

Semester II Examinations, 2003/2004
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Exam Code(s)

1BA1, 1BL1, 1BL2

Exam(s)

1ST ARTS, 1ST LL.B.

Module Code(s)

LW106/LW328

Module(s)

CONTRACT LAW

Paper No.

PAPER 1 FOR 1ST BA'S

Repeat Paper

Special Paper

External Examiner(s)

Mr. Eoin O'Dell

Internal Examiner(s)

Ms. Ciara Smyth

Instructions:

Answer **FOUR** Questions, **TWO** questions from Part I and **TWO** questions from Part II
 Parts I & II should be answered in separate answer books.

Duration

THREE HOURS

No. of Answer books

2

Requirements:

Handout

MCQ

Statistical Tables

Graph Paper

Log Graph Paper

Other Material

Department(s)

LAW

Part I

1. "The courts are generally reluctant to imply terms into a contract because of the maxim 'it is for the parties to strike a bargain; the judiciary serve merely to enforce it.' However, a term may be implied into a contract in certain clearly defined situations." Discuss with reference to case law.
2. A supermarket chain runs a bonus points scheme, whereby the purchase of certain products give the customer bonus points. The customer can collect points and then choose a gift from the supermarket's catalogue. For example, the catalogue states that a hairdryer = 350 points, a stainless steel kitchen bin = 500 points, a dishwasher = 5,000 points. The catalogue notes that if a customer lacks enough points for a desired item, s/he can purchase additional points at 10 cent per point. On the cover of the catalogue is a picture of a tropical island with the words "*Paradise Island = 1 Million Bonus Points!*"

Mrs. Doyle is a long standing customer who has been collecting points for over five years. One day she asks to see Dave, the supermarket manager. She tells him that she has just received a windfall and that she now has enough money and points to get Paradise Island. When Dave explains that the island was only an advertisement for the scheme, Mrs Doyle becomes very upset. She has been dreaming of the island for years. She threatens legal action.

Advise Dave.

3. "A promise to perform an existing duty, or the performance of it, should be regarded as good consideration, because it is a benefit to the person to whom it is given." Explain and assess this statement with reference to case law.
4. Mr and Mrs Ahern, a well-to-do couple, spend two weeks every winter in the same hotel in their favourite ski resort in Austria. They always book and pay in advance by credit card. This year, Mrs Ahern's three fur coats were stolen from the room while she was out on the slopes. There is a notice in every room stating 'The proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the manager for safe custody.' However, Mrs Ahern says she never really paid any attention to the notice. She is considering suing them for negligence.

Advise Mrs Ahern.

PTO

Part II

5. "For many years the courts provided an equitable remedy for a common mistake which was not operative at common law. However, recent case law suggests that where there is no common law remedy, there is no equitable remedy." Discuss.
6. Finbar is negotiating with Matilda for the lease of her flat. As it is next to the canal, he asks her whether she has had any problems with damp. She tells him that she has never had any such problem. She then hands him an engineer's report on the house and says that he is welcome to read it. He glances at the first page but does not bother to read any further. On the third page of the report, the engineer states that the house suffers from rising damp in winter.

Finbar comments on the spectacular view from the living room window, and mentions that the view alone would make the house worth leasing. Matilda does not comment.

Finbar also asks about the proximity of good restaurants. Matilda tells him that there are two very good restaurants close to the house. She neglects to mention that one of them is about to close down and that the proprietor of the other was recently prosecuted for violating health and safety regulations.

After moving in, Finbar discovers the truth about the restaurants. He also discovers that a multi-story car park is being built which will block his living room view. Most of his clothes have been destroyed by mildew and he has begun to suffer from Bronchitis. He asks you if it is possible for him to get out of the lease, and also whether he can recover any damages for the damage to his possessions and his medical expenses.

Advise Finbar.

7. Jeremy needs a substantial loan to pay off a money lender, who is becoming increasingly impatient with him. He decides to remortgage the family home (which is in his name) and announces this to his wife, Monica. Monica is very unhappy about the idea, but Jeremy says that if they don't remortgage the house, the money lender will "get him". Monica finally relents and agrees to accompany Jeremy to the bank to sign a mortgage consent form. She does not understand the implications of the transaction, but is afraid to ask about it at the bank because Jeremy has warned her not to ask any questions in case the bank think something "fishy" is going on. The bank official hands her the family home declaration to sign, but does not speak directly to her. Jeremy pays off the money lender, but cannot afford to keep up the mortgage repayments. After almost 1 year, the bank moves to repossess the house. Advise Monica.
8. Traditionally, the courts classified contractual terms according to whether they were conditions or warranties. More recently, the courts have developed a new classification of 'innominate terms'. Explain the distinction between the traditional classification and the 'innominate terms' classification, and the advantages and disadvantages of both.

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