

# UiO : Det juridiske fakultet

## Universitetet i Oslo

### EXAM

#### JUS5260 - English Law of Contract - Autumn 2016

Date: 28 November 2016

Time: 10.00

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#### Exam question

Please answer the following questions in connection with the following case scenarios. In answering the questions, you are to apply English law of contract.

In grading the answer, the questions will be weighted as follows. The answers to questions 1 and 3 will count for approximately 80% of the final grade (each answer counting approximately 40%), while the answer to question 2 will count for approximately 20%.

1. In January 2014, a company, Luxury Flats (LF), engages a building company, Better Homes (BH), to renovate a residential apartment owned by LF. The apartment is in Liverpool, England. It is, at the time, rented out to a businessman, Donald Bucks (DB) on a lease running for the ensuing 5 years. Under the lease agreement, either party may withdraw from the agreement upon giving 3 months' notice of their intention to withdraw. The terms of the engagement and renovation project are laid down in a written contract. Under the contract, the renovation is to be completed by 31 December 2014. The amount payable to BH on completion of the renovation is stipulated as £45,000. The renovation is also supposed to be carried out such that DB can continue to live in the apartment without significant discomfort. DB is informed of, and agrees to, the renovations.

In March 2014, after 2 months of renovations, DB is annoyed by the dust and noise created by the renovations and complains to LF that these disturbances go beyond what he expected. LF replies that it will reduce the monthly rental rate that DB has to pay, by 30%. DB is initially satisfied with this reduction. However, by October, DB has become fed up with the disturbances and he gives notice to LF that he will move out of the apartment in early November and quit the lease agreement then. LF informs DB that he may quit the agreement despite the lack of 3 months' notice but that DB must pay LF for the full rent due for the period from March until November. DB resists this demand.



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In February 2014, BH looks around for sub-contractors that can carry out particular specialized parts of the renovation and also supply some of the building materials needed. Over the past 10 years, BH has exclusively used a firm Reliable Suppliers (RS) to supply it with kitchen and bathroom tiles. The relationship between BH and RS has been close and cordial, and orders from BH have generated approximately 40% of RS's income, but the cooperation has never been set out in a written contract. In February, BH sees an offer from another company Good Alternatives (GA) for the supply of tiles, at a considerably cheaper price than what RS can offer. BH then informs RS that it will no longer be using RS as supplier. RS protests and claims that BH is precluded by both contract and promissory estoppel from bringing an end to their business relationship.

The offer from GA to BH is stated as being a "firm offer" that will stand for 5 days. Before BH formally accepts the offer, GA withdraws it after 3 days and replaces it with another offer that is not as financially favourable for BH. The second offer contains clauses stipulating that any increased costs in procuring the tiles will be passed on to BH and that the terms of the offer "shall prevail over any terms and conditions in the buyer's order". BH faxes an order to GA stating that it will purchase the tiles "according to the terms and conditions set out in this order". The order does not contain a clause to the effect that BH will bear any increased costs in procuring the tiles. GA sends back a fax stating that "your order is acknowledged". When GA later supplies the tiles, it claims an extra amount to cover increased procurement costs. BH disagrees that it should pay for these costs. BH also argues that GA was wrong to withdraw from its first offer before the 5 days were up.

By November, BH has completed most of the renovations – all that it has left to do is to install an alarm system that will cost £500. BH and LF then have a disagreement over the quality of the renovation work that has been carried out. BH withdraws from the project without completing the installation of the alarm system, and claims for the cost of the work it has done on a *quantum meruit* basis. LF disagrees that BH can claim for this cost.

- (i) Advise LF in its dispute with DB.
- (ii) Advise RS in its dispute with BH.
- (iii) Advise BH in its dispute with GA.
- (iv) Advise LF in its dispute with BH.



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2. In April 2014, during the above-described renovation process, LF sees displayed in an interior magazine a stylish concrete finish for a bathroom wall. LF then contacts BH to say that it wants the same sort of finish for the bathroom of the apartment. BH meets with a firm Clever Concrete (CC) to ask if it has the equipment that can deliver the specified finish. A representative for CC looks cursorily at the photos in the magazine. She then states that CC has a special device for spraying concrete on walls and that, while “we have never tried to use the device for the finish” desired by LF, the device can, “in her opinion, definitely deliver that finish”. BH then enters into a contract with CC for the work on the bathroom walls. CC carries out the work but the device it uses does not deliver the desired finish.

(i) Advise HB as to whether it can sue CC for misrepresentation.

(ii) Assuming it can sue for misrepresentation, advise HB as to the damages it may claim under section 2 of the Misrepresentation Act 1967. Explain both your answers.

3. In his judgment in the case *Hong Kong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd.* (1962), Lord Justice Diplock indicated that a term of a contract will be treated as a condition if its breach will deprive the non-breaching party of substantially the whole benefit of the contract. Discuss the validity of this characterisation of a condition and discuss the significance of the *Hong Kong Fir* case in English law of contract.

Av Lee A. Bygrave

