MODEL EXAM

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IRAC method of exam technique

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 – Usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of upmost importance as it will help you clarify your thoughts and ensure that you avoid following exam strategies that students commonly resign themselves to:

    i)   'the kitchen sink' i.e spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hope 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.

CONTRACT LAW EXAM

Here is a distinction-level model answer for a Contracts problem. Contracts is a subject typically taught in the first or second year of a law degree. This exam answer is an excellent example of the IRAC method, an exam technique which is espoused by law lecturers around the country. Try to answer the question yourself first before looking at the answer. Don't worry if you didn't come up with the same amount of text as is in the answer below. The student who wrote this answer had a considerable amount of time in which to write. Good luck!

QUESTION

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 enure 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 contact 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.

Brett then sent a guarantee contract to Minh, under which Minh's parents agreed to pay any outstanding money that Minh may end up owing Brett if the business failed. Late one evening Minh took this contract to his parent's apartment to get them to sign it. Minh's parents, who were in the middle of a game of poker at the time, asked what the document was for and Minh replied 'oh nothing much, just something for the new business.' Minh's parents, who were very proud of their entrepreneurial son, enthusiastically signed the document without reading it or pressing Minh for details. It should be noted that Minh's parents are first-generation immigrants from Vietnam who emigrated to Australia as refugees after the Vietnam war. They have both developed only a tenuous grasp of the English language.

Everything was now set for the business arrangement between Minh and Brett to begin functioning. The first package of chips arrived at Minh's office on March 3. Minh discovered that the chips were slightly larger than the industry standard 2cm x 2cm. In order to get them to fit into his motherboards, Minh was forced to manually alter the motherboard using a soldering iron. This is a fairly quick and easy operation.

However, when he installed a *Fasttrack* chip into the modified motherboard of a computer to test its processing speed, Minh discovered that the chip operated considerably below the standard Pentium III capacity that he was expecting. Being pressed for time due to other arrangements which he needed to make for the business, Minh neglected to make an immediate complaint to Brett.

On June 5 Minh began in earnest to start building computers that customers had ordered. He was shocked to discover that *all* of the chips that he tested operated at a speed ¾ of full Pentium III capacity. Minh came to the realisation that the chips would not operate at full capacity unless he replaced his COMPUSHADE v2.0 interface with the new COMPUEASE v1.0 software system. Mihn reluctantly decided to purchase the software package. The package cost him a considerable amount of money because it was more than a simple upgrade. Minh also had to spend time learning how to use the new interface. Minh went to see Brett to complain about this unacceptable situation. Brett responded by highlighting that the contract contained no provision indicating that the *Fasttrack* chips would function at full capacity with COMPUSHADE v2.0 software. Brett also raised the fact that clause 15 of the contract said: 'The entire agreement is embodied in this contract, with respect to the subject matter thereof. There are no prior warranties or representations relating thereto.' Minh was incensed.

On July 2, Minh's soldering iron broke down. Minh now decided that enough was enough and he was sick of modifying the motherboards, even though it was pretty routine job. He wrote to Brett pointing out

that that the chips did not meet the contract requirement that they be of size 2cm x 2cm and that he would not accept any further deliveries of chips from Brett. Brett wrote back and said: 'I am treating your latest letter as an unwarranted repudiation of your obligations under our contract and as such, I hereby terminate the contract. I intend to claim $10,000 as damages. This is for the profit for the remainder of the contract.'

By this stage Minh's business was in dire straights. He had spent a lot of time and money installing the new software on his machines and lost a lot of business during this time.

Minh asks you for advice as to:

i)   his rights and liabilities arising from the business arrangement with Brett which has turned sour; and
ii)   if he is liable under the contract with Brett, whether his parents will be liable under their guarantee.

ANSWER

By 'The Steamtrain'

ANSWER PLAN

Issues

What does Minh (M) want?

A. M wants to be able to resist Brett (B)'s claim for $10,000 in damages. The issue is whether B was justified in terminating the contract due to M's repudiatory conduct in cancelling the supply of chips. A subordinate issue is whether there are any barriers to B terminating owing to the fact that the initial breach was due to him [*Sheville*].

B. M wants to be justified in terminating the contract due to a serious breach with respect to:

> *Step 1-* **I**ssues
>
> There are four broad issues that are outlined in this section. Sub-issues are briefly stated throughout the rest of the answer

   1. The size of the chips being different to the stated size in accordance with the express term as to the industry standard (condition of contract – not a major issue).

