

Title	510 Commercial Law
Assessment Number and Version	Assignment 3
Prescription Version	V2
Semester & Year	Term 1 2018
Campus	Auckland

Date		Time allowed/Due Date	26 February 2018
-------------	--	------------------------------	-------------------------

Learning Outcomes	3, 5	Total Weighting	45%
--------------------------	-------------	------------------------	------------

PART A Learning Outcomes	Key Elements	Questions	Marks Available	Marks Awarded	Weightings
LO 3 – Students will apply the basic principles of the law of contract to given situation(s).	a) Creation of the contract: <ul style="list-style-type: none"> • Intention to create legal relations • Offer and acceptance • Consideration b) Vitiating of the contract: <ul style="list-style-type: none"> • Capacity of minors and companies • Consent-contractual misrepresentation and one of: undue influence or unconscionable bargains • Legality – restraint of trade provisions c) Remedies: <ul style="list-style-type: none"> • Cancellation (Contractual Remedies Act) • Damages • Debt recovery d) Interpretation of contractual terms for a given type of contract: <ul style="list-style-type: none"> • Identification of parties and their main obligations • Dispute resolution or termination clause • Two other common clauses relevant to the type of contract 	1. (a) (b) (i) (ii), (iii) (iv) (c) (i) (ii) 2. (a) (b) (c) (i) (ii) 3. 4.	15 15 15 15 (in-class assessment portion)		30%
Part B Learning Outcomes	Key Elements	Questions	Marks Available	Marks Awarded	Weightings
LO 5 – Students will apply basic principles of consumer law to given situations.	a) Fair Trading Act 1986: <ul style="list-style-type: none"> • Misleading or deceptive conduct • False or misleading representations • Remedies and penalties for breach 	1.	15		15%

	b) Current Consumer Guarantees Act <ul style="list-style-type: none"> • Application • Implied guarantees • Remedies 	2.	15		
Total marks					

Assessment Instructions:

--

STUDENT DECLARATION

I declare that this is my own work.

If this assessment is submitted electronically I understand that by entering my name/student ID below, this declaration will be deemed to have the same authority as a signed statement.

Student name:

Student ID:

Student signature:

Date:

Tutor/Assessor		
Marks:	%:	Grade:

PART A**TOTAL: 60 MARKS****Question 1.****(15 marks)**

(Creation of the contract: • intention to create legal relations • offer and acceptance • consideration)

(a) Intention to create legal relations

Jane, Aroha and Mike are close friends who decide to share a house together. All three of them enter into a tenancy agreement for the rental of a three bedroom house. The house is quite expensive and Jane cannot afford to pay as much as Aroha and Mike. The friends agree that, in return for paying a reduced share of the rent, Jane can have the smallest bedroom, which is a single room. Aroha and Mike equila will each have much larger, double bedrooms. The friends agree to share all other expenses equally.

The arrangement is going well until, several months later, Aroha and Mike are both made redundant from their jobs. Aroha and Mike are now insisting that Jane pays an equal share of the rent. They say that without work they cannot afford to “subsidise” Jane living in the house.

With reference to the law of intention and supporting your answer with valid reasons and reference to relevant case law, advise Jane whether her original agreement with Aroha and Mike is enforceable at law.

(5 marks)

(b) Offer and acceptance

Petula is studying at NorthTec for a New Zealand Diploma in Business. Last year she successfully passed Commercial Law and would like to sell her text book before the new semester begins. She intends to place an advertisement for her text book on the Department of Business notice board. The following events take place at the NorthTec notice board:

- Petula affixes her advertisement to the NorthTec notice board offering her book for sale at \$75.
- Charlie, a student about to study Commercial Law is watching and says to Petula: *“I can’t afford \$75. I have \$50 in my wallet. I will pay you that now for the book”*.
- Petula replies: *“No. I’m only prepared to sell it for \$75.”*
- Katy, another student who Petula does not like had seen Petula’s advertisement and who had been listening to the conversation blurts out before Charlie can say anything more: *“Done! I’ll take it for \$75”*.
- Petula then says to Charlie *“I will now accept your offer for \$50”*. Charlie says *“sorry too late lady!”*

- (i) Explain whether Petula’s advertisement in paragraph (i) above is an offer. You must give legal grounds and cite case law in your answer.

(2 marks)

- (ii) Does Katy have a valid contract? Ensure you give the law and apply to the facts.

(2 marks)

- (iii) Is it too late for Petula to accept Charlie's offer of \$50?. You must give legal grounds and cite case law in your answer.

