

NATIONAL UNIVERSITY OF SINGAPORE
EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS
(Semester 2: 2010-2011)

LC 1003
LAW OF CONTRACT

30 April 2011 – Time Allowed 2 Hours 30 Minutes

INSTRUCTIONS TO CANDIDATES

1. This examination paper contains **THREE (3)** questions and comprises **FIVE (5)** printed pages, inclusive of this cover page.
2. Answer **ALL THREE (3)** questions.
3. Answer each question in a new answer booklet.
4. This is a **CLOSED BOOK** examination.
5. Do not bring any material into the exam venue. A case-list and relevant statutory provisions are provided.

Question 1

Answer EITHER (a), (b) OR (c).

(a) "The law relating to illegality in contract is not in need of reform. The principles that apply are clear and satisfactory." Discuss

(b) "There is so much overlap between cases of undue influence, duress (especially lawful act duress), the *Etridge* doctrine on guarantees and unconscionable bargains that we should just recognise a general doctrine of unconscionability." Discuss.

(c) Of the two positions below, which do you prefer? Why?

Position 1: "The supporters of an equitable jurisdiction appear to think that the common law is unjust in refusing to hold certain contracts to be void for mistake, because the applicable test as to whether a mistake was sufficiently fundamental is too narrow... But the question is always at bottom (in the absence of an express allocation of risks) how risks ought *reasonably* to be allocated. If that view is right, then it is difficult to see what role there can be for equity in this area: it can hardly be supposed that equity would require risks to be allocated in an *unreasonable* manner."

Position 2: "The idea that there exist two doctrines of mistake operating side-by-side is complex and confusing... But the underlying idea – that relief for mistake ... needs to be more flexible – has much to commend it. In particular the view ... that an operative mistake may cause a contract to be merely voidable, rather than void, appears both fairer and more consistent with the juridical basis of relief than the current rule. This is also true of the suggestion that courts should be allowed to set aside the contract 'on terms' ... Courts would be less hesitant to give relief for mistake if these options were available. The all or nothing approach of the current law makes decisions like that in the *Great Peace* case inevitable."

Question 2

Kate is a young fashion designer of women's clothes. Her original designs are much sought after by celebrities and socialites. Kate broke away from her family business (which consisted mainly of making party costumes and school uniforms) to start her own business resulting in her being ostracised by her family. Kate runs her business from a small outlet in Orchard Road. Due to increasing demand, she finally hired an assistant, Pilla to help her.

On a particularly busy afternoon, when Kate was attending to another client, a rather flustered lady, Carol, entered the shop. She wanted an 'original' design for a gala function that night. Her original outfit was ruined by her pet dog that morning. She tried on one that looked rather special and asked Pilla whether that was a 'one and only' piece. Pilla, who spoke little English, said, 'Yes'. (Later, it was discovered that Pilla meant, only one left of that design.) Carol then said, "I'll take it" and paid for it by credit card. Pilla did not find a price label on the dress and had looked at the price tag on another dress on the same rack, which was tagged at \$5,000. As Carol was in a hurry, she just glanced at the receipt and thought the price was \$500. Situated above the cashier's desk was a large sign that said 'Goods exchange allowed at the discretion of Kate, but returns must be in original condition. No cash refunds.'

Carol, who is a popular and oft-photographed socialite, attended the gala function that evening in the dress. She was deeply embarrassed to find another one of the guests wearing a dress with the same design. It turned out that Pilla had sold a 'spare' of a unique design that was made by Kate for the other guest who was her regular customer. The 'spare' was intended for emergencies. After a ruinous evening, which comprised of her mainly avoiding photographers, Carol was determined to return the dress. She was even more upset and distraught when she finally saw that she had been charged \$5,000. When Carol went to return the dress, she was told that it could not be accepted as it had some stains on it, and in any case there could be no refunds. Carol angrily told Kate saying that if she did not get her refund and 'compensation' often dresses (each of an exclusive design), she will tell all her friends that Kate deals in 'seconds' or copies. She would also publicise her exorbitant prices and allege that Kate copies the ideas of other designers. Kate felt slandered but reluctantly agreed as she feared the allegations would ruin her business.

