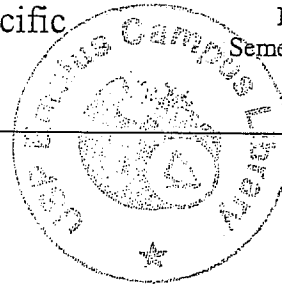


ON RESERVE



The University of the South Pacific
Emalus Campus

Examinations
Semester 2 - 2002



SCHOOL OF LAW

COURSE NAME: LAW OF CONTRACT

COURSE NO: LA 202

TIME ALLOWED: Three (3) Hours

READING TIME: Ten (10) minutes

NUMBER OF PAGES: Four (4) pages including this one

NUMBER OF QUESTIONS ON PAPER: Seven (7)

NUMBER OF QUESTIONS TO BE ANSWERED: Four (4)

MARK ALLOCATED FOR EACH QUESTION: 12.5 marks per question

TOTAL MARKS: Fifty (50)

MATERIALS PERMITTED IN EXAMINATION ROOM:

None, apart from writing materials

SPECIAL INSTRUCTIONS

Support all your answers by reference to relevant cases and/or legislation

Please do not turn over any page until you are told to do so.

Question 1

Junior was a 19 year old young man in a jurisdiction where the age of majority was 21. However the same jurisdiction allowed people to obtain a driver's licence when they had reached the age of 18. Junior held a current driver's licence but he did not own a car. In May this year he wanted to attend a party on the other side of the island. He decided to hire a car from "No Frills Car Hire". Bob Frills (the manager of the hire car firm) had a policy (which was known to Junior) of not hiring out vehicles to people unless they were over the age of 21. Bob mentioned this to Junior who assured Bob he was over 21. He then produced his driver's licence which indicated he was 23 years of age. In actual fact Junior had earlier changed the date of birth on the licence.

Bob Frills explained the terms of the hire agreement to Junior who indicated that he understood. He was also given a written copy of the contract, which was signed by him and Bob Frills. One of the terms of the agreement was as follows:

Clause 5. The hirer of the vehicle accepts complete responsibility for any loss or damage to the vehicle, howsoever arising, during the time of the hire.

There was an option for Junior to take out insurance cover so as to protect himself from liability in relation to any damage to the vehicle; however he declined to accept this option and initialled the contract accordingly.

While driving, Junior failed to notice a large warning sign that indicated the road ahead was partly washed away. Junior rounded the corner and because he was going too fast he was unable to stop the car before it left the road and rolled down the embankment.

The car was towed back to "No Frills". It was very badly damaged.

Bob received a quote for repairs - equivalent to one million vatu. He is now seeking payment of this amount from Junior either under clause 5 of the contract, or as damages for the fraudulent misrepresentation.

Advise Bob. In your answer, ignore any legislative provisions that may apply.

Question 2

"A misrepresentation is a false statement of past or existing fact that induces the other person to enter into a contract and which causes loss or damage to that other person."

Discuss and explain this statement in terms of the law concerning misrepresentation and by reference to relevant cases and authorities.

Question 3

Carol was negotiating the sale of one of her many horses to Tina as well as some riding gear including a saddle. Tina thought she was buying a former racehorse from Carol when in fact Carol understood that she was selling her show jumping horse to Tina. After the sale, Tina later finds out the truth about the horse she has purchased. In relation to the saddle, both Carol and Tina thought that it was made by the reputable London firm of Spence and Co. using special leathers of high quality. In fact it turns out to have been a cheap import that would likely only last a couple of years.

Advise Tina what remedies (if any) she might have concerning the purchase of the horse and the saddle.

Question 4

"The purpose of the doctrine of frustration, which requires that there be a fundamental or radical change in the surrounding circumstances and the significance of the obligations undertaken, is to fairly allocate loss caused by an event which both parties could not reasonably have foreseen between the parties.

Discuss this statement. In your answer refer to relevant cases and/or statutory provisions.

Question 5

On 1st April Johnny entered into a contract with Thelma for the building of a swimming pool. Under this contract, Johnny had quoted a price of 1 million vatu for construction of an in-ground pool on Thelma's land in accordance with certain written specifications. It was also agreed that Thelma would pay Johnny 100,000 vt on the signing of the written contract, a progress payment of 400,000 vt on 1st May and the balance on completion by the end of May. Prior to the contract Thelma had made it known to Johnny that it was important for the pool to be finished on time so that it was available for a family celebration in early June.

Thelma paid Johnny the 100,000 on signing of the contract but did not pay him the 400,000 on 1st May. Johnny continued work without comment. At the end of May the pool had not been finished. Johnny finished the pool four weeks late but it leaked and was not exactly in accordance with Thelma's specifications. During the next four weeks, at Thelma's request, Johnny returned on three separate occasions to effect repairs but without success. Thelma thereupon sacked Johnny from the job and arranged satisfactory repairs costing 150,000 vt with another contractor.

Johnny claims the balance of the contract price (900,000 vt) which Thelma refuses to pay asserting that Johnny had failed to perform on time as promised and failed to perform properly or exactly in accordance with the contract. Johnny seeks your advice. Apart from whether he can recover all or some of the outstanding money, he also wants to know if Thelma was entitled to terminate the contract for late performance.

Question 6

“At common law, the only remedy available for breach of contract is damages. It is obvious that, while this remedy is appropriate in some cases, it is inadequate in others. Aware of this problem, the Court of Chancery developed other remedies which may be available in the event that a person suffers a loss which cannot be adequately compensated by damages”.

Discuss this statement in terms of available equitable remedies and the circumstances in which they may be granted.

Question 7

Arthur, Bernadette and their ten year old daughter Joyce, wanted to go to Tanna on a ten day holiday. Arthur booked the holiday with “Volcano Travel Agents” Port Vila. The whole holiday package cost Arthur 200,000 vt. Before booking, Arthur and Bernadette were given a brochure relating to the guest house they would be staying in. It promised transport and a guide to see the volcano, free breakfast, air-conditioned rooms, a swimming pool and entertainment each night of their stay. They were all very excited. When they arrived at the guest house they were disappointed. The air-conditioning had broken down, and the swimming pool was a mud hole at the back of the guest house. The entertainment turned out to be the husband of the manager, and all he did was tell a few jokes – the same ones each night. Breakfast was also a disappointment – a piece of toast and a cup of coffee. After two days Arthur complained to the manager. She offered to pay for them to move to another guest house which was of a higher standard, however it was further away and did not have a view of the volcano. In the end the three decided to stay where they were.

Arthur is now seeking to recover damages of 100,000vt against the Agents for himself, Bernadette and Joyce for the bitter disappointment concerning the holiday. The contract Arthur had signed with the Agents included a damages clause to the effect that ‘the parties agree that damages for any breach of this contract are to be 1,000vt for each day of the breach’.