



# **THE HONORABLE SOCIETY OF KINGS INNS**

## **ENTRANCE EXAMINATION**

**AUGUST 2018**

**Examination: Contract Law**

**Date: 15 August 2018**

**Time: 10am to 1pm**

**Examiner: Professor Raymond J Friel (UL)**

**External Examiner: Mr James O'Callaghan SC**

### **Instructions:**

**Candidates must answer Question 1 and any TWO of the remaining questions.**

**Question 1 carries 50 marks, all other questions carry 25 marks each.**

This paper is 5 pages long including the cover sheet. You should check that you have all the pages and inform the invigilator immediately if any are missing.

**Q 1.** During February, Deirdre was in negotiations with Fred for him to install an enhanced cyber-security system for 3<sup>rd</sup> party data held by Deirdre. Deirdre was under an obligation to have the system in place by May 1, otherwise her insurance premium would be increased by €10,000. Deirdre and Fred had agreed the price for the work (€50,000) and the completion date (April 15). Although Deirdre and Fred were satisfied that there was nothing else left to agree, they wanted the agreement put into a legally binding contract and so asked their respective lawyers to do this.

However, while their lawyers were continuing to negotiate over small details of the final contract, Fred told Deirdre on March 10 that unless he began work on the project soon, he would not be able to guarantee that he could have the work completed by the April 15 deadline. Both Deirdre and Fred agreed that Fred could start work immediately because they were in agreement over the main issues and what was left to agree was just “for the lawyers”.

On April 1, Fred called Deirdre to say that as they were working on the cyber-security system it had become clear that due to the delay in starting the project because the lawyers could not get their act together, he would be unable to make the April 15 deadline. Deirdre said that this was unacceptable since Fred had promised to be able to complete the project if he was allowed to start it on March 10. Fred said that as they still did not have a contract in place, he was under no legal obligation to continue working on the project at all. However, he said if Deirdre would pay Fred for two additional programmers, at a total cost of €5,000 in addition to the agreed €50,000, the project could still be completed by the April 15 deadline. Deirdre reluctantly agreed.

The project was completed on April 15 without a formal written contract having been signed. Deirdre has now told Fred that she will only pay the €50,000 that they had initially agreed but not the extra €5,000 that she had promised. She did not believe that Fred had ever employed the additional programmers.

Advise Fred as to his legal position under the law of contract in these circumstances.

**[50 Marks]**

**Q 2.** Max had recently inherited €100,000 from his favourite aunt. Although he had no experience in business, he had agreed with Susan to rent a small shop from her, located on one of Ireland's most popular beaches for surfing, for the sum of €10,000 pa. Max was a passionate surfer and he hoped to open a shop selling surfing equipment. The shop was rented to a small convenience store but that tenant was leaving shortly due to lack of business. Max was eager to ensure that he would have the shop ready for the beginning of the surfing season and so made it a condition with Susan that he could move in by June 1. In the meantime, he had invested around €50,000 of his inheritance in stock necessary to make the shop a success.

In drafting their own agreement without legal advice, Max and Susan put into the contract a clause which stated

“In the event of a breach of this agreement by Susan for whatever reason resulting in Max not being granted possession of the shop by June 1, the agreement shall be considered terminated and Susan agrees to pay Max €50,000, less any amount Max may recover from returning or selling the stock he has purchased, as agreed upon damages.”

As it transpired, Susan was unable to let Max in to the property on the agreed date.

Advise Susan as to whether the above clause is enforceable in contract law.

**[25 Marks]**

**Q 3.** Harley Transport DAC has a contract with “Comps-R-Us” which started on July 21, 2018 and ends on July 20, 2020. The contract is for the transportation of laptops produced by “Comps-R-US” in Galway to a warehouse just outside of Paris. The contract is silent with respect to how the goods are to be transported. It simply states that they must arrive at the Paris warehouse within 48 hours of being collected from the Galway production facility of “Comps-R-US”.

Harley Transport DAC has been a reliable carrier since the original contract began, always meeting this deadline. Their traditional approach has been to transport the

laptops by ferry directly from Ireland to France and then by road to Paris. However, around July of 2018, Harley Transport unofficially became aware that the company operating the Ireland-France ferry was experiencing financial difficulties on this route meaning that it might not be possible to transport the laptops by ferry as the service would cease. Instead, they would have to travel through the UK and then to Paris by way of the Channel Tunnel. The impact of this would be to make it virtually impossible to meet the 48 hour deadline. More importantly, the cost of doing this would entirely negate any profit on the contract and in fact Harley Transport would end up making a significant loss.

Advise Harley Transport as to whether there would be sufficient grounds for treating the contract as frustrated in the event that the ferry company no longer operates the Ireland-France route from June 2019.

**[25 Marks]**

**Q 4.** John was selling his stove cleaning business and had been approached by Lydia who was interested in buying it. During the course of their negotiations, John indicated that his annual turnover was nearly €100,000. John claimed that his income by cheque or bank transfer was around €35,000, but that he earned another €65,000 or so in cash. John showed Lydia his bank statements which confirmed an income of around €35,000 and then offered her a box file of cash receipts which he said would show the balance of €65,000 in cash received from customers. Lydia took one look at the box of crumpled receipts and said that she trusted John was telling her the truth. John shrugged and said she could check the receipts at any time.

Lydia then asked John for his opinion about the potential for growth in the business. John replied by asking Lydia whether or not she had seen all the reports in the newspapers about the increased usage of stoves in private residences of about 15% per annum. Lydia agreed she had. John then said “Those reports would match what I see on the ground.”

Lydia agreed to buy John's business, but neither the turnover nor the potential growth in the market were included as part of the contractual terms. Later Lydia discovered that the cash receipts only amounted to around €35,000 and not the €65,000 she had been led to believe. Further due to changing environmental concerns sales of stoves were falling, not rising.

Advise Lydia as to her position under the law of contract with regard to these representations by John.

**[25 Marks]**

**Q 5.** In relation to any **TWO** of the following issues, comment on whether the law is in need of reform, illustrating your answer with relevant case law.

- (a) The *contra proferentem* rule in the interpretation of contractual provisions.
- (b) The role of formalities in contractual agreements.
- (c) The negation of a contract based on mistake as to identity.

**[25 Marks}**