At about the same time Kate's family came to the shop to ask her to guarantee her father's purchase of some sewing machines needed for the family business. Her father (Daniel) told her that that was the least she could do if she wanted to reconcile with him and the family. He said that the sum was just a few thousand dollars and that in any case, the business could take care of the instalments. As Kate was in the midst of dealing with Carol and her other customers, and she felt keen pressure from her family, she signed the guarantee forms without realising that the sum was actually \$100,000. When presented with the guarantee, the finance manager of the sewing machine company remarked, "Daniel, you're very lucky to have a successful daughter who is willing to guarantee your debts." Her family's business later ran into trouble and the sewing machine company is seeking to enforce the guarantee against Kate.

Advise Kate.

Question 3

Stacey is the owner of a small business which supplies gift baskets and singing telegram services on festive events, birthdays and other special occasions. Towkay Tim hires Stacey to help him announce the wedding engagement of his son. Under the contract between them, Stacey is contractually obliged to deliver abalone-ginseng hampers, each specifically selected by Tim who pays \$500 per hamper, to various recipients found on a list of friends provided by Tim. Each delivery will be made by an independent sub-contractor who will also perform a song and dance routine to entertain each recipient of these hampers. In addition, the contract between Tim and Stacey states that “the customer (Tim) agrees to exempt the vendor (Stacey), and any sub-contractor appointed by the vendor pursuant to this contract, of any legal liability whatsoever arising from the performance of this contract”. Mitch, a freelance entertainer, is subsequently appointed by Stacey to deliver the hampers and execute the singing telegrams.

Without any reference to the *Sale of Goods Act*, what is your legal advice to the parties in each of the following independent scenarios?

- (a) Jon, an aficionado of fine foods, is on the list of Tim's friends who was supposed to receive one of the food hampers. Owing to Mitch's negligence, the hampers are left unattended in the delivery van and most of them are stolen by unknown criminals. Jon does not receive one of the remaining hampers and tells Tim who is, understandably, upset by this turn of events.

Advise Tim and Jon on whether they have any legal claim against Stacey and/or Mitch.

- (b) At the time of the contract between Tim and Stacey, both parties believed that the dried abalone found in the hampers, which were packaged in bags marked “Produce of NSW”, originated from Australian waters. Stacey also told Tim that the ginseng in her hampers was of “a high-grade variety” and “best in the market”. Given the high price tag for these hampers, Tim believed that the ginseng contained in the hampers was Korean ginseng – which is widely regarded by the food industry as the most expensive type of ginseng available in the market. The contract is silent as to the origin of these food products.

Tim subsequently conducts further checks and discovers that the abalone originated from New South Wales, Canada, while the ginseng was, in fact, North American ginseng. Upset by the “loss of face” that these inferior products have caused him, Tim insists on a refund of the contract price.

Advise Tim.

- (c) Tim prepares and gives Stacey a number of *angpaos* ('red packets'), each containing a sizeable wad of cash, and asks her to put one into each of the food hampers. Stacey considers this an odd request but gets suspicious when informed by Mitch, after the latter has delivered about half of the hampers, that the “friends” on Tim's list were all senior government officials and policemen. Under the contract, the contract price is supposed to be paid by Tim only after all the deliveries have been made but Stacey

decides that she cannot risk the reputation of her business by continuing with the shady transaction. Stacey instructs Mitch not to deliver the remaining hampers and returns the undelivered *angpaosto* Tim.

For the earlier deliveries that were carried out, Mitch executed the singing telegrams by performing slightly off-key renditions of "Money Not Enough" without the permission of the copyright owner of that song, which is unlawful under the *Copyright Act*. Distracted by his own singing, Mitch negligently damages some of the hampers while unloading them from his delivery truck.

Advise Stacey on whether she has any legal claim against Tim. Can Tim sue Mitch for the damaged hampers?

- END OF PAPER -