



# THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF     JULY     2003

CODE AND NAME OF COURSE: LA21A - LAW OF CONTRACT II

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 2 pages and 6 questions.

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Answer THREE (3) questions, including ONE (1) from SECTION B. Answers may be confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

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## SECTION A

1. Critically examine the circumstances in which damages may be recovered for an actionable misrepresentation.
2. Analyse the proposition "*In pari delicto potior est conditio possidentis*".
3. "Frustration cannot be pleaded as an excuse for non-performance where the event in question was foreseen, foreseeable or resulted from the deliberate act of the person seeking to rely on frustration."

Critically discuss this statement.

## SECTION B

4. On June 1, Cave agrees with Augustine, the proprietor of "Auto Repairs", that Augustine should repair Cave's minibus at a cost of \$1,500. Cave is required to pay a deposit of \$500. Cave tells Augustine that he needs the vehicle by June 15, since he is expected to get a contract to transport some visiting delegates to a Government Conference reception on June 17.

On June 8, while driving another minibus for a friend, Cave is convicted of driving without due care and attention, an offence which diminishes the likelihood of performing his contract with the Government. Further, Cave misses out on two extremely lucrative contracts to transport guests to a wedding and funeral respectively as a result.

P.T.O.

The vehicle is not repaired by June 15, so Cave hires another minibus for 2 days for \$500 *per diem* in case the Government contract comes through. Cave is most disappointed when he is not chosen by the Government and demands his minibus from Augustine. Augustine agrees to hand it over but insists that Cave forfeits his deposit.

Advise Cave.

5. Answer **EACH** of the following:

- (i) John agrees to buy a rocking chair from Antiques Ltd. Both John and the sales manager believe that it was made in the early eighteenth century. In fact, it is a very good imitation created in the late nineteenth century.

Advise John.

- (ii) Keith and Levi contract for the sale of Keith's brown cow, Daisy, which is supposed to be at Keith's farm in the country. The contract is made at Keith's office in the city. When they get to the farm, the cow is not there but at another farm. Moreover, the cow is not barren as they both thought, but is pregnant with calf. Finally, Keith had renamed the cow Brandy.

Advise the parties.

6. Gaynor, a clarinetist, signs an agreement with Ted, a restaurateur, to perform at his dinner club on Mondays, Wednesdays and Thursdays from 7:30 p.m. to 9:30 p.m. during dinner with a 'half-hour break'. The agreement stipulates that Gaynor should arrive by 7:15 p.m. on each night and this is made "a condition of the agreement". There is a further provision that Gaynor must play at least 20 pieces during her stint but there is no designation of this term. Gaynor is to be paid \$200 per night.

Last Thursday night, Gaynor did not arrive until 7:28 p.m. and did not begin playing until 7:45 p.m. Without any protest from Ted, she decided against taking her usual half-hour break but then abruptly closed the show at 9:00 p.m., even though she had only played 15 pieces. As a result of this, the Mellons, a couple who regularly patronised the restaurant with their wealthy holidaying guests from abroad, were not entertained for the duration of the dinner. They vowed never to return.

When asked for an explanation, Gaynor cited domestic problems and Tom tendered only \$50 as payment for that night. Gaynor sues Ted for breach of contract.

Advise Ted.

**END OF QUESTION PAPER**