



## CONTRACT LAW EXAM

March 2021

**Duration of the exam:** 3 hours  
Consultation of academic materials allowed

### Part I . Multiple Choice Questions

10 Questions - (0,8 points per question - no penalty for an incorrect answer)

**Answer** all of the multiple choice questions below (10 Questions) - **For each of the questions, check only one box.**

**Question 1:** In English Contract law, what does the 'mirror image' rule refer to?

- a) it refers to the fact that an invitation to treat does not constitute an offer
- b) it refers to the fact that an offer can be revoked at any time before it is accepted
- c) it refers to the idea fact that acceptance of an offer must be exactly on the same terms as the offer
- d) all of the above

**Question 2:** How do the Principles of European Contract Law approach the battle of forms which occurs when two businesses are negotiating the terms of a contract, and each party seeks to impose its own standard terms upon the other?

- a) they use the 'first shot rule' whereby the first terms which have been offered by the offeror prevail
- b) they use the 'last shot' approach which considers that the latest terms referred to prior to performance prevail
- c) they use the 'knock-out' rule whereby the terms which contradict each other will cancel each other out
- d) none of the above

**Question 3:** How did Professor Pollock define the concept of consideration in English Contract Law?

- a) consideration can be an act or a forbearance
- b) consideration can be a promise to act or a promise to forbear
- c) consideration should be something of value given in exchange of a promise for it to be legally enforceable
- d) all of the above

**Question 4:** In the English case of *Partridge vs. Crittenden* (1968), what did Lord Parker mean by 'business sense' when he said: 'I think when one is dealing with advertisements and circulars (...) there is business sense in their being construed as invitations to treat and not offers for sale'?

- a) he was referring to the fact that the seller can no longer decide whether he wants to sell the product after the advertisement has been published.
- b) he was referring to the need to protect the customers in contractual relationships.
- c) he was referring to the 'limited sock' argument whereby construing an advertisement as an offer would mean that the advertiser might find him/herself contractually obliged to sell more goods than they in fact owned
- d) all of the above

**Question 5:** Consider the following scenario. On 29 November 2019, **A** posted an advertisement in the local newspaper offering a second-hand MacBook Air computer for sale for £500. The next day, **B** went to the address mentioned in the advertisement and presented **A** with £500. However, **A** informed him that he had changed his mind and no longer wished to sell his computer. Which of the following statements most accurately summarise the position in English contract law?

- a) The advertisement posted by **A** in the local newspaper constituted a mere invitation to treat.
- b) **B** made an offer to **A** when he handed the £500 to him.

- c) A was entitled to change his mind about selling his computer.
- d) all of the above.

**Question 6.** In French law, at which moment in time is acceptance effective?

- a) when the 'meeting of the minds' takes place
- b) acceptance takes effect when and where the acceptance reaches the offeror
- c) the postal rule applies and acceptance takes effect as soon as the letter is posted
- d) all of the above

**Question 7.** What does the 'business efficacy' test developed in the English Moorcock case (1886) refer to?

- a) it refers to the fact that courts will imply a term into a contract where it is something so obvious that it goes without saying
- b) it refers to the fact that courts will imply a term into a contract when it is a custom
- c) it refers to the fact that courts will imply a term into a contract that is necessary and obvious to give it business sense.
- d) none of the above

**Question 8.** In the English case of *Combe vs. Combe* (1951), what did Lord Denning mean when he said that the doctrine of promissory estoppel could only be used 'as a shield, not as a sword'?

- a) that the doctrine of estoppel can only be used as a defence.
- b) that the doctrine of promissory estoppel gives rise to a new cause of action.
- c) that it would be equitable for the promisor to come back on their promise
- d) all of the above.

**Question 9.** In the French case of *Chastan vs. Isler* (1958), the offeror sent a letter to the offeree offering to sell his chalet to the offeree for 2.5 million Francs. The offeree responded that he planned to visit the chalet on 15th or 16th of August that year, and the

offeror agreed. In the meantime, the offeror sold the chalet to someone else. Which of the following statements accurately reflects what the court held?

- a) the offeror's response constituted a counter-offer and therefore no contract had been formed.
- b) the offeror was free to revoke his offer at any time prior to acceptance.
- c) the offeror had implicitly undertaken not to revoke his offer before the offeree's visit of the chalet.
- d) all of the above

**Question 10.** Consider the following scenario. A husband and wife were separating and the husband promised to maintain his wife, provided that she took good care of their child. Later, the husband changed his mind and refused to provide any maintenance to the wife. The wife then sought to enforce the promise. Which one of the following statements most accurately summarises the position in English contract law?

- a) The promise is unenforceable because the parties did not have any intentions to create legal relations.
- b) The promise is enforceable because it is supported by valid consideration and the husband clearly intends to be bound.
- c) The promise is unenforceable because the wife has not given consideration and the doctrine of promissory estoppel does not create new causes of action.
- d) none of the above

### **Part II . Questions**

Please **answer 3 and only 3** of the following 5 questions.

**(4 points per question)**

**Question 11:** Article 16 of the United Nations Convention on Contracts for the International Sale of Goods (CISG) provides that:

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.
- (2) However, an offer cannot be revoked:
  - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
  - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

**Explain and analyse this article** in light of the principles which apply to the revocation of an offer under French, English and Portuguese Contract Laws?

**Question 12:** : In the English case of *Smith vs. Hughes* (1871), Blackburn CJ stated that:

*even if the vendor was aware that the purchaser thought that the article possessed that quality, and would not have entered into the contract unless he had so thought, still the purchaser is bound, unless the vendor was guilty of some fraud or deceit upon him, and that a mere abstinence from disabusing the purchaser of that impression is not fraud or deceit; for, whatever may be the case in a court of morals, there is no legal obligation on the vendor to inform the purchaser that he is under a mistake, not induced by the act of the vendor.*

**Comment this statement** in light to the principles applicable in relation to the duty to disclose in pre-contractual relationships in both English and French Contract Laws. **Illustrate your answer with case law.**

**Question 13:** Article 2:209 of the Principles of European Contract Law entitled "Conflicting General Conditions" provides that:

- (1) If the parties have reached agreement except that the offer and acceptance refer to conflicting general conditions of contract, a contract is nonetheless formed. The general conditions form part of the contract to the extent that they are common in substance.
- (2) However, no contract is formed if one party:
  - (a) has indicated in advance, explicitly, and not by way of general conditions, that it does not intend to be bound by a contract on the basis of paragraph (1); or
  - (b) without delay, informs the other party that it does not intend to be bound by such contract.
- (3) General conditions of contract are terms which have been formulated in advance for an indefinite number of contracts of a certain nature, and which have not been individually negotiated between the parties.

**Analyse this article** and the principles applicable to the battles of forms. Compare and contrast this article to the solutions adopted in French and English Contract Laws. Can the principles in question be reconciled with the mirror image rule? **Illustrate your answer with case law.**

**Question 14:** Article 11 of the UN Convention on the Use of Electronic Communications in International Contracts provides that:

A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Explain and analyse this article in light of the principles which apply both to electronic contracts under French, English and Portuguese Contract Laws. How do they compare to the principles applicable to non-electronic contracts?

**Question 15:** In the English case of *Roscola vs. Thomas* [1942] Lord Denman stated that:

it may be taken as a general rule [...] that the promise must be coextensive with the consideration... a consideration past and executed will support no other promise than such as would be implied by law

**Analyse this statement** in light of the rules applicable to consideration in English Contract Law. Are there some exceptions to the rule? Does the concept of consideration exist in French and in Portuguese Contract Laws? **Support and illustrate your answer with case law.**