   2. The statement as to the full compatibility of the *Fasttrack* chip with the COMPUSHADE v2.0 software (this section contains the bulk of the answer).

The issue in this case is whether this statement was part of the terms of the contract. A subordinate issue is whether there was a barrier to termination in that M's conduct in not immediately representing to B about the slowness of the chips was impliedly representing to B that the chips were OK.

C. M wants his parents not to be liable under the terms of the guarantee. The issue is that even though his parents had signed the guarantee which provides evidence of consent [*L'Estrange*], is there a special equity in favour of parents to get them out of a guarantee? [*Garcia*] Alternatively were they the victims of unconscionable bargaining?

D. M wants damages in the form of expenses thrown away for the costs that he incurred in setting up the computer business.

Rules and application

> *Step 2 and 3:*
> **R**ules and **A**pplication
>
> In a long answer like this one it is best to separate the rules and have separate applications for each issue - A,B,C,D

A. Preliminaries

B's right to terminate

In order for B to be justified in terminating the contract, there must have been a serious breach that justified termination. He will rely on M's repudiatory conduct in order to prove this [*Laurinda*].

Did M's statement that he would not accept any further deliveries of chips from B evince an intention not to be bound by the contract? [*Laurinda*] It may be argued that whilst prima facie there was a repudiation of the contract in that M terminated it, M was acting honestly and did not intend to repudiate his obligations if the seller (B) had applied a correct interpretation as to the size of the chips. M may argue that whilst he terminated there was still an intention to be bound by the contract, provided the other party (B) had observed its obligations and provided chips that were of industry standard size.

Rules:

- serious breach
- repudiatory conduct

Clear application of rules to the facts

Barriers to termination

Equity may step in to provide a barrier to termination. In *Foran v Wright* it was established that the breaching party impliedly represents to the other party that they (the other party) do not have to fulfil their obligations under the contract. Hence the initial breaching party are estopped from relying on the innocent party's subsequent breach as a ground for termination. It was B's initial breach in that he failed to provide the correct sized chip, thereby breaching the condition, which resulted in M terminating the contract. Therefore, B is estopped from subsequently holding M in breach.

Concisely-written paragraph on one sub-issue that states the rule and applies it to the facts.

B. M wants to be justified in terminating the contract

1. Was the statement about the size of the chips a sufficient breach which justified termination?

Clause 10, which specifically states that the size of the chip will be industry standard 2cm x 2cm, is a condition of the contract. A condition is an essential term, the breach of which justifies termination [*Oscar Chess*]. That the size of the chips was 2.5 x 2.5 cm is a breach of this condition which justifies termination.

2. Is M justified in terminating the contract due to the statement about the chips being able to function with COMPUSHADE v2.0 being erroneous?

Identification of the terms:

In order to be justified in terminating the contract M needs firstly for the statements made about the compatibility with COMPUSHADE v2.0 to be included in the contract.

   a) Was the statement promissory in nature?

Test: what would the reasonable person, hearing or reading the statement in question have concluded as to its status? [*Oscar Chess*]

Relevant factors to consider:
   - the language used: 'No worries Minh. I guarantee that the *Fasttrack* chips will be compatible with your COMPUSHADE v2.0 interface.' This language clearly affirms the statement to be true.
   - Relative expertise of the two parties: B is a specialist supplier of *Fasttrack* chips and should know about chip's capacity to work with particular software packages [*Ellul Oakes*]

Furthermore, it is clear that this aspect of the product was important to M as he made a specific inquiry as to the ability of the chips to function with COMPUSHADE v2.0, and explained his requirements to B.

Hence, the proper inference from the fact situation is that the statement was a promise.

   b) Was the statement part of the contract?

Test: It is a matter of ascertaining the intention of the parties by reference to what a reasonable observer would conclude.

The main factor to consider is that there is an entire agreement clause which has the effect of excluding the statement made about the capacity of the chips.

However, the fact that it was a standard sales contract does leave some room for the suggestion that it was a partly written/partly oral contractual agreement, the promise being included therein. It could be argued that is was just a form and therefore does not comprehensively contain their specific agreement.

Nonetheless, the better view is that the parties had deliberately reduced their contract to a formal written document. Therefore the Parol Evidence Rule applies to make the written contract the sole

If you have to apply a test, state it explicity first.

