

CONTRACT Law

27.07.2020

Duração do exame: 3 horas

Duration of the exam: 3 hours

Responda, por favor em folhas de exame distintas, perfeitamente autoomizáveis à Parte de Direito dos Contratos e à Parte de Comparative Contract law.

Part I Direito dos Contratos

I (6 valores)

(limite de duas páginas)

O Manuel contratou um empreiteiro para lhe fazer uma obra em casa: remodelar a casa de banho. O contrato foi assinado em janeiro, a obra iniciou-se a 15.01 e o termo da obra estava previsto para 15.03. A 16.03 a obra não estava concluída. Manuel já tinha pago 75% do preço da obra.

- (a) *Quid?* Responda, não esquecendo de qualificar o contrato, a situação jurídica e de justificar a respectiva resposta.
- (b) Agora imagine que Manuel por repetidas vezes pedira ao empreiteiro para vir terminar a obra, sem que este o tivesse feito. Tal facto altera de alguma forma a resposta à questão anterior?

II (4 valores)

(limite de uma página)

Comente **uma** das seguintes afirmações:

- (a) As prestações emergentes de um contrato de compra e venda a prestações não são prestações de execução duradoura.
- (b) A faculdade de resolução por incumprimento do contrato é manifestação do sinalagma funcional.

Part II. Comparative Contract Law

No consultation of materials allowed

Section 1. Multiple Choice Questions (10 Questions)

(0,4 points per question - no penalty for an incorrect answer)

Question 1: What are the conditions currently necessary for a contract to validly exist in French law?

- a) a certain and determined object
- b) free and informed consent of the parties
- c) the parties' capacity to contract
- d) all of the above

Question 2: What is the legal consequence of acceptance of an invitation to treat in English law?

- a) it results in a binding contract providing that the acceptance mirrors the invitation to treat.
- b) it results in a binding contract providing that the acceptance is effectively communicated.
- c) it does not create a contract as an invitation to treat merely constitutes an invitation to start negotiations.
- d) none of the above

Question 3: 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 stock' 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 4: In French law, can an offer be revoked before it is validly accepted by the offeree?

- a) yes, provided revocation does not frustrate the legitimate expectations of the offeree.
- b) not if a reasonable period of time has not passed.
- c) not if the offeror has expressly included a period during which the offer may be accepted.
- d) all of the above.

Question 5: In English law, for the revocation of an offer to be valid, when should it be communicated to the offeree?

- a) at any time before the offeree accepts the offer.
- b) for revocation by post to be effective, it must be received by the offeree before the latter post their letter of acceptance.
- c) as soon as it has been communicated using the same channel as the one used when the offer was communicated.
- d) all of the above.

Question 6: How does English 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) it uses the 'first shot rule' whereby the first terms which have been offered by the offeror prevail
- b) it uses the 'last shot' approach which considers that the latest terms referred to prior to performance prevail
- c) it uses the 'knock-out' rule whereby the terms which contradict each other will cancel each other out
- d) none of the above

Question 7: What is the legal effect of a counter-offer in English Law?

- a) it destroys the original offer of the offeror

- b) it creates a binding contract between the person who made the offer and the person who made the counter-offer
- c) it entails that the original offer is still open for acceptance
- d) all of the above

Question 8: 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 9: 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 10: 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.

Section 2. Please answer 3 and only 3 of the following 5 questions.

(2 points per question)

Question 11: Article 2:201(3) of the Principles of European Contract Law provides that:

A proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue, or by a display of goods, is presumed to be an offer to sell or supply at that price until the stock of goods, or the supplier's capacity to supply the service, is exhausted.

Explain and analyse this article. Do the same principles apply under French and English Contract Laws? Illustrate your answer with case law.

Question 12: In the English case *Entores* (1955), Lord Denning stated:

'Let me consider the case where two people make a contract by word of mouth in the presence of one another. Suppose, for instance, that I shout an offer to a man across a river or a courtyard but I do not hear his reply because it is drowned by an aircraft flying overhead. There is no contract at that moment. If he wishes to make a contract, he must wait till the aircraft is gone and then shout back his acceptance so that I can hear what he says. Not until I have his answer am I bound.'

Please analyse this statement in light of the rules applicable to the communication of acceptance in English and French Contract Laws. Illustrate your answer with case law.

Question 13: Article 1119 of the French Civil Code provides that: '

General conditions put forward by one party have no effect on the other party unless they have been brought to the latter's attention and that party has accepted them.

In case of inconsistency between general conditions relied on by each of the parties, incompatible clauses have no effect.

Analyse this article and the principles applicable to the battles of forms in French Contract Law. Are the same principles applicable in English Contract Law? Illustrate your answer with case law.

Question 14: In the English case of *Jones vs. Padavatton* (1968), Fenton Atkinson L.J said that:

At the time when the first arrangement was made, the mother and daughter were 'very close'. I am satisfied that neither party at that time intended to enter into a legally binding contract.

Explain this statement in light of the principles applying to the intention to create legal relations in English Contract Law. Illustrate your answer with case law.