



***THE UNIVERSITY OF THE WEST INDIES***

***EXAMINATIONS OF*** \_\_\_\_\_ ***JULY/AUGUST*** \_\_\_\_\_ **2004**

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

**DATE AND TIME:**

**DURATION: 2 HOURS**

**INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 6 questions.**

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Answer **THREE (3)** questions, at least **ONE (1)** of which must be selected 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. "The *in pari delicto* rule has no application where a party to an illegal contract seeks to recover back his property which he has transferred under that contract."  
  
Discuss.
2. "A party cannot claim to be excused from performance on the basis of frustration if he induced the allegedly frustrative event or foresaw it."  
  
Discuss.
3. Critically analyse the concept of anticipatory breach with special reference to the options available to the innocent party.

**PLEASE TURN OVER**

**SECTION B**

4. Joe, a car dealer, sells a second-hand car to Kim for \$10,000. Joe tells her that the car is very fast, economical and in good condition. He also advises her to test drive it, but Kim, who is ignorant so far as the mechanics of cars are concerned, has her ex-boyfriend, Larry, check out the car. He advises her to buy it. One month after she buys the car to drive to work, Kim discovers that the car gives only 3 miles to the gallon and she has so far spent nearly \$5000 in repairs to the engine and gearbox. She decides to go to Joe to question him about these problems, but he refuses to listen to her complaint. The car can go no faster than 50 mph.

Advise Kim.

5. Advise in each of the following circumstances:

- (i) Lana buys a ticket at a price of \$200 from her cousin, Mona, for a calypso show featuring a performer called "Li'l Bit Mo". Both Lana and Kim believe that "Li'l Bit Mo" is the popular entertainer of that name whose record has just gone platinum in the United States. In fact, when she comes on stage, Li'l Bit Mo is a shabby local imitation who sings out of tune and who claims she cannot dance too well because she had twisted her ankle that afternoon. Lana bursts into tears and demands her money back from Mona.
- (ii) Nigel, a taxi driver, and Oral, a visitor, agree that Nigel will take Oral and his family on a tour of the island of Erewhon with stops for lunch at Bath Beach and for afternoon tea at the Cinco Rios Restaurant on that day. Unknown to either of them, the Beach has been closed since the day before because of dangerous swells, and the restaurant has been destroyed by fire that morning. Oral has paid Nigel a deposit of \$200 leaving a sum of \$300 owing. Nigel has employed the services of a car valet at a sum of \$250 so that the car would be a comfortable, pleasant ride for Oral and his family.

**PLEASE TURN OVER**

6. Maya a philanthropist has contracted with Western Caterers (WC) to provide 500 meals at \$50 each for a dinner party she is having. Maya intends to charge each attendee \$200 per person but WC is not made aware of this by Maya. Half of the proceeds is to go to a charity for homeless children while the other half is for Maya's personal use. The week before the event, there is much advertisement of it in the local and electronic media.

During the afternoon of the dinner party, many of WC's staff go on strike to protest the non-payment of travel allowances to them over the previous three months. When WC informs Maya of this, she informs them that they ought to be fully aware of the consequences. She proceeds to engage the services of Eastern Caterers to prepare the meals at \$60 per plate, even though Southern Caterers, to her knowledge, would have charged only \$45 per plate. However, Maya is not on speaking terms with the manager of Southern Caterers and refuses to do business with them.

The food from Eastern Caterers is of low quality and one of Maya's older guests suffers an acute case of food poisoning because of some badly prepared chicken and eventually dies. Maya is totally distressed and frustrated and brings an action against WC. When you read the contract there is a section headed "*Penalty clause*" which provides that in the event of a breach of contract the damages payable should not exceed \$5000 in total.

Advise WC.

**END OF PAPER**

