

SECTION B**Question 2***(6 Marks)*

In Singapore, copyright subsists in any creative works of the original creator. Generally speaking any works such as books, musical scores and even software programmes are protected under copyright law. The protection extends, prima facie to the creator of the works.

In relation to the project products, where software is concerned, the protection ought to extend to the creator of the software. This would normally be the software programmer. However, the programmer would inevitably be the employee of company Z. Where a person creates a software in the course of employment, the copyright in the software subsists in the employer unless otherwise agreed in the employment contract. That being the case, in the absence of any express stipulation in the contract of employment, it must be presumed that company Z is in a position to claim copyright in the project products.

A further consideration that would apply is the nature of the relationship between ASBC, company Y and company Z. It is clear in our copyright law that whilst the creator of a work might be able to assert copyright, this can be overridden easily if the creation of the works was itself pursuant to an express commissioning of the works. In our present scenario, it is highly likely that ASBC had expressly commissioned the works as it is stated that company Y was to develop the Booking System. The software pertaining to the booking system would therefore have been commissioned by ASBC.

Accordingly, it is highly likely that ASBC would own the copyright as the commissioner of the works. If the contract between ASBC and company Y permitted company Y to retain the copyright, then ASBC would not be able to assert copyright. It is safe to assume that ASBC had not contracted to give up its copyright.

The issue that arises then is the conflicting rights between company Z and ASBC. The two companies do not have any direct contractual relationship. As the commissioner of the works, ASBC would own the copyright. Since, company Y is merely subcontracting the work to company Z, company Z would be a mere agent of company Y. Company Z would therefore be unable to assert copyright in the project products.

In view of the above, ASBC as the commissioner of the works ought to own the copyright in the works.

Question 3

(14 Marks)

Question 3(a)

(7 marks)

The key issue about the statement made by Linda Cheng is whether it is capable of constituting a contractual term. It is unclear from the facts what the precise terms of the contract are. However, it is clear that Linda Cheng had made an oral promise that the Cata-tombII software was capable of fulfilling the functions that Parton and Lim were interested in.

Generally speaking, where a contract is in writing, any statements made orally about the contract would not be admitted as evidence. This is known as the parol evidence rule. Therefore, Parton and Lim face a potential hurdle in this regard.

A similar problem arose in the case of *Computer Aided Design Ltd v Sime Darby*. In this case, a Sime Darby representative had assured that the hardware supplied by them was compatible with the Plaintiff's software. However, the Plaintiff faced compatibility issues that were impossible to resolve. The Court held that the goods supplied must be fit for the purpose for which they were supplied. The equipments supplied by Sime Darby were not fit for that specific purpose. Therefore, Sime Darby was in breach of its contractual obligation. Although the contract was partly oral and partly in writing, the court accepted both the oral as well as the written aspects of the contract.

On our present facts, it is clear that the software supplied was not fit for the purpose for which it was supplied. The purpose was made known by Parton and Lim to Linda Cheng and she expressly assured that the software could be used for that purpose. Under Section 15 of the Sale of Goods Act 1979, the goods supplied must be fit for the purpose for which they were supplied. It is submitted that the Sale of Goods Act applies to software as well. In *Computer Aided Design v Sime Darby*, the court was dealing with hardware and it had little difficulty in concluding that they were "goods". In *St Albans v ICL*, the English courts were faced with a software that did not fit for the purpose for which it was to be used. The court applied the Sale of Goods Act to software as well.

In view of the above, Linda's statement would give rise to the operation of S.15 of the Sale of Goods Act and as a result of the same, Pandora's Box is in breach of its contractual duty by supplying a software that did not fit the purpose for which it was requested.

Question 3(b)

(7 marks)

The general rule is that whenever there is a breach of contract, the innocent party is always entitled to damages. However, in cases where the innocent party did not in fact suffer any loss, he will only be awarded nominal damages by the court (which could be a token sum of \$1). It is, therefore, necessary for us to see if Parton and Lim can claim any sum of money as damages.

On the face of it Parton and Lim appear not to have lost anything except for the potential sum of \$65,000 that they could each have earned. Although it appears as if this is a speculative future loss, an innocent party in a contract is able to claim this sum. The rationale behind contractual damages is to put the parties in a position as if the contract had been performed.

If the contract had been properly performed by Pandora's Box, then Parton and Lim would have received their contractual payment of \$65,000 each.

There is a legal rule that the loss claimed by the Plaintiff cannot be too remote. In the case of *Hadley v Baxendale*, the court held that a defendant would be liable for losses that arise naturally from the breach of contract as well as losses that would have been in the reasonable contemplation of the parties at the time that they entered into the contract.

On this principle, it would be clear that Parton and Lim can claim for the \$65,000 as damages as the loss that can be attributed to the breach. However, there is a question as to whether they could claim for reputational loss. It is not unusual in a written contract for parties to indicate that any loss to reputation is to be compensated. It is not clear if the parties in the present situation had expressly agreed in their contract. In the absence of any such agreement, Parton and Lim would need to prove that their reputation had been affected as a result of the breach by Pandora's Box.

Therefore, Parton and Lim would be advised that they can claim \$65,000 each from Pandora's Box and any loss to their reputation if this was in the contemplation of the parties and if they can prove it.