

3^e année licence droit

DROIT ANGLAIS DES CONTRATS

Durée de l'épreuve : 1 heure.

Problem question

Eastmouth Tennis Club hosts an international Tennis Championship in April each year, at which all the leading players regularly play. Bernard owns a house five minutes' walk from the Club, which he regularly lets out to people wishing to attend the championship. In January 2014 Bernard agreed to let out the house to Sarah for the week of the championship, at the price of £1,500. Sarah paid the full sum in February, when Bernard confirmed the booking.

Consider the following circumstance :

On the second day of the Championship, one of the players is killed in a terrorist incident at the Club. As a result the organisers decide that the Championship cannot continue, and the event is cancelled.

Sarah wishes to know if she can recover all or any of the £1,500 she has paid to Bernard.

Document autorisé : NEANT.

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Traitez les deux questions suivantes :

Question 1 (15 points)

Evans agrees to ride Racing Ltd's bike in the *Tour de France* in return for a sponsorship fee of £10,000 to be paid in advance. Racing spent £5,000 designing and building Larry's bike. The Tour is cancelled when yet another cyclist tests positive for performance enhancing drugs and Evans has only been paid £5,000 of the sponsorship fee.

- 1) Advise both parties.
- 2) Would your advice be any different if Evans had been the cyclist who had tested positive for drugs?
- 3) What if the Tour was not cancelled but Racing had sponsored five cyclists and, because lightning had hit their manufacturing plant, they could only supply bikes to four of their riders, and because Evans was the least likely to win the Tour, they refused to provide him with a bike?

Question 2 (5 points)

- What are the basic requirements for misrepresentation? (Citez-les sans développer)
- What is "A benefit to one party or a burden to the other party"?

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You have one hour to discuss the following hypothetical case. Your analysis should contain the following elements: (1) identify the issue(s), (2) state the general rule of law along with possible exceptions, (3) apply the rule of law previously presented to the fact pattern below, and (4) conclude by indicating how a court would rule. The only document you are allowed to look at is the Unfair Contract Terms Act 1977 (enclosed in Annex).

One morning, Andrew sees an advertisement in the newspaper for a day of introduction to skydiving. The advertisement reads "Come discover the fun of skydiving at *The Kings of the Skies, Ltd.* For only £100, you will experience the thrill of jumping from an airplane, overseeing our beautiful Earth. Should you be unhappy with your experience, we will refund you the £100, no questions asked." Andrew always wanted to skydive and thus, the very next day, he went to make his dream come true. Bill, the owner of *The Kings of the Skies, Ltd.* welcomes Andrew with a cup of coffee and a contract containing the terms of agreements. The contract contains a clause stating "*The Kings of the Skies, Ltd.* shall not be responsible for harm resulting from negligence on the part of the *Kings of the Skies, Ltd.*'s employees and agents. By signing this document, you agree that skydiving is a high risk sport." Seeing Andrew's hesitation while he was reading the clause, Bill exclaims "Oh but do not worry! Nothing bad ever happens!" Andrew signs the contract and Bill leads him to a short training session before getting him ready for the big jump.

Because Andrew is not a trained skydiver, Bill arranges to have him jump with John, an instructor employed by *The Kings of the Skies, Ltd.* John will be on Andrew's back and will handle all of the technical aspects of the jump, including opening up the parachute. Andrew and John get on the airplane and after reaching the proper altitude, the men jump. Andrew is suddenly startled by screams from John. Andrew quickly realizes that John is unable to open the parachute. As they are losing altitude, Andrew is starting to panic. As they reach a dangerously low altitude, John finally manages to open the parachute. The landing is harsh, brutal, and as a result, Andrew suffers some bruises. It turns out that the inability to open the parachute was due to a problem that would have been noticed had the team of *The Kings of the Skies, Ltd.* performed a proper inspection of their material before the jump. The crew had however failed to perform such an inspection. Andrew is extremely shaken and shocked. He swears never to skydive again and asks Bill for his money back. Bill refuses saying the advertisement was just puffing. Andrew thus comes to see you to see whether he can recover the £100 that was promised in the advertisement and whether he can sue *The Kings of the Skies, Ltd.* for negligence and recover damages for emotional distress. If/when applicable, explain what *The Kings of the Skies, Ltd.* might assert and whether these assertions would be successful. Your entire analysis should be made according to Common Law and to the Unfair Contract Terms Act 1977 (see document in Annex).

