# CONTRACT Law

26.06.2020

**Duração do exame**: 3 horas

**Duration of the exam**: 3 hours

# Part I Direito dos Contratos

**I** (6 valores)

*(limite de duas páginas)*

**Aurora** tem os dois filhos, **Guitolina**, 4 anos, e **Fonsicas**, 7 anos, numa escola privada.

Em resultado da pandemia e como medida de precaução, o Estado português ordenou o fecho das escolas, tendo **Guitolina** e **Fonsicas** ficado, por isso, em casa, com os pais, desde então. Enquanto que **Fonsicas,** já no segundo ano, teve aulas online, **Guitolina** não. A escola não alterou o valor das propinas de nenhum.

**Aurora**, furiosa com a situação e, em especial, com a decisão da escola de não baixar as propinas, decidiu falar consigo, advogada(o) conceituada(o) na praça, para saber o que poderia fazer. Entre as várias hipóteses que tinha presente, das leituras que fizera online, ponderava resolver o contrato ou solicitar a sua alteração.

Diga o que lhe parecem as alternativas propostas por **Aurora**, justificando a sua posição.

**II (4 valores)**

*(limite de uma página)*

Comente **uma** das seguintes afirmações:

(a) A natureza duradoura da prestação do empreiteiro, emergente do contrato de empreitada, é discutível.

(b) O regime jurídico do crédito ao consumo contém uma previsão expressa quanto às consequências jurídicas da verificação de uma coligação de contratos.

**Part II. Comparatice 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*)***

**Consider the following** scenario and answer all of the multiple choice questions below (10 Questions) **- For each of the questions, check *only one box*.**

On Monday 14th of October 2019, Chiara sent a letter by post to Nicolas, offering to sell him her Bösendorfer piano for £1000. The letter arrived at Nicolas' address the next day. On Wednesday 16th of October 2019, Nicolas went to Chiara's house to see the piano, and told her: 'I would like to purchase this piano for £800. Should this be agreable to you, please let me know by post by Tuesday next week'. On Friday morning, Chiara went to the post office to send him a letter informing him that she had decided to sell him her piano for the proposed sum of £800. On the same day, in the afternoon, Nicolas saw an advert in the local newspaper placed by Susana stating 'Blüthner piano for sale, good used state, £700', accompanied by a contact number. He called the number provided and told Susana that he would like to purchase the piano. Susana informed him that he could come and collect the piano from her house that very evening. On Monday morning, Nicolas telephoned Chiara to inform her that he had found another piano and no longer wished to purchase her Bösendorfer piano. Chiara was absent but Nicolas left a message on her answering machine. On Tuesday 22nd of October, in the morning, Nicolas received and opened Chiara’s letter, and then checked his answerphone messages and heard the message Nicolas had left the previous day.

**Question 1:** In English Contract law, Nicolas' statement: 'I would like to purchase this piano for £800' constitutes:

☐ a) an offer

☐ b) an invitation to treat

☐ c) a counter-offer

☐ d) none of the above

**Question 2:** How would English Contract Law qualify Susana's advert in the local newspaper stating 'Blüthner piano for sale, good used state, £700'?

☐ a) as an offer

☐ b) as an invitation to treat

☐ c) as a counter-offer

☐ d) all of the above

**Question 3:** How would French Contract Law qualify Susana's advert in the local newspaper stating 'Blüthner piano for sale, good used state, £700'?

☐ a) as an offer

☐ b) as an invitation to treat

☐ c) as a counter-offer

☐ d) none of the above

**Question 4.** In English Contract Law, at which point would a legally binding contract between Nicolas and Chiara be deemed to have been formed?

☐ a) when Nicolas went to Chiara's house to see the piano, and told her 'I would like to purchase this piano for £800'

☐ b) when Chiara posted the letter informing Nicolas of her decision to sell him the piano on Friday morning

☐ c) when Nicolas received Chiara's letter on Tuesday 22nd of October

☐ d) a legally binding contract was never formed between Nicolas and Chiara in English Contract Law

**Question 5.** In French Contract Law, at which point would a legally binding contract between Nicolas and Chiara be deemed to have been formed?

☐ a) when Nicolas went to Chiara's house to see the piano, and told her 'I would like to purchase this piano for £800'

☐ b) when Chiara posted the letter informing Nicolas of her decision to sell him the piano on Friday morning

☐ c) when Nicolas received Chiara's letter on Tuesday 22nd of October

☐ d) when Chiara listened Nicolas' message on her answerphone

**Question 6.** In French Contract Law, at which point would a legally binding contract between Nicolas and Susana be deemed to have been formed?

