

NATIONAL UNIVERSITY OF SINGAPORE

EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

(Semester II : AY2004-5)

LC1003

LAW OF CONTRACT

April/May 2005 – Time Allowed 2.5 Hours

INSTRUCTIONS TO CANDIDATES

1. This examination paper contains **FOUR (4)** questions and comprises **FIVE (5)** printed pages, inclusive of this cover page.
2. Answer **TWO (2)** questions. Where a question is in parts, each part carries equal marks. All parts must be answered.
3. Use separate answer books for each question.
4. This is AN OPEN BOOK examination.

Question 1

Perrie and Andrew are a well-known couple in the television industry who are tying the knot and holding a wedding celebration at the Pacific-Ritzy-Orient-Marrion (PROM) hotel on 3 April 2005. Having sold the exclusive television broadcasting and photography rights for a handsome fee to MediaInc (the local television station), the couple is under immense pressure to ensure that the whole event is picture-perfect and runs like clockwork. They engage the services of Jazzy Low, a former-actress-turned-wedding-planner to manage the various administrative and logistical aspects of the wedding dinner. Under the intense glare of the media's unforgiving spotlight, the following problems arise in the run up to their wedding day which Jazzy has to deal with.

Jazzy contracts with Ping to erect a gilded gazebo on the front lawn of the Pacific-Ritzy-Orient-Marrion hotel for a contract price of \$10,000. Ping carries out most of the construction work himself but hires Pong, a local artist, to decorate the surfaces of the gazebo in a way which reflects the "modern classy fusion" theme which the wedding couple have requested for. While covering the gazebo in Grade-A imitation gold-leaf, Pong negligently spills a bucket of toxic adhesive onto the front lawn and damages the hotel's flowerbed. The contract between Jazzy and Ping does not provide for any secondary obligations to arise in such an event.

i) Assume that there is an implied term in the contract between Jazzy and Ping which required Ping to take reasonable care in the construction of the gazebo. Is the hotel (PROM) able to sue Ping under the contract? Can Jazzy sue Ping for breach of contract? If so, what is she entitled to recover?

ii) Assume that the toxic spill damages some of the floral arrangements which Jazzy has specially ordered for the wedding ceremony. If there is a clause in the contract between Jazzy and Ping in which Jazzy promises to "exempt Ping, and all subcontractors hired by Ping, from liability for any damage caused in the course of building the gazebo", will Jazzy succeed in an action under the tort of negligence brought directly against Pong? Alternatively, what if the clause in the contract states that "Jazzy shall not take any legal action against any subcontractor hired by Pong under this contract"?

iii) Assume that Pong is Ping's paternal grand-uncle who had single-handedly raised Ping, an orphan at a young age, for more than 15 years. Ping was brought up in an extremely conservative household which emphasised filial piety and the importance of showing respect for one's elders. Jazzy and Pong were romantically involved many years ago and the latter was eager to resume his relationship with the former. Upon learning of Jazzy's plans to construct a gazebo on the hotel premises, Pong told Jazzy that he could get his grand-nephew Ping to do the job for a "special price". Pong then persuaded Ping that the latter should give Jazzy a 75% discount on the contract price which Ping would normally charge for building a wedding gazebo. Jazzy and Ping subsequently conclude a contract under which Jazzy is to pay Ping \$2,500 for the gazebo. In these circumstances, would Ping be able to set the contract aside and seek to recover the full market value of the gazebo (and the services rendered) from Jazzy?

Question 2

The Traditional Chinese Medicine Act (TCMA) regulates the practice of traditional Chinese medicine in Singapore. Practitioners have to register with the TCM Board as well as obtain a practising certificate; otherwise they are liable for an offence. Employees of such practitioners are also subject to the same rule (i.e., registered and have a practising certificate). The Act aims to ensure the quality and good character of the TCM practitioners in Singapore.

Huang, a TCM practitioner of great renown in China, decided to set up a practice in Singapore and registered under the Act without difficulty. He rented a shop-house for a year in Joo Chiat and brought in all the paraphernalia to set up the practice. Consider Huang's legal position in the light of the following alternative fact situations:

- (a) Being new to Singapore, he did not realise that he had to obtain a practising certificate as well. Without obtaining one, he started seeing patients and was very successful. After the first month, he decided to expand his clinic and agreed to pay the landlord \$15,000 p.m. rent for the upper floor of the shop-house to offer more services. He paid \$30,000 in advance. But on hearing that he was required to have a practising certificate, he realised that he might be operating unlawfully. He reluctantly informed the landlord that he is ceasing operations, stopped renovating the upper floor, and asked for his \$30,000 back. He also informed the landlord he would close his business and therefore would terminate his tenancy.

Advise Huang who wants his \$30,000 back. Huang also wants to know whether the landlord can claim the rent for the remaining months. The landlord knew of Huang's business but did not know that Huang did not have a practising certificate.

Would your advice be different if due to a public outcry about the proliferation of massage parlours and the like, the Government prohibits the carrying on of any massage parlour or similar services, and Huang is informed that his TCM business is in the prohibited category?