Jane, Andrew's wife, is also encountering some challenges. Jane befriended a neighbor, Sally. Due to an illness, Sally needs someone to drive her to the hospital on a regular basis. Jane agrees to help her and in exchange, Sally promises Jane she would give Jane her original Picasso painting. Jane then drives Sally several times to the hospital. When Sally unfortunately passes away, Sally's estate representatives refuse to give Jane the painting and try to revoke the arrangement. The representatives would like to keep the painting and give Jane some money instead. Jane comes to you to see what she could do. Is she entitled to the Picasso painting?

3^e année Maîtrise Droits français et anglais

DROIT CONSTITUTIONNEL

Document autorisé : Aucun

Durée de l'épreuve : 1 heure

Expliquez à la lumière de vos connaissances sur le fonctionnement de la V^{ème} République les raisons qui ont conduit le Comité Balladur à proposer les modifications, présentées ci-dessous, des articles 5 et 20 de la Constitution

Propositions de modification de la Constitution de 1958 du comité dit Balladur

Article 5 : Le Président de la République veille au respect de la Constitution. Il assure, par son arbitrage, le fonctionnement régulier des pouvoirs publics ainsi que la continuité de l'Etat.
Il est le garant de l'indépendance nationale, de l'intégrité du territoire et du respect des traités.
Il définit la politique de la nation.

Article 20 : Le Gouvernement conduit la politique de la nation.
Il dispose à cet effet de l'administration et de la force armée.
Il est responsable devant le Parlement dans les conditions et suivant les procédures prévues aux articles 49 et 50.

Pour mémoire : Constitution de 1958.

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Art. 20 : Le Gouvernement détermine et conduit la politique de la nation.
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SUJET SUR 5 PAGES

Réponse juste : 1 pt

Réponse fausse : 0 pt



- 1) Which of the following types of statement *clearly cannot* give rise to a claim for misrepresentation?
 - a. A promise
 - b. A statement of intention
 - c. A statement of opinion

- 2) In the leading case in the area of intention to create legal relation, *Balfour v. Balfour* [1919] 2 KB 571, Atkin LJ suggested that the basis for the presumption that the parties to a domestic agreement do not intend to create legal relations is mainly derived from:
(One correct answer)
 - a. A principle of public policy
 - b. The intentions of the parties involved
 - c. The lack of evidence in domestic agreements

- 3) The doctrine of consideration can be outlined in the form of three rules. Which *one* of the following is the one *out*?
 - a. Consideration must be sufficient
 - b. Consideration must be adequate
 - c. Consideration must not be past
 - d. Consideration must move from the promisee

- 4) All three judges in *Williams v. Roffey Bros* mention *Stilk v. Myrick* in their judgments. What do they do with the case?
 - a. *Stilk v. Myrick* is applied
 - b. *Stilk v. Myrick* is refined
 - c. *Stilk v. Myrick* is overruled

- 5) One of the rationales behind the use of consideration in the pre-existing duty cases is the desire to protect the promisor from duress by the party promising to perform his pre-existing duty. The adoption of a duress-based approach can entail a number of (sometimes incompatible) propositions. Which one of the following propositions does not follow from the adoption of a duress-based approach?
 - a. The scope of the doctrine of consideration is too narrow
 - b. The scope of the doctrine of consideration is too broad

6) In *Combe v. Combe*, Denning LJ stated "The doctrine of consideration is too firmly fixed to be overthrown by a side-wind". To which of the following propositions was he referring in this quotation?

- a. Duress-based approaches are satisfactory in cases of contract modification but not contract formation
- b. The doctrine of estoppel can only be invoked by litigants able to establish that the promise on which they base their claim is supported by consideration
- c. The doctrine of estoppel can never stand alone as a cause of action in itself

7) With reference to the formation of a contract, what is an 'invitation to treat'?

- a. An offer by one party that results in a contract upon acceptance by a second party.
- b. A statement welcoming the submission of offers without any legal guarantee that a contract will result.
- c. A counter-offer made in response to an offer and suggesting a contract on modified terms.

8) A 'battle of the forms' occurs where both buyer and seller use standard forms and both appear to enter into the contract on the basis of their own general conditions. In these circumstances, two main approaches have been applied. One is to deny the existence of a contract on the basis that there is no true agreement between the parties. The other is to consider the last set of forms sent to be decisive, the terms of which will govern the contract. Which of these approaches was adopted in *Butler Machine Tool Co v. Ex-Cell-O Corporation* [1979] 1 WLR 401?

- a. The first - no contract was found.
- b. The second - the parties were said to have agreed on a set of terms.

9) Rescission is a self-help remedy in that a party can choose to rescind a contract without the need for a court order.