(2 marks)

- (iv) At the end of the case study who owns the book? You do not need to give law or argument-rather just give the name fo the person you think it is.

(1 mark)

(c) Consideration

Daphne's car breaks down on a remote Northland road, many miles from the nearest town Kaikohe. A passing motorist, Mikey , stops and offers to give Daphne a tow to the nearest garage. On their arrival, a thankful Daphne obtains Mikey's address in Raumanga and promises to send him \$200 for his troubles. A month passes and Mikey still has not received the promised \$200.

- (i) Advise Mikey whether he has an enforceable contract with Daphne for the \$200 .

(2 marks)

- (ii) Giving reasons, advise whether your answer above would be any different if you knew that Daphne, on seeing Mikey's car approaching had waved him down and asked her to take her to the nearest garage, saying, "If you can drive me, I'll make it worth your while"?

(1 mark)

Question 2.

(Vitiation of the contract: • capacity of minors and companies • consent – contractual misrepresentation and one of: undue influence or unconscionable bargains • legality – restraint of trade provisions)

(15 marks)

(a) Capacity of minors and companies-Minor's Contracts Act 1969

Pete and Delwyn have been in a de facto relationship for 6 months. One day Delwyn says: "I want a car but we don't have any money-do you think we could borrow some?"

As Pete loves Delwyn he is prepared to do anything to get her a car. They find a car for sale at Lucky strike car dealers. The purchase price for the car was \$13,890 which they did not have. However, Pete said let's see if we can borrow the money!!!

Unfortunately, Delwyn had lost her job at burger king and Pete was only working part time as a ventriloquist act at local schools earning \$300 a week. So they decided to apply to You-loan Limited for a loan to enable them to purchase the car. When interviewed for the loan, Pete and Delwyn each gave their correct dates of birth (which when calculated correctly would have shown Delwyn to be 17 years and 8 months and Ben to be 17 years and 6 months at the time of contracting with You-loan Limited).

Regrettably, the loan officer working for You-loan Limited miscalculated their ages and proceeded on the basis that they were both 18 years old. In their application for the loan (which formed part of the contract), Pete and Delwyn had stated that their joint weekly income was \$750, which was incorrect because Delwyn was not currently working. The loan officer did not require verification of their income, for example by requiring a copy of pay slips.

The loan was approved and advanced to Pete and Delwyn on standard terms and conditions.

It is now 6 months later and Pete and Delwyn have not made any loan repayments. With reference to the Minors Contracts Act 1969 and relevant case law, advise You-loan Limited whether it can enforce the contract against Pete and Delwyn. Also advise who can sign the loan agreement on behalf the company?

(6 marks)

(b) Consent – misrepresentation

Jane of Whangarei purchased an automatic Honda from Paul. The car had done about 105,000 kilometres and had been imported by a previous owner. On

5

Honda car-A very neat specimen for its age. Upholstery in good condition except some wear on the front armrests and in the floor. Some chips and scratches here and there on the bodywork as you would expect but overall in excellent condition. Got it in January this year, it had 97,297 km then, my sister and her family used it to travel around NZ. Now selling again as I no longer have a use for it.

contractual and undue influence

purchased an automatic Honda from Paul. The car had done about 105,000 kilometres and had been imported by a previous owner. On

contacting Paul for the first time Jane realised that it was their lawyer that had completed the legal work when they bought their last home. The car had been advertised on TradeMe but had failed to sell. After the classified was withdrawn, the parties negotiated directly and agreed on a sale at \$4,400.00. Jane's husband went to Hikurangi to collect the car. When he went to pay he asked Paul whether he should get mechanic to check the car but Paul said I assure you that isn't needed. However, by the time he reached Kauri, the transmission was showing problems. He was able to get home, but the car has since been diagnosed with a transmission fault that cannot be remedied without a \$3,000—\$3,500 overhaul of the gearbox. Paul is not a car dealer and was selling the car privately. Advise Jane and her husband as to what their legal rights and remedies if any.

(6 marks)

(c) Legality – restraint of trade provisions

You are a lawyer in Kamo and over a week have 2 clients that seek advice about the following contractual terms. In each case advise whether you believe them to be valid or void and give your reasons (and where appropriate give case law to support your answer:

(i) In a employment contract a employee of a trucking company had a clause that stated: " If the employee leaves the employment they are prohibited from driving a truck for a period of 5 years within 100 kilometres of the employers yard at Station Road, Kamo, Whangarei."

