

Exam - JUR1260/5260 - English Law of Contract

Autumn 2007

Please answer all of the following questions. Each question will be given equal weight in the marking of the answers.

1. In June 2006, the Oslo city council decided to build a new town-hall. It also decided that a rare and expensive kind of stone – Larvikitt – was to cover the façade of the new hall. This kind of stone could only be procured by a single supplier – Larvikitt Ltd. – on the south-west coast of Norway near the city of Larvik.

Subsequent to these decisions, the Oslo city council entered into a contract with an English company – Selma Contractors Ltd. – to build the new hall. The contract specified, amongst other things, that the new hall was to be completed by 1st April 2008 and that Selma Contractors Ltd. was to procure all the materials needed to build the hall. The contract also specified that the contract, along with any disputes arising out of it, were to be governed by English law.

Selma Contractors Ltd. then concluded a contract with Larvikitt Ltd. for the procurement of the necessary quantity of Larvikitt. According to this contract, Selma Contractors Ltd. was to take delivery of the Larvikitt from Larvikitt Ltd. in the port of Larvik – thus Larvikitt Ltd. would have no responsibility for the transportation of the Larvikitt from the port of Larvik to Oslo. The time of delivery of the Larvikitt was simply specified in the contract as follows: “Larvikitt Ltd. is to ensure that the necessary quantity of Larvikitt is made available to Selma Contractors Ltd. during the period July 15th to September 30th 2007.” The contract also stipulated that the contract, and any disputes arising out of it, were to be governed by English law.

For the purpose of bringing the Larvikitt from the port of Larvik to Oslo, Selma Contractors Ltd. concluded a contract with an English ship-owner. Under this contract, the ship-owner was to ship the Larvikitt from the port of Larvik to Oslo in three consecutive journeys by the ship-owner’s only vessel – The Marilyn. The three journeys were, according to the contract, to be completed on 1st August, 15th August and 1st September 2007. The contract also stipulated that the contract, and any disputes arising out of it, were to be governed by English law. Moreover, according to the contract, Selma Contractors Ltd. was to pay the ship-owner 20% of the contract price for shipping the Larvikitt, by 30th May 2007. This sum was duly paid by the agreed date.

On 23rd June 2007, an oil tanker ran ashore just outside Larvik and spilled a huge amount of oil into the sea. The coastline in the vicinity was quickly covered with oil. On that same day, the environmental protection authorities banned all traffic at sea around the Larvik area for three months. The reason for this ban was that any sea traffic would jeopardise the success of the restoration of the coast line. The authorities also banned production of Larvikitt by Larvikitt Ltd. but this latter ban was just for one month.

The accident outside Larvik obviously influenced the work of Selma Contractors Ltd. on the new town-hall, although there was no ban on sea traffic at or in the vicinity of the port of Oslo. The Marilyn could not reach the port of Larvik to transport the Larvikitt to Oslo by the three agreed dates. On 26th June 2007, the ship-owner informed Selma Contractors Ltd. that they regarded their contract with Selma Contractors Ltd. as frustrated.

On 30th June 2007, Larvikitt Ltd. also informed Selma Contractors Ltd. that they regarded their contract with Selma Contractors Ltd. as frustrated. Larvikitt Ltd. claimed that the one-month ban on their production made it impossible for them to have the required quantity of Larvikitt available during the period stipulated in the contract. They did acknowledge, however, that it was possible to have the required quantity available from 1st September, but that this would entail expenses far beyond the foreseen level. They had calculated that their total expenses would exceed the purchase price laid down in the contract with Selma Contractors Ltd. by more than 100%. Selma Contractors Ltd. replied that they would be considering other means of transporting the Larvikitt to Oslo and that Larvikitt Ltd. was still under an obligation to have the Larvikitt available at least on 1st September.

Selma Contractors Ltd. then determined that it would still be possible to finish the new town-hall by 1st April 2008, even though the Larvikitt was not delivered on the planned dates. Finishing the hall on time would require, however, an increase in Selma Contractors Ltd.'s costs of approximately 20%. Selma Contractors Ltd. held that their contract with Oslo city council was frustrated.

