

Faculty of Shariah and Law
Final Examination for the 2nd Semester
Academic Year 2008/2009

Course Code : SL 1305
Course Name : Law of Contract II
Course Level : Bachelor of Laws (LL.B)
Time : 3 hours

References allowed
The Contracts Act (Cap. 106)

Note:

Answer any **four (4)** of the following questions.

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Question 1

(a) Ali, a minor, entered into a sale and purchase agreement with Bakar for the purchase of a piece of land for \$10,000. Ali paid the price in full and began to occupy the land. Bakar died and his son, Samah, was appointed as the administrator of his estate. Samah complained that the land was sold at a price much lower than the market price then. Samah demanded for the return of the land.

Advise Samah.

(9 marks)

(b) Jan, aged 17 years, is an orphan. He has been offered a place to study law at a local private college. He received a scholarship offer from a company. If he took up the offer, he would have to serve the company for a period of 6 years upon completion of his studies. Jan wants you to advise him on his rights and liabilities, should he refuse to serve the company.

Advise Jan.

(6 marks)

Question 2

“The modern case law is more concerned with economic duress rather than with threats to the person or to a person’s goods. In particular, it has concerned itself with the economic pressure that a threat to break a contract can impose, no doubt reflecting the increased value of economic rights enshrined in contracts relative to the value of property rights in goods. ... Take for example the one-man building contractor who quotes a low figure for building your conservatory [i.e. a room with glass walls and roof]. Halfway through the building he realizes he will go bankrupt unless you pay him some more money – should he be allowed to threaten not to complete the job and extract a binding agreement from you to pay more?”

(Taylor, R. & Taylor, D. (2007). *Contract Law: Directions*. Oxford: Oxford University Press. p. 225.)

With the help of case law illustrations, explain “economic duress”? In view of the limited scope of “coercion” envisaged under section 15 of the Contracts Act (Cap. 106), in your reasoned opinion, would the court in Brunei accept “economic duress” as part of the law in the country?

(15 marks)

Question 2

Ahmad, a 78-year old wealthy businessman, had been suffering from very poor health and mental depression. He was under medical supervision and treatment of his family doctor, Dr. Bakar, for the last 10 years. Ahmad, from time to time, had also consulted Dr. Bakar for advice on social and financial matters, as Dr. Bakar is a successful medical practitioner and investor. One day, Ahmad told Dr. Bakar that he wanted to move from the busy Gadong area to a village in Kuala Belait. He wanted to purchase a house there and live peacefully until the end of his life. Dr. Bakar offered to sell his own village house to Ahmad for the price of \$250,000. Two days later, on 22 April 2008, Ahmad agreed to purchase the property at the offered price. Ahmad died on 30 June 2008. His only surviving son, Salim, consulted a property valuer on 1 August 2008, and was informed by the latter that the market value of the property in April 2008 was only \$150,000. Salim filed a claim in the High Court to seek for an order that the sale and purchase agreement entered into between his deceased father and Dr. Bakar be set aside on the ground of undue influence.

Decide.

(15 marks)

Question 3

(a) Section 24 of the Contracts Act (Cap. 106) provides:

“The consideration or object of an agreement is lawful unless –
(a) it is forbidden by law; ...”

Discuss and illustrate the above provision.

(7 marks)

- (b) The doctrine of 'public policy' regards the sanctity of contracts as of primary importance. It is paramount to consider that freedom of contract is not lightly to be interfered. However, such freedom has its limits. The agreement made by the parties must not be opposed to public policy. If the consideration or object of the agreement contravenes public policy, the agreement would be declared illegal and void.

Explain the above proposition.

(8 marks)

Question 4

Dr. Saliha, a well-known gynaecologist, had been working at a private hospital for 18 years. She had joined the hospital as a medical officer when she was 27 years old. She gradually worked her way up through hard work and further studies. When she was 37 years old, she was accepted as one of the partners who owned the hospital. She was then made the Director of the Gynaecological Department. Dr. Saliha had to enter into a new written agreement, which was basically related to the partnership. In this agreement there was also a covenant restricting her, firstly, from engaging herself as a part-time gynaecologist at any other private medical centres while she was in the employment of the hospital, and secondly, from engaging herself in any similar activities or business of the hospital after she left the hospital, within 10-kilometre radius of Gadong, for a period of 36 months.

In March 1999, Dr. Saliha sold her shares in the partnership and tendered her resignation. She plans to open up her own private medical centre in Berakas. Dr. Saliha has heard that the private hospital would be bringing action against her for an injunction to enforce the restrictive covenant should she proceed with her plan.

- (a) Advise Dr. Saliha.

(10 marks)

- (b) What would be the position if Dr. Saliha was only an employee of the private hospital?

(5 marks)

Question 5

- (a) “The courts, in their desire to do justice between contracting parties, have developed what is called the doctrine of substantial performance, which in effect has somewhat relaxed the requirement of exact and precise performance of entire contracts.”

(Andrew Phang. (1998). *Cheshire, Fifoot and Furmston's Law of Contract*. First S'pore & M'sian Students' Edn., Singapore: Butterworths Asia, p. 561.)

Explain the application of the doctrine of substantial performance. Support your explanation with case law.

(8 marks)

- (b) Section 57(2) of the Contracts Act (Cap. 106) provides:

“A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”

Illustrate and explain the test to determine the application of the above provision.

(7 marks)

Question 6

The determination of damages in the event of breach of contract has not been an easy task for the courts. The statute contains definite rules for the purpose, which, are based on the law laid down by the court long ago. The process of evolving the law of damages still continues.

Explain the principles of damages as contained in the statute and expounded by the courts in various cases.

(15 marks)

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