

CONTRACT LAW

(PROBLEM QUESTION - 750 WORDS)

Advise Adonis on relevant legal issues arising that have been covered in Contract Law.

Adonis has recently encountered financial troubles and has decided to sell off the antique cars he had inherited from his grandmother as quickly as possible. Although he was no expert, Adonis did some basic research on the cars, figured out a price he wanted that was slightly below what he thought would be the market value, and advertised them on various webpages for collectable cars.

The first car he sold was to Himari. She was super impressed with the appearance of the car but inquired whether the engine was fully original. He had explained at the time that his grandmother had taken meticulous care of all of her cars and barely drove them, and he so couldn't imagine that she would have replaced any of the parts. Himari seemed satisfied with the response and bought the car right away.

Adonis' second customer was a woman who presented herself as Charlotte Church. As soon as she introduced herself he realised that she looked a lot like the famous singer by that name, and after a moment of surprise asked 'Oh, you mean like *the* Charlotte Church, the singer?' To which she responded looking slightly uncomfortable by saying, 'Um, yeah, I sing.' Adonis quickly dropped the subject and proceeded to discussions about the car. She agreed to buy the car for the asking price but explained it would be on the condition that she could pay half up-front taking the car away today. She elaborated that she was going on a road trip the next day and was keen to buy the car especially for it. Somewhat reluctantly Adonis agreed after deciding that since the sale was to a well-known person, he didn't need to worry about her running off with the car without paying.

A few days later when Adonis was doing some more research on the remaining cars he was selling, he saw what appeared to be an identical car to the car he had just sold to Charlotte but didn't think much of it. A week or so later he still hadn't heard anything back from Charlotte. After trying to get

in touch with her he discovered all the contact details she had left were for different people who knew nothing about her. He contacted the police and discovered that a rogue who went by the identity of 'Charlotte Church' had been buying used luxury items, promising to pay half later, and then selling them on to unsuspecting buyers before disappearing. Horrified, Adonis looked into the car he had seen that appeared identical to his and discovered that 'Charlotte' had in fact sold his car on to another buyer and then disappeared.

When he thought his luck couldn't get worse, he got a call from Himari who explained that after she had the car fully inspected, it was discovered that the engine wasn't the original engine for the car.

She claimed that because of this, the value was only a fraction of what she had paid and wanted her money back.

Advise Adonis on relevant legal issues arising that have been covered in Contract Law.

Things that has been covered so far:

- What a contract is;
- The basic effects of breach;
- The 'ingredients' of contract formation, with more detailed understanding of 'intention to create legal relations' and the relevant case law;
- The distinction between 'subjective' and 'objective' intention;
- What a case note is and the role of case law in legal doctrine.
- From negotiation to contract formation: identifying when (and on which terms) a contract is formed;
- *Consensus ad idem* - finding the agreement and the 'mirror' requirement for contract formation;
- Identifying an Offer:
 - Distinction between offer, invitation to treat, and invitation to tender;
 - Distinction between provision of information and offer;

- Rejection of contextual approach in identifying agreement in favor of linear approach;
- Requirements for identifying acceptance:
 - Unilateral contracts and acceptance as performance
 - Acceptance vs counter offer
 - battle of the forms and timing of acceptance
 - Timing and form of communication
- Requirements for revocation
- Categorisation of terms relevant for right to terminate a contract
- Beyond the signed contract and the parole evidence rule
- Terms versus representations
- Incorporation by notice:
 - Reasonable (sufficient) notice
 - Course of dealing
 - Relevance of trade practice
- Terms implied 'by fact' including consideration of the key 'tests' such as: the business efficacy test; the officious bystander; and the role of necessity
- Relational contracts and 'good faith'
- Terms Implied 'by law' including consideration of the role of necessity and the reception of Denning's intervention
- Terms implied by statute and the role of Parliament in regulating contracts, including the Sale of Goods Act 1976 and the Supply of Goods and Services Act 1982
- The ways in which the courts *interpret* the terms of a contract.
- Pre-legislative/Common law efforts to protect against unfair terms
- Unfair Contract Terms Act 1977:
 - Scope and legal effect;
 - Role of 'Reasonableness Test'
- Part 2 of the Consumer Rights Act 2015

- Scope and legal effect
- Judicial interpretations
- Substantive vs procedural unfairness
- Regulatory bodies and practical implications for business practice.
- Misrepresentation
- When a contract is found void vs voidable
- The remedy of rescission
- Distinction between representations and contractual terms
- Criteria establishing misrepresentation
- Types of misrepresentations: fraudulent, negligent, innocent
- Damages for misrepresentation
- Unilateral/Formation Mistake
 - Unilateral/Formation mistakes as to a term
 - Unilateral/Formation mistake as to person
- Types of mistake and the distinction between common (shared) mistake and formation (unilateral) mistake
- Mistake as to the existence of subject matter
- Mistake as to the quality of a thing
- The test for expectation (common) mistake from *Great Peace*
- Introduction to the doctrine of 'frustration'
- Frustration and the impossibility of performance
- The 'purpose' of a contract in *Herne Bay* and *Henry v Krell*
- The 'implied term' approach
- The 'essentially different' approach
- Legal effects of frustration, and the 1943 Act
- The relationship between Frustration and Common Mistake

CRITERIA:

- Overall: A deeply thoughtful, well-organised and well-presented answer informed by extensive reading, demonstrating clarity of thought (and intellectual rigour at higher levels).
- Demonstrates throughout a comprehensive knowledge and nuanced critical understanding informed by work at the forefront of the discipline.
- Uses and accurately cites an extensive range of advanced readings skilfully throughout, demonstrating a highly independent approach to sources.
- Highly analytical and critical, skilfully and convincingly argued throughout with intellectual rigour.
- Skilfully structured and communicated Throughout and shows a nuanced understanding of academic style.