Please answer the following sub-questions:

1. Was the contract between Larvikitt Ltd. and Selma Contractors Ltd. frustrated?
2. Was the contract between the ship-owner and Selma Contractors Ltd. frustrated? Provided that the contract was frustrated, what would be the consequences at common law of the frustration? (N.B. you do not need to discuss the consequences pursuant to the Law Reform (Frustrated Contracts) Act)

3a. Was the contract between Selma Contractors Ltd. and the Oslo city council frustrated?

Assume that in the contract between Selma Contractors Ltd. and the Oslo city council there was a force majeure clause with the following wording:

“Force Majeure

A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

The exemption provided by this clause has effect for the period during which the impediment exists.”

3b. Give a short account of the consequences of the inclusion of the clause for resolving the issue of frustration, and on whether the final result would be different from that under question 3a above.

2. Guenter Treitel, who is one of the leading experts in English law of contract, has characterized the decision of the Court of Appeal in *Hong Kong Fir Shipping Co. Ltd. v. Kawasaki Ltd.* (1962) as having “a fair claim to being the most important judicial contribution to English contract law in the past century”. Discuss the extent to which such a characterization is justified. In your discussion, assess also the benefits and problems raised by the *Hong Kong Fir* decision.

3. Bruce has an old car which he decides to sell. On Sunday, he parks the car on the lawn in front of his home and fastens to the car window the following sign: “For sale. Very good condition. Only one owner. £1,000 or nearest offer. Telephone 692362. First serious offer will be accepted.” Early on Monday morning, Bruce has to depart for France on a business trip and does not return to his home in England until Tuesday evening. The only person left in his house during the time he is away in France is his nephew, Michael, who is 20 years old and unemployed. Michael has been staying with Bruce for the past month. During the last three weeks, Bruce has become irritated about Michael and has complained to him that he is lazy and has too much time on his hands. On Sunday evening, just before he is about to leave on his business trip, Bruce says to Michael: “You could make yourself useful if you helped get the car ready for sale.” On Monday afternoon, Michael spends 4 hours polishing the car and repairing scratched paintwork on its panels.

At 10a.m. on Tuesday, Kevin walks past Bruce’s home and sees the sign in the car window. He uses his mobile phone to ring Bruce and make an offer of £900 for the car. Bruce replies: “I will consider your deal with great interest”. Kevin then says to Bruce: “I will assume that you have accepted the offer unless you ring me back by 6 this evening”. Bruce replies: “That sounds reasonable”.

At 11a.m. on the same day, Candida walks past Bruce’s home and sees the sign in the car window. She too is interested in buying the car. As she does not have a phone with her, she knocks on the front door of Bruce’s home. The door is opened by Michael. Candida says to Michael that she would like to buy the car and writes out quickly a note addressed to Bruce in the following terms: “I want to buy your car at the asking price. Please see cheque. My contact number is 946345. Candida Brimnes”. She then writes out a cheque for £1000 which she attaches to the note. Michael takes the note and cheque to Bruce’s bedroom and places these on the bedside table.

By 4p.m. on the same day, Bruce is at the airport in France getting ready for his flight back to England. He decides to accept the offer by Kevin and he tries to call Kevin. Unfortunately, however, the battery for his mobile phone has gone flat and he is unable to find a functioning public telephone at the airport. He is, however, able to access the Internet from a computer terminal at the airport, and, using Google, he is able to find Kevin’s homepage and email address. Bruce then sends a short email to Kevin stating: “I agree to your deal. Can you pay in cash?”. At 6.30p.m., Bruce arrives back home, and sees the note and cheque from Candida. He then telephones Kevin immediately and leaves the following message on Kevin’s answering machine: “Ignore the email I sent you – the deal is off”.

Advise Bruce, Kevin and Candida as to their respective legal positions under English law of contract. Advise also Michael as to whether Bruce is under a contractual obligation to pay him for the work he carried out on the car.