(1.5 marks)

(ii) In a sale and purchase of a business contract a clause purported to restrain the vendor of a dairy from competing (establishing another dairy or working for another dairy) for 3 years and within 200 kilometers of the the dairy that had been sold.

(1.5 marks)

Question 3.

(Remedies: • cancellation (Contractual Remedies Act) • damages • debt recovery.)

(15 marks)

Billy visited Tamarillo Gallery Limited in Auckland. He viewed several pieces, and decided to commission a piece. He ordered a sculpture. When he went to see it he found it displayed and entitled " see you later alligator". The piece was displayed on an underlit plinth in the window of the gallery. Billy discussed this piece and other pieces with the gallery manager. With the managers consent, Billy took

photographs of the piece. Billy told the manager: "I am looking for a flawless piece of glass that I can display in my front lounge. It is a really sunny space."

Two days later Billy telephoned the gallery and agreed to purchase the commissioned piece.

That afternoon he rang and asked the manager: "Would you say that the glass is clear because I don't want to buy it with any bubbles in it!!!" The manager replied; "you will be happy".

The piece was delivered to Billy's home three days later.

Billy was very surprised by the appearance of the piece when it was delivered, in particular by the appearance of numerous bubbles and "veiling" in the glass, and a marked difference in colour.

Billy contacted the gallery and said he was unhappy and that he was cancelling the contract. He is most upset and demanded compensation for the costs of visiting the gallery and his time wasted.

(a) Is Billy entitled to cancel the contract? Make sure you use relevant case law and statute to support your answer.

(5 marks)

(b) What damages would Billy be entitled to? Make sure you use relevant case law and statute to support your answer.

(5 marks)

(c) Give advice as to what options Billy has here for enforcing any judgement in his favour. You can use a diagram to explain the debt recovery process.

(5 marks)

Question 4.

(Interpretation of contractual terms for a given type of contract: • identification of parties and their main obligations • dispute resolution or termination clause • two other common clauses relevant to the type of contract)

This is a in class assessment and will completed during a normal class. Materials will be supplied in class.

(15 marks)

PART B**TOTAL: 30 MARKS****Question 1.****(Fair Trading Act 1986: • misleading or deceptive conduct • false or misleading representations • remedies and penalties for breach.)**

Questionable Fitness (Q Fitness) has entered the Christchurch fitness market with swish new gyms in various suburbs. It launches a marketing campaign with the key slogan: "Top fitness facilities at only \$13.00 per week!" The advertisements are accompanied by a couple of photographs, including one of Q Fitness' trendy bike fitness studio.

Sandy visits Q Fitness with a view to joining it. She is given a tour of the fitness facilities during which Sandy is particularly impressed by the trendy bike fitness studio, exclaiming: "This will be fantastic for my triathlon training over the cold winter months!", in response to which the Q Fitness employee simply replies "yeah" and moves on with the tour. At the conclusion of the tour when Sandy indicates that she would like to join and starts completing the paper work, she becomes aware of the following:

- There is an initial joining fee of \$60.00;
- In addition to the weekly fee of \$13.00, there is an "administration fee" of \$25.00 per month;
- The membership does not include access to the bike fitness studio. If Sandy wishes to train there, then she will need to pay an additional fee of \$5.00 per session.

Annoyed, Sandy complains to the Commerce Commission. Q Fitness denies any wrongdoing. You are the Commerce Commission-analyse and advise if the Fair Trading Act applies, and if so what provisions may have been breached here and what are the legal consequences?

(15 marks)**Question 2.****(Current Consumer Guarantees Act: • application • implied guarantees • remedies)**

Rex has decided to replace the floor coverings in his house and art studio from where he sells paintings. After visiting several retailers he enters into a contract with Kiwi Discount Carpets Limited for the supply and laying of vinyl and carpet throughout his house and art studio, at a cost of \$9,000. He chooses a particular

shade of beige from a range of samples for the carpet and vinyl which will both fit with his décor and not interfere with his artistic inspiration.

Rex arrives back from a business trip the day the work is being done to find that the colour of the carpet is very different from the sample he looked at. He also notices that there are streaks in the vinyl, and gaps in several places around the edges where it has been laid in the kitchen and his work studio. The skirting boards have also been badly gouged and scratched in two places.

Rex complains to Kiwi Discount Carpets Limited but the manager points out a clause in the contract which reads: "The provisions of the Consumer Guarantees Act 1993 shall not apply to this transaction".

With reference to specific sections of the Consumer Guarantees Act 1993, advise Rex what legal rights he may have against Kiwi Discount Carpets Limited and what remedies he might expect.

(15 marks)

End of Assignment