- a. T
- b. F

10) Fraudulent misrepresentation is established when a person makes a false statement that he knows or believes is not true, or makes recklessly, not caring whether it is true or not.

- a. T
- b. F

11) Fiona and Paul negotiate over the sale of a computer. Paul tells Pauline, Fiona's friend, who is a computer expert and who Paul knows has been advising Fiona on the sale, that the computer has never crashed and never needed repair. Pauline tells Fiona, and Fiona relies on this information and buys the computer. It crashes on first use and Fiona calls out a technician who discovers that the hard drive has already been replaced once; the diagnostic history reveals that the computer has a fault that causes it to crash on a regular basis.

- a. Fiona can rescind the contract and claim damages for fraudulent misrepresentation on the basis of Paul's statement.
- b. Fiona was not entitled to rely on the information from her friend, and so she cannot rescind the contract or claim damages for misrepresentation.
- c. Fiona cannot rescind the contract because the principle 'buyer beware' applies and Fiona should have sought a promise from Paul if she wanted the computer's performance guaranteed.



12) Harbour Heights (estate agents) advertise for sale a large warehouse on the harbour. Mario hopes to buy the warehouse and make extensive changes so as to convert it into his own studio cum architectural exhibition centre. In an attempt to clinch the deal, an HH representative tells him that there are no planning restrictions preventing a change of use or design of the warehouse. Mario buys the warehouse on the faith of this representation, and soon discovers that all changes to the present interior architectural features are forbidden. Mario wishes to bring a claim for misrepresentation but finds the following statement under clause 8 of the concluded contract: "No servant or agent of HH & Co has the authority to make any representation or warranty on behalf of HH & Co". Advise Mario as to the effect of HH's attempt to exclude liability for misrepresentation.

- a. HH's attempt to exclude liability for misrepresentation is unlikely to be effective as under section 3 of the Misrepresentation Act 1967 it is unreasonable
- b. HH's attempt to exclude liability for misrepresentation is likely to be effective because it does not fall within the scope of section 3 of the Misrepresentation Act 1967
- c. HH's attempt to exclude liability for misrepresentation is likely to be effective because it is not unreasonable in the manner envisaged by section 3 of the Misrepresentation Act 1967

13) John is promised £500 to work as a waiter for a New Year's Eve Gala dinner from 6p.m. to 4a.m. At 1a.m., John falls ill and has to go home without completing his shift.

- a. John can claim 70% of his £500 pay in an action for the price, because he worked 70% of his shift.
- b. John cannot claim any of his pay because he failed to perform fully his obligation to work the ten-hour shift, which is not severable.
- c. John can rely on the equitable rule that a worker can claim part of his total pay for each hour worked.
- d. John's pay was too high for a job of this nature and so he cannot claim back any of his pay.

14) What did Denning LJ mean when he said, in *Combe v Combe* (1951), that the doctrine of consideration was 'too firmly fixed to be overthrown by a side wind'?

- a. That the doctrine was too rigid and should therefore be abolished.
- b. That it was impossible to get rid of the long-established doctrine of consideration by allowing promissory estoppel to create rights of action on its own; estoppel can only act defensively to prevent a promisor from going back on his promise not to exercise his existing contractual rights.
- c. He was not in favour of promissory estoppel and saw it only as an annoying side wind.
- d. That promissory estoppel is a weak doctrine and should not replace the stronger and more effective doctrine of consideration.

15) The presumption that domestic parties do not intend to create legal relations between themselves is limited to agreements between husband and wife.

- a. T
- b. F

16) With reference to the formation of a contract, what is an 'invitation to treat'?

- a. An offer by one party that results in a contract upon acceptance by a second party.
- b. A statement welcoming the submission of offers without any legal guarantee that a contract will result.
- c. A counter-offer made in response to an offer and suggesting a contract on modified terms.



