

THE UNIVERSITY OF HONG KONG
DEPARTMENT OF LAW

Course code and title : JDOC1002 Law of Contract II
Session : 2022–2023, Semester 2
Date of examination : 17 May 2023
Time of examination : 2:30pm – 5:30pm

This paper has 5 (five) pages (including this page).

Instructions to candidates:

This paper contains 3 (three) questions in total.

Answer ALL 3 (three) questions.

Each question is of equal value.

Please use a separate answer booklet for each question.

Materials, aids and instruments permitted to be used in this examination:

Candidates are permitted to refer to any printed/written materials in the examination.

No electronic devices (including laptops and phones) may be used.

Question 1

Roger is a keen collector of old cameras. He saw on the C-Bay website that a vintage Silver Leiter II camera was being offered for sale by Tom for \$7000. Roger considered this a good price as he expected to pay at least \$12,000 for a Silver Leiter II camera. Tom's camera, however, was a Silver Leiter II Mark 6, which was generally sold at around \$5000 by others in the second-hand market. Tom's web advertisement on C-Bay contained a photo of the Silver Leiter II camera that he intended to sell but the description of the camera in his advertisement did not specify that it was the "Mark 6" model.

On 1 March, Roger sent an email to Tom stating that he wished to purchase the Silver Leiter II camera that was advertised at the price of \$7000. In the email, Roger requested that the camera be delivered to his postal address as specified in the email. He also asked how payment may be made.

On 2 March, Tom replied to Roger by email, confirming the proposed sale and providing a bank account number for payment by way of electronic funds transfer.

Around that time, Roger had been having some trouble with his email service. Due to computer and connectivity problems, Roger did not receive the above email from Tom on his (Roger's) device until 8 March.

Tom was content to arrange for delivery of the camera prior to receipt of payment. On 6 March, Tom arranged for delivery by courier, with the camera dropped off with the courier that morning for sending to Roger.

Meanwhile, before Roger received delivery of the camera, he had been discussing with some vintage camera enthusiasts about his purchase of the Silver Leiter II camera from C-Bay. One of them knew Tom and told Roger that the model owned by Tom was a Mark 6. Upon hearing this, Roger, in the afternoon of 6 March immediately emailed Tom to say that he no longer wanted the camera. This email was successfully sent and was received by Tom almost instantaneously.

Tom immediately phoned Roger and told Roger that the camera is already being sent by courier and that he expects Roger to pay the agreed price of \$7000. In reply, Roger said that he does not wish to have the Mark 6 model. The next day (7 March), the courier delivered the camera to Roger but Roger refused to accept delivery. Tom nonetheless continued to press for payment from Roger.

Roger seeks your advice as to whether there was a binding contract formed and, on the assumption that there was a binding contract, whether there is any ground for setting aside the contract. Advise Roger.

Question 2

Mr Tran, 75 years of age, and Mrs Tran, 72 years of age, wished to celebrate their 50 year wedding anniversary on 15 October 2022. To that end, the Trans proposed to throw a huge party with 500 guests at a luxury hotel.

On 7 January 2022, the Trans signed a written contract with the Peak Hotel (“the Hotel”) to hire its Grand Ballroom for the purpose of holding their anniversary party on 15 October.

The written contract contained two parts. Part A contained terms specific to the present contract of hire.

Under Part A:

Clause 2 stated that the total cost of hire of the Grand Ballroom is \$800,000.

Clause 3 stated that the Hotel will provide Food and Beveridge Package A (with details specified on the food and drinks menu to be served).

Clause 8 required a 25% “deposit” (\$200,000) to be paid by the Trans to the Hotel upon signing of the contract.

The Trans duly paid the deposit on 7 January.

Part B of the written contract contained the standard terms of hire of the Hotel, under the heading “General Terms and Conditions”. These were printed in small font size.

Under Part B:

Clause 68 provided that the total cost of hire as specified in Part A of the contract shall be payable by the hirer in the event of cancellation of the hire by the hirer for any reason whatsoever.

Prior to the signing of the contract, the Hotel representative had discussed the terms in Part A of the contract with the Trans. The representative did not explain the terms in Part B. The Trans were aware that Part B of the contract contained general terms but they did not read Part B, nor did they request time to read the full document before signing. Once the terms regarding matters such as dates, times and price in Part A were agreed, the Trans signed the document.

On 1 October, Mrs Tran was suddenly diagnosed with a malignant tumour. Both the Trans had hitherto been in very good health. Due to the urgency of the situation and upon the advice of Mrs Tran’s doctors, Mrs Tran underwent an operation on 9 October. Although the operation was successful, she needed to recuperate in hospital and she could not attend the anniversary party on 15 October.

On 11 October, Mr Tran contacted the Hotel. He told the Hotel that due to the circumstances of Mrs Tran's illness, it was necessary to cancel the anniversary party and consequently the hire of the Grand Ballroom. The Hotel representative pointed out to Mr Tran that the Trans can cancel but the full hire price still needs to be paid pursuant to clause 68 in Part B of the contract. Mr Tran was surprised by this requirement and became quite anxious.

The Trans seek your advice on their legal position in light of the above. Advise the Trans.

Question 3

X Company Ltd (“X Co”) owns a large commercial building in Shatin which X Co rents out as office space for businesses. In January 2023, X Co entered into a contract with Y Company Ltd (“Y Co”) for Y Co to perform renovation works at the building. Under the contract, the renovation works were to be completed by 31 December 2023.

When negotiating the terms of the contract, Y Co had indicated to X Co that it would be working on the basis of three 8-hour shifts each day from Mondays to Saturdays every week (“the Three Shift Schedule”). The written contract did not, however, contain any term referring to this. During the negotiations, X Co warned Y Co that if the renovation work created undue noise or other disturbances, it is possible that affected persons could seek an injunction from the court to restrict hours of work during the night.

Indeed, in May, residents of adjacent buildings in the area where the works were being carried out successfully obtained a court injunction preventing Y Co from working between 10pm and 6am each day. The injunction took effect on 1 May 2023.

As a result of the injunction, Y Co informed X Co on 2 May 2023 by letter that the renovation works could not be completed by the end of 2023 and that it would only be possible to complete the works by the end of February 2024.

On 3 May 2023, X Co replied to Y Co by letter imploring that it was necessary for Y Co to comply with the contractual deadline of 31 December 2023 and that X Co reserves all its rights against Y Co in the event that Y Co fails to adhere to the deadline.

On 4 May 2023, Y Co sent a further letter to X Co. In the letter, Y Co stated to X Co that there is an implied term in the contract that completion by the 31 December 2023 deadline was conditional on Y Co being able to carry out work on the basis of the Three Shift Schedule.

Prior to the renovation works commencing in January 2023, all existing leases of the office space in the building had been validly terminated, but X Co was already negotiating new leases to be taken up by tenants following completion of the renovation. By 4 May 2023, leases for about 40% of the office space in the building had been entered into, with the tenants entitled under the leases to take possession on 8 January 2024. For one of the leases entered into with a major tenant, the tenant agreed to pay a premium (at a rental of 10% above market rates) to secure a lease of the offices on the top three floors of the building.

On 5 May 2023, X Co comes to you to seek your advice as to its potential remedies against Y Co in light of the above. Advise X Co.

END OF PAPER