- (b) Huang has a practising certificate. He has such a big clientele that he decided to employ a part-time assistant, Buck, a TCM student of his from China, to help run the place. Buck is currently under an employment pass as a pharmacist (for Sentinel Pharmacy) and is not registered under the TCMA. Huang said that he would undertake to obtain the necessary registration and practising certificate for him, and that he would get his pass extended to cover TCM. Buck was told by Huang not to see patients in the meantime. However, on one occasion, when Huang was too busy, Buck tended to a lady who needed acupuncture. Due to his carelessness, Buck caused the patient to suffer serious bleeding. The patient is considering suing Huang and his employee for her injuries and she refuses to pay the fee of \$500. Buck is furious when he discovered that Huang did not obtain the necessary permits for him, and demanded that Huang pays him his salary for the months he had worked for him. Consider Huang's legal position.

- (c) Huang finds the TCM clinic giving him too much trouble and decides to teach martial arts only. Leong, another TCM practitioner, offered to buy the business. The "Sale of Business Agreement" contains the following clause:

"The seller undertakes not to practise TCM (which includes acupuncture, prescription of herbal medicine, and retail of any herbal preparation) or provide any therapeutic massage or any other form of medical treatment, whether based on traditional Chinese medicine or not for a period of ten years in the following territories: the whole of Singapore, Malaysia (including East Malaysia) Indonesia and Thailand."

Huang seeks your advice as to whether he is bound by the clause. He says that he needs to provide medical treatment (based on TCM) to any of his students injured while training in his martial arts school. He also intends to expand his martial arts school to Indonesia, Malaysia and Thailand.

Would your answer be the same if the clause is contained in a separate document titled, "Agreement to Restraint of Trade" and for which Leong paid an additional consideration of \$10,000?

Question 3

Sylvester was interested in rearing carp fish and engaged Ken to build a pond in his garden. These fish, more commonly known as koi, originated in Japan. Because of their growing popularity, they are now also farmed in other parts of the world, but Japanese koi continue to dominate the top spots at international championships and maintain the reputation of being of the best quality. As Sylvester had heard that the potential maximum size to which a koi can grow is directly related to the depth of the water in which it is bred, he decided to have a deep pond of 2 metres. The pond would have a biological filtration system, and would be aerated mainly by a waterfall and an overflowing pot. In addition, a series of 4 water jets would be installed at one side of the pond. When desired, these jets could be switched on for extra interest and aeration. Under the contract, Ken would also supply "19 high quality koi, each between 18-24 inches long". The total cost was \$30,000: \$20,000 for the pond (including the filtration and aeration systems), and \$10,000 for the fish. Sylvester paid \$12,000 at the time of the contract. The balance of \$18,000 was payable upon completion. The work was to start on 1 October 2004 and be completed by 12 November 2004. This period coincided with the time that Sylvester and his wife Maia would be away on their round-the-world-trip so as to avoid any inconvenience to them, and Ken was given a key for access to the garden.

On 25 September 2004, Ken spoke to Sylvester over the telephone and told him that the work would have to be delayed by one week. Sylvester grumbled and said "make sure the work is started by 8 October, otherwise I want to cancel our contract." Ken said, "Yes of course." However, Ken was unable to start by 8 October and on that day, wrote an e-mail to Sylvester asking for an indefinite extension of time. On 15 October, Ken finally found some workers and started work on the pond although he had not yet heard from Sylvester. On 20 October, Ken received an e-mail from Sylvester stating, "Absolutely no way! I told you before, start on 8 October or no deal." Ken ignored this message. On 26 November the pond was

completed and the fish were put in. Sylvester and Maia returned on 27 November (later than planned) to find a bill for \$18,000. Sylvester was furious that Ken had gone ahead with the work. He refused to pay the \$18,000 and insisted that Ken should refund him the earlier payment of \$12,000. Sylvester alleged that in any case, Ken was not entitled to payment because the pond only had a depth of 1.9 metres; the 4 water jets could not be used as the valves to turn on the nozzles were missing; and the fish were local koi instead of Japanese koi.

The following facts emerge: (1) Increasing the depth of the pond to 2 metres would involve a rebuilding cost of \$15,000. (2) Ken had intended to supply Japanese koi, but finally decided to use local koi as the price of Japanese koi had soared sky-high due to an earthquake which struck Niigata, the largest koi rearing region in Japan, on 23 October 2004, destroying millions of dollars worth of koi stock. The local koi cost Ken a total of \$1,500, whereas the Japanese variety of equivalent sizes would have cost about \$8,000 under normal circumstances, and in excess of \$30,000 as a result of the shortage.

Advise Sylvester regarding his potential rights and liabilities. If there are further facts that you need to know, state what these are and how they might affect your answer.

Question 4

“The law of contract ought to be concerned only with the recovery of economic loss suffered by the parties to a contract, and not of any other type of loss suffered by them or by any others.”

Discuss.

END OF PAPER