. The contract price was \$500,000, which Nellie paid. When the fencing was completed, Nellie discovered that, in breach of contract, the fence was only four feet high. It should have been five feet in height.

The fence, as built, is worth \$250,000. It would have been worth \$350,000 if it had been of the correct height. To obtain the height of five feet for the fence, it would be necessary to dismantle the existing fence as built by George, and to build a new fence. George told Nellie that he does not have time to do any re-building work for Nellie but recommended his friend, Kerry, who can do the work for \$350,000.

Nellie no longer trusted George and refused to take up his recommendation. Another builder (Peter) offered to do the work at the price of \$600,000. Nellie accepted Peter's offer and paid him the \$600,000.

Nellie owns a truck which she uses for her farming business. She uses the truck to make the required deliveries to buyers of her organic vegetables each week. The brakes in Nellie's truck failed and she left the truck with Fernando to be repaired. Fernando told Nellie that in addition to fixing the brakes, the wheel alignment badly needed adjusting and the tyres replacing. Because of cash flow difficulties Nellie was experiencing, and despite Fernando's advice, Nellie only asked Fernando to fix the brakes.

Fernando failed to properly tighten the brake pads in breach of his contractual obligation to render his services with reasonable care. As a result of this fact together with the bald tyres and bad alignment, Nellie had an accident, which led to damage to the truck.

Nellie took the truck to another repairer to undertake repairs. Nellie was unable to use her truck to deliver vegetables for four weeks while the truck was being repaired. Since

she did not have the truck to make deliveries during that time, Nellie lost profits of \$300,000.

Nellie seeks your advice on the following:

- (a) She wishes to know whether she can recover from George the \$600,000 that she paid to Peter.
- (b) She also wishes to know what compensation she could recover from Fernando for his breach of contract.

Advise Nellie.

Question 2

Please read pages 281 to 289 of Robert L Birmingham, “Breach of Contract, Damage Measures, and Economic Efficiency”. Then answer the following questions.

- (a) What does Birmingham mean by his reference to “stability of commitment” and why does he reject stability of commitment as a primary goal of contract law? According to him, under what circumstances should repudiation of contractual obligations be encouraged?
- (b) How does Birmingham evaluate the case of the defaulting employee?
- (c) Lon Fuller and William Perdue famously assert that “[i]t is as a matter of fact no easy thing to explain why the normal rule of contract recovery should be that which measures damages by the value of the promised performance”.¹ According to Birmingham, what justifies expectation damages?
- (d) In your view, is breach of contract morally wrong?

¹ L Fuller & W Perdue, “The Reliance Interest in Contract Damages” (1936) 46 *Yale LJ* 52 at 56-57.