☐ a) When Nicolas told Susana on the phone that he would like to purchase the piano

☐ b) When Susana informed Nicolas that he could come and collect the piano from her that evening

☐ c) When Nicolas collected the piano from Susana's house

☐ d) None of the above

**Question 7.** Under English Contract Law, did Nicolas validly revoke his offer to Chiara?

☐ a) Yes, he validly revoked his offer when he telephoned Chiara and left a message on her answering machine on Monday morning

☐ b) Yes, he validly revoked his offer when Chiara and llistened to the message that Nicolas had left on her answering machine on Tuesday morning

☐ c) No, he did not validly revoke his offer to Chiara because the revocation took place within the time period he had given to Chiara to accept the offer

☐ d) None of the above

**Question 8.** Imagine that Nicolas had seen Susana's advert on Thursday 17th of October and posted a letter informing Chiara that he had found another piano and no longer wished to purchase her Bösendorfer piano on that same day, and that said letter arrived on Monday 21st of October. The rest of the scenario remains identical to the original scenario described above. What would English Contract Law consider?

☐ a) In that case, Nicolas would have validly revoked his offer to Chiara when he told Susana that he would like to purchase the piano advertised in the newspaper

☐ b) In that case, Nicolas would have validly revoked his offer when he posted the letter informing Chiara that he had found another piano and no longer wished to purchase her Bösendorfer piano

☐ c) In that case, Nicolas would not have validly revoked his offer to Chiara because the revocation would have been received after the acceptance letter had been posted

☐ d) None of the above

**Question 9.** ImaginethatChiara had answered her phone when Nicolas called on Monday to inform her that he had found another piano and no longer wishes to purchase her Bösendorfer piano. The rest of the scenario remains identical to the original scenario described above. What would French Contract Law consider?

☐ a) that a contract between Nicolas and Chiara had not been formed as Nicolas' offer had been revoked when he called on Monday to inform her that he had found another piano and no longer wished to purchase her Bösendorfer piano

☐ b) that the revocation was abusive as it would have taken place within the time period given to Chiara to accept the offer

☐ c) that Nicolas may be held liable in tort under the French Civil Code

☐ d) all of the above

**Question 10.** Going back to the original scenario described above, under the Principles of European Contract Law (see Article 2:202 reproduced below in Question 11), did Nicolas validly revoke his offer to Chiara?

☐ a) Yes, he validly revoked his offer to Chiara when he called Susana to tell her that he would like to purchase the piano advertised in the newspaper.

☐ b) Yes, he validly revoked his offer when he telephoned Chiara and left a message on her answering machine on Monday morning

☐ c) Yes he validly revoked his offer when Chiara listened to the answering message on Tuesday 22nd of October

☐ d) No, his revocation was ineffective because it had taken place before the end of the period he had fixed for its acceptance

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

**(2 points per question*)***

**Question 11**: Article 2:202 of the Principles of European Contract Law provides that:

(1) An offer may be revoked if the revocation reaches the offeree before it has dispatched its acceptance or, in cases of acceptance by conduct, before the contract has been concluded under Article 2:205(2) or (3).

(2) An offer made to the public can be revoked by the same means as were used to make the offer.

(3) However, a revocation of an offer is ineffective if:

(a) the offer indicates that it is irrevocable; or

(b) it states a fixed time for its acceptance; or

(c) 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.** Do the same principles apply in relation to the revocation of an offer under French and English Contract Laws?

**Question 12**: Professor Pollock wrote ‘*An act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable*’. **Explain this definition of the doctrine of consideration, and analyse the role played by this doctrine** in English Contract Law. **Illustrate your answer with case law**.

**Question 13**: ***Consider the following scenario***. In September 2018, Richard moved to Oxford to study medicine. Simon, his father, promised to give Richard £1000 a month for rent and maintenance during his studies. In March 2019, Simon and Richard had an argument and Simon stopped sending money to Richard. Richard comes to see you to seek advice as to whether he can sue his father for breach of contract under English Contract Law. **Advise him using case law to illustrate your answer**.

**Question 14**: **Article 1102 of the French Civil Code** provides that:

Everyone is free to contract or not to contract, to choose the person with whom to contract, and to determine the content and form of the contract, within the limits imposed by legislation. Contractual freedom does not allow derogation from rules which are an expression of public policy.

**Analyse this article**. **Are there some limitations to the principle of freedom of contract under French Contract Law? Is the situation the same in English Contract Law?** **Illustrate your answer with case law**.

**Question 15**: In the English case of *Combe vs. Combe* (1951), Lord Denning stated that the doctrine of promissory estoppel could only be used 'as a shield, not as a sword'. **Explain what the doctrine of promissory estoppel refers to and analyse this statement. Illustrate your answer with case law**.