



FACULTY OF ARTS AND LAW
SCHOOL OF LAW

COURSE NAME:	CONTRACTS II
COURSE NO:	LA202
TIME ALLOWED:	3 hours
READING TIME:	10 minutes
NUMBER OF PAGES:	4 including this page
NUMBER OF QUESTIONS ON PAPER:	6 (Six)
NUMBER OF QUESTIONS TO BE ANSWERED:	5 (Five) Only
MARK ALLOCATED FOR EACH QUESTION:	10 (Ten)
TOTAL MARKS:	50 (Fifty)

MATERIALS PERMITTED IN EXAM ROOM:

None (This is a closed book exam!)

SPECIAL INSTRUCTIONS

- All Candidates in this exam must complete the **Compulsory Question** which is **Question 1**;
- Attempt **5 questions only** in the exam;
- Some questions may have a number of parts in which case all parts are to be attempted;
- You may cite cases and legislation in support of your answers to the questions.

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

Approved.
J. O. Pestini
12/10/06.

LA202 – CONTRACTS II – SEMESTER 2, 2006 - EXAMINATION

QUESTION 1 – COMPLUSORY (10 marks)

Lea and Lola, who are cousins, have decided to enter into an interior decorating business partnership. Both are qualified in this area of business and have just completed their training and apprenticeship at the Emalus Institute of Technology.

Lea and Lola have tendered for a contract to redecorate the Emalus Museum & Arts Centre and they have been awarded the tender. They quote an attractive contract price of \$1,000.00 and it is accepted by the Emalus Museum & Arts Centre. This is a big project.

The first contract that the women enter into is with the Emalus Museum & Arts Centre which is to redecorate and complete the contract within 3 months from the starting date. The second contract they enter into is with Apco Coatings to order exclusively all paints from Apco Coatings and not from any other paint shop.

Unfortunately, after the 1st month, the project to redecorate the Emalus Museum & Arts Centre turns out to be a huge one with a number of unexpected stress factors and financial difficulties that result in the collapse of their business. Lea leaves the country and Lola attempts to continue the contract, but decides to get cheaper paint from Asian Paints, a competitor of Apco Coatings. The first contract is completed but the quality of the interior decorating is not as contracted for by the Emalus Museum & Arts Centre.

- (a) Advise the Emalus Museum & Arts Centre on what contractual breaches have occurred and what remedies can be obtained against Lea and Lola?**
- (b) Advise Apco Coatings on what contractual breaches have occurred and what remedies can be obtained against Lea and Lola, especially for the exclusive contract that they have entered into?**
- (c) What, if any, arguments would Lea and Lola have in defence to such claims by the other parties?**

QUESTION 2

Yenkong negotiated to purchase Azuma's farm in West Zamunda. Azuma assured Yenkong that there were 1,000 milk-producing goats on the farm. In fact there were only 500 and some of them were not milk producing. Yenkong arranged an inspection to check the number of goats, but because it took so long for the inspection to be carried out and Yenkong was keen to start producing goat milk for the lucrative European market, Yenkong signed the written contract before the results were available. The written contract did not mention the exact number of goats or whether they were milk producing. Yenkong is now suing Azuma for misrepresenting the subject matter of the contract.

You are a judge in the District Court of Zamunda, an island state in the Pacific. The following parties have appeared before you and have completed arguing their case before you. You now have to give a judgment based on the facts and applying the relevant legal authorities. Write a decision as to the claim of misrepresentation. (You may refer to any case law from any jurisdiction of the Pacific.)

QUESTION 3

You have been instructed by a Parliamentary Select Committee of your Country to assist in explaining the "*doctrine of non est factum*". None of the members of that Committee are lawyers. Your submission should cover the following headings:

- (a) **What is the doctrine of *non est factum*?**
- (b) **How is the doctrine applied?**
- (c) **What are the pre-requisite conditions for the application of such doctrine?**
- (d) **Are there any cases in the South Pacific that have used this doctrine and how have the Courts applied the doctrine?**

QUESTION 4

Note: Both Parts of this question are to be attempted. Each Part is worth 5 marks

- (a) **Distinguish between (i) liquidated and unliquidated damages; and (ii) liquidated damages and penalties.**
- (b) **Explain the rule in *Hadley v Baxendale* (1854) 9 Exch 341.**

QUESTION 5

Discuss the ambit of the doctrines of duress, undue influence and unconscionable bargains in current contract law. Illustrate your answer by reference to relevant case law.

QUESTION 6

“Traditionally, the common law courts have refused to uphold contracts which tended to prejudice the social or economic interest of the community, and these contracts have been variously described as being “contra bonos mores” or “ex turpi causa”.

- (a) Why are “restraint of trade” contracts considered to be void contracts but not illegal contract?**
- (b) What are the exceptions to the rule on restraint of trade?**
- (c) In your view, should restraint of trade clauses be allowed to be applied as a statutory requirement in employment contracts in jurisdictions of the Pacific?**