

**CONTRACT LAW
MODEL EXAM
2010**



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IRAC method of completing exams

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Use this method for EACH issue that you address.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Each answer should include:

- An Introduction - Flag the issues that will arise in your answer.
- A Body - This should contain your answer to the issues flagged in the introduction.
- A Conclusion - A concise answer to the question based on what you have argued in the body of the essay. For example - 'Tim will not be able to lawfully terminate the contract. However, he will be able to successfully argue that he was induced into the contract as a result of unconscionable conduct'.

When considering any possible actions in the answer, first look to see if there is anything explicit in the contract that you can rely on (e.g. written and oral terms). If there is nothing explicit in the contract, consider whether you can rely on any implied or incorporated terms. If you cannot rely on these, then examine whether you can use anything outside of the actual contract (e.g. promissory estoppel, part performance, undue influence, misrepresentation, misleading conduct).

Use headings frequently to structure an answer.

Use the language of the question.

Be as comprehensive as possible when answering a question - canvas all possible answers. An example of this is stating that 'Although a Court would likely find that termination was justified because of breach of an essential term, it is also necessary to consider whether termination was justified because of repudiatory conduct'. Don't merely give an answer for whatever cause of action will be most likely to succeed.

Question One

Kester is a young man who migrated to Australia 3 years ago from China to attend university. He has been living with his grandparents, who have recently just passed away and have bequeathed him with a large sum of money. Kester only speaks basic English, he does not have many friends and has recently been prescribed anti-depressants to deal with the loss of his grandparents. He has limited business experience.

Kester is unsure what to do with his money and approaches his best friend and neighbour Julie, who has known him since he moved to Australia. Julie runs a fashion outlet called "Pink Pathways". Julie wants to start a bigger store in Sydney, but she lacks the money. She offers to sell the business to Kester in July 2006 for \$400,000 and assures him that she will run the business for another year. Kester remains skeptical, and during the negotiations Julie says to Kester:

"There is no risk to you of buying this business. We have made consistently \$15,000 per month and with summer coming, if you expand to swimwear you could easily make \$20,000 for sure – I have studied the trends."

In fact, Pink Pathways is heavily dependent on head designer Jean Baptise, who is known for his outrageous and wacky designs. Jean-Baptise has told Julie that he wishes to return to France in December 2006 to head up his own business. Julie does not tell Kester this.

Further, Jean-Baptiste's new swimwear collection is branded "Street Beach" and is remarkably similar to those in other fashion houses in France. Julie registers the "Street Beach" logo with Intellectual Property Australia, and is yet to hear from them as to whether the trademark has already been taken. Julie does not mention this to Kester either.

Kester seeks independent advice at the suggestion of Julie, from Madeleine, a friend of Jean-Baptiste. Madeleine has worked extensively overseas as a solicitor and part-time fashion designer, and has been in the industry for 20 years. She has only recently moved to Australia. She tells Kester the business is worth \$350,000 but potentially more if Kester were to expand to swimwear, but that she needs more time to consider the Australian market in order to give a better assessment.

Julie falsely tells Kester she has another prospective buyer and she wants to sell the business quickly. Comforted by Madeleine's assessment Kester signs the contract two days later which has as one of its terms, clause 8:

"The purchaser warrants making all reasonable enquiries about the nature and value of the business, and in no way relies on any representation made by the vendor."

Question Two

Lois is a young businesswoman who has just graduated from University. She decides to start up a business, which organises conferences within the Canberra region – seeing an opportunity in a niche market. Lois approaches Lex Luther Lending Corporation (“Luther”) about obtaining a loan to secure office premises. Luther is impressed by Lois’ business plan, but given her inexperience, is only willing to lend her \$200,000 if the loan is guaranteed.

One evening, Lois and a representative from Luther go to visit Lois’ mum Lana at a retirement village. Lana is 70 years old, she has been in the retirement village for 9 years after a car accident in which her husband was killed. As a result of the accident she suffered a major brain hemorrhage and has lost most memory of her life and some comprehensive of language. She is very passive as she was heavily reliant on her husband for emotional and financial support since she was a stay at home wife. She is now heavily dependent on Lois for emotional support. Lois shows her mother the contract and tells her:

“The bank just wants to make sure that everything will be ok with my new business. They just want to make sure that someone will pay them if it goes broke, but I’m sure it won’t come to that. Can you just sign here?”

Lana does not respond, but reluctantly nods her head before signing the guarantee. The representative from Luther asks if Lana knows what she is signing and she nods her head.

In the first 6 months Lois’ business seems to be performing well, and her business acumen shines through. She has just recently won a contract to organise the AFMS (Australians for a Multicultural Society) Conference in two weeks. The Conference brings together important Australian politicians and civil society. This is an important event for Lois, as her chances of securing future catering contracts are dependent on her performance.....

QUESTION THREE

Minh, a self-taught wiz-kid, started a small business manufacturing personal computers for home and office use. He constructed computers to fit the specifications required by individual customers. Minh expected that the Pentium III would be a top seller for the home computer market. He contacted Brett who is a salesman for Hot Chips, a specialist supplier of computer chips and inquired whether he would be able to fill a standing order for a regular supply of Pentium III computer chips. Minh emphasised to Brett that the chips needed to be fully compatible with the COMPUSHADE v2.0 software, which served as the interface which he used to program his computers. Brett replied by saying that he would be delighted to become Minh's regular supplier and recommended that he consider the *Fasttrack* brand of chip. Brett also said - "No worries Minh. I guarantee that the *Fasttrack* chips will be compatible with the COMPUSHADE v2.0 interface". Minh was impressed with Brett's professional attitude and decided to finalise with Brett an order of 50 *Fasttrack* Pentium III chips per month.

A few days after the initial agreement, Brett phoned Minh to raise an issue that had come to his attention. Brett realised that Minh was an inexperienced businessman and that he had started his business at time when there was an oversupply of computer manufacturers in the community. Brett thus sought to ensure that Minh would be able to provide a guarantee for the liabilities of his business. Minh said that his parents would be happy to provide such a guarantee.

Content with this assurance, Brett forwarded Minh a sales contract under which he agreed to sell Minh 50 *Fasttrack* Pentium III chips per month, from March 2003 to March 2005. Clause 10 of the contract stated that the chips would be of industry standard size for Pentium chips i.e. 2cm x 2cm. Minh read and signed the contract.....

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**If you have any queries regarding the contract law model exam
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