

LEGAL PROFESSION ADMISSION BOARD

CONTRACTS

September 2008

EAXMINER'S COMMENTS

Question 1

The issues to be covered in answering this question are: (i) whether Simon was given sufficient notice of the existence and contents of the exemption clause before or at the time he entered into the contract with the Elvira: *Causer v Browne*, *Thornton v Shoe Lane Parking* and *DJ Hill v Wright*; and (ii) if so, whether the clause, on its proper construction, is wide enough to cover the losses sustained by Simon: *Darlington Futures v Delco*, *City of Sydney Council v West*. Many students did not differentiate between the bag and the shoes. Whilst the loss for the shoes might be covered by the clause, it is unlikely that the loss of the shoes would be due to the four corners rule.

Question 2

Part (a) deals with the issue of whether an existing contractual duty already owed to the promisor is good consideration. Relevant cases are *Stilk v Myrick*, *Williams v Roffey Bros* and *Antons Trawlings v Smith*.

Part (b) raises the question of whether economic duress was applied by AD. Relevant cases include *North Ocean Shipping Co v Hyundai*, *Crescendo Management v Westpac*.

Question 3

The claim for damages for the humiliating dismissal fails: *Addis v Gramophone Co*. Similarly so for the mental illness: *Baltic Shipping Co v Dillon*.

The other possible recoverable losses are for the \$ 1million salary for 2 seasons, the bonuses, and the two BMWs. In relation to the salary losses, the loss for the second year may not be recoverable on causation grounds because the loss was really due to the injury in the motor vehicle accident. Furthermore, the amount recovered would be reduced on mitigation principles by an amount equal to what was earned with the first season of the contract with the Bears. An amount for bonuses is recoverable even though there are difficulties in assessing the amount: *Howe v Teefy*, *Chaplin v Hicks*. In relation to the BMWs, the claim may

fail on grounds of remoteness. The remoteness rules need to be applied with respect to all claims, but it is with the BMWs that there is the most difficulty.

Question 4

(a) This question raises the issue of whether Robert's contract with Assets Managers is impliedly illegal by statute, and requires a discussion of cases such as *Yango Pastoral -v- First Chicago Bank* in particular.

(b) The issue raised here is that of *non est factum* and the problem is based upon the decision in *Petelin v Cullen*. A number of students argued that the signed document was an unconscionable bargain. Even if so, it would not be void at common law, merely voidable. The doctrine of *non est factum*, if satisfied, means that the document is void at common law.

Question 5

(a) This part raises the issue of whether the display of salad was an offer or invitation to treat. The significant case is *Boots Cash Chemist v Pharmaceutical Society*. If the *Boots Case* applies in Bill's favour it is arguable that the situation is reversed in the alternate scenario on the basis that the sign establishes that the parties' intention was that a contract was established upon selection of the salad.

(b) Two issues are raised in this question. The first is whether the contract is frustrated – see principles in *National Carriers v Panalpina*, and if so whether the contract price, being a pre-frustrating event obligation is enforceable. As part of the garage was actually painted it would be arguable that there has not been a total failure of consideration and that the *Fibrosa* principle would not apply, with the result that the contract price is payable. Because of the question raising the right to sue at common law, the impact, if any, of the Frustrated Contracts Act, is not relevant. If so, the second major issue then is whether Cindy can sue to recover that sum. She is a party to the deed but has provided no consideration. However, that is not a problem because of the deed and therefore she could bring acclaim for the money at common law.

Question 6

This question requires a discussion of the principles and policy issues relating to recovery of damages in cases of concurrent liability. Significant cases to note and discuss include *Koufos v Czarnekow*, *H Parsons (Livestock) v Uttley Ingham* (remoteness) and *Astley v Austrust Ltd* (contributory negligence).