- 17) A party is not bound by a contract if he entered it under a mistake.
- a. T
 - b. F
- 18) A void contract has never been a contract and never will be.
- a. T
 - b. F
- 19) Which of the following form part of Lord Phillips' five principles in *The Great Peace* (2002) in relation to common mistake? (select all that apply)
- a. There must be a common assumption as to the existence of the state of affairs.
 - b. The non-existence of the state of affairs must render the performance of the contract impossible.
 - c. The non-existence of the state of affairs must not be attributable to the fault of either party.
 - d. The common assumption must be communicated orally by one party to the other.
- 20) The £50,000 compensation payment in *Bell v Lever Bros* (1932) was:
- a. recoverable, because the two employees did not realize that their employment contracts could be terminated without compensation by reason of their speculation activity in breach of contract.
 - b. valid, but the employment contract was void because the two employees did not realize that their employment contracts could be terminated without compensation by reason of their speculation activity.
 - c. valid, because the employer's mistake in relation to its ability to terminate the employees' employment contract was not fundamental.
- 21) Which of the following may give rise to a "statement of fact"?
- a. 'The roof of the barn does not leak.'
 - b. 'I intend to fix the roof of the barn this summer.'
 - c. 'The roof of the barn complies with all local planning laws.'
 - d. 'This barn roof is probably the best roof around this area.'
- 22) Which of the following are *bars* to rescission? (select all that apply)
- a. Restitution is impossible.
 - b. The representation is true.
 - c. Section 2(2) of the Misrepresentation Act 1967.
 - d. Affirmation of the contract.
- 23) Ben offered to sell his prize collection of football memorabilia to Sam for £500. Sam rejected the price and offered to pay £400. Ben refused this amount. Later when Sam found out that Ben was going to sell the memorabilia items to Ellie he tried to accept the original price of £500. Which of the following statements is correct?
- a. A contract will be formed when Sam accepts Ben's original offer
 - b. If Sam accepts before Ellie, a contract will be formed between Ben and Sam
 - c. There will be no contract, Sam's attempt to accept the original price of £500 is too late because a contract has been formed with Ellie
 - d. There will be no contract, Sam's offer to pay £400 will be regarded as a rejection of Ben's offer

24) Harvey lost his gold sovereign necklace whilst attending a local charity concert at the Town Hall. He advertised a reward of £30 for its return in the local paper, which Britney saw. Britney later found the necklace on the car park of the venue and returned it to Harvey. Harvey thanked Britney for the necklace but told her that he had purchased a new necklace and his offer was revoked. Britney wishes to claim the reward. Which one of the following statements is correct?

- a. Britney cannot claim the reward because she did not communicate her acceptance of his offer of reward.
- b. Britney can claim the reward because by returning the necklace she has accepted the offer of the reward.
- c. The advertisement in the local paper is an invitation to treat and not an offer.
- d. Britney cannot claim the reward as Harvey has now purchased a new necklace, and this act amounted to revocation of the offer.

25) On Tuesday, Julian offered to sell his motorbike to Ben for £200, telling Ben he must have a reply by Sunday. On Thursday, Julian offered to sell the motorbike to Ellen for £250 and she accepted. Later that day, Ben learnt of the sale from Ellen's boyfriend, Sam. On Friday, Ben accepted Julian's offer. Which one of following statements is correct?

- a. Julian is bound to sell to Ben because he did not personally notify David of his intention to revoke the offer.
- b. Julian is bound to sell to Ben because he did not revoke his offer and an offer can be accepted at any time before revocation.
- c. Julian is bound to sell to Ben because an offer can only be made to one person at a time and therefore the offer to Ellen is invalid.
- d. Julian is not legally bound to sell to Ben because when Sam told Ben of the sale, the offer had been effectively revoked.

26) Angela wrote a letter to Chris saying, 'I will sell you my blue Saab convertible for the bargain price of £12000. If I hear nothing from you by the end of the week I will take it that we have a deal'. Chris did not reply to this letter. When Chris went to Angela's house to collect the car, he was told the car had been sold on the previous day to Boris for £11500. Which one of the following statements is correct?

- a. Angela has made a unilateral offer, which Chris has accepted by turning up at the house to buy the car.
- b. Chris has accepted Angela's offer and can sue for breach of contract.
- c. There is no contract between Angela and Chris, as Angela cannot impose silence as acceptance upon Chris.
- d. Angela is in breach of contract because by his silence, Chris did accept the offer.

27) On 10 January Ruby offered to sell her caravan to Amber for £3,500. Ruby gave Amber 3 weeks to consider the offer but told her that she must have notice in writing if she wanted to buy the caravan. Ten days later Amber sent a letter of acceptance to Ruby by recorded delivery. The letter is lost and hearing nothing from Amber, Ruby decided not to sell the caravan. Amber wants the caravan. Which one of the following statements is correct?

- a. The offer has been revoked because Ruby has decided not to sell the caravan after all.
- b. There is no contract because Ruby did not receive the letter.
- c. There is a contract between Amber and Ruby because a contract came into existence when the letter of acceptance was posted.
- d. There is a contract between Amber and Ruby because although the letter was never received by Ruby it was sent by recorded delivery and Amber can prove that she posted it.