Using dashes or dot points make your answer clearer.

repository for the parties rights and liabilities. The extrinsic evidence in the form of the statement about he capacity of the chip to function with COMPUSHADE v2.0 therefore cannot be used to add, vary or contradict the written term [*State Rail Authority of NSW*].

Therefore it is unlikely that B's oral promise would be seen as part of the contract.

Make frequent use of case law as legal authority.

Collateral contract

It may be argued that the promise constituted a collateral contract [*Heilbut Symonds*], the consideration for which was the act of entering into the main contract. The veracity of the statement was certainly important to M. However, there is a heavy onus to be borne by the person proving a collateral contract especially in these circumstances as the subject matter – the capacity of the chips – is the same as the main contract [*Shepherd*].

It is unlikely that a collateral contract would be found to exist due to the restrictive rule in *Hoyts v Spencer* which states that a collateral contract cannot stand if it contradicts the main agreement. Therefore, clause 15 would rule out the possibility of an enforceable contract.

Separate sub-issues with distinct headings

Estoppel

Another alternative is estoppel which may be used to enforce the collateral contract instead. B may be estopped from going back on his promise as to the capacity of the chips if it can be established that:
   a) a clear unequivocal statement was made [*Legione v Hateley*]
   b) that there was detrimental reliance on M's part; and
   c) it was reasonable to rely on the promise.
If so, M may claim damages as a result of the broken promise [*Walton Stores v Maher*]

Effect of signature

There is no doubt that M is bound by the terms of the contract as signature is 'irrefragable evidence of assent' [*L'Estrange v F Goucob*] and therefore M is bound by the terms of the contract

If the statement is found not to be part of the contract, M wants to be able to rescind the contract and receive restitution payments to return him to the status quo due to:
   a) misleading and deceptive conduct
   b) misrepresentation.

Misleading and Deceptive Conduct

The statement as to the capacity of chip to be fully compatible with COMPUSHADE v2.0, may constitute misleading or deceptive conduct under s52 of the *Trade Practises Act*, if it can be proven that the statement was made:
   i)   by a corporation
   ii)   in trade or commerce
   iii)   that it was misleading or deceptive.

i) B is a salesman for the Hot Chips company which specialises in manufacturing and selling computer chips (agency theory). He therefore satisfies the corporations aspect of s52.

ii) B's sale of computer chips is integral to his business of being a computer chip manufacturer and therefore falls within the trade and commerce limitation of s52 [*Concrete Constructions*].

iii) B's conduct was misleading in that is was fallacious as to the chip's capacity to be fully compatible with the COMPUSHADE v2.0 software. Furthermore, it lead M into error in that based on B's assurance, M placed an order for the chips. Furthermore, it was reasonable to M to rely on the statement, it being made by a professional, the salesman for the manufacturer of computer chips, whom one would assume would be knowledgeable as to their capacity [*Henjo*]

Misrepresentation

In order to prove a misrepresentation under the general law:
   i)   the statement must be a statement of fact and not opinion [*Smith*]
   ii)   it must have induced the other party to enter the contract.

i) The test to determine whether the statement is of fact is objective [*Smith*]. The context in which the representation was made suggests that it is factual. Certainly the relative expertise and differential knowledge of B being the salesman for a computer chip manufacturer is relevant [*Smith*]. It would be argued that he should have known about the capacity of the *Fasttrack* chip to be compatible with the COMPUSHADE v2.0 software and as such his statement that 'the *Fasttrack* chips will be compatible with the COMPUSHADE v2.0 interface' should be taken to be factual.

ii) If the misrepresentation does not actually induce one into the contract it cannot be a misrepresentation. It must be *an* inducing factor, not *the* inducing factor. Furthermore, the person receiving the misrepresentation must be unaware that the statement made was false to be an inducing factor [*Gould*]. A subjective test is used i.e did this statement induce this person rather than the ordinary

person? [*Nicolas v Thompson*]. Clearly, M was assured by the statement and as a result of that assurance he placed an order for the chips. Furthermore, there is no obligation to check the validity of the statement [*Redgrave v Hurd*] and therefore even though M checked the chip's ability with B, he is not entitled to take B at his word.

Contract voidable

If any of the above excuse areas of law are proven it will render the contract voidable. A voidable contract is perfectly good until it is possible substantially to restore the parties to the status quo.

It may be argued here that the recision is not possible as the contract has been affirmed. M's perseverance for a while with the chips may constitute a positive act that affirmed the contract. However, the better view is that this act was an attempt 'to make the contract work' or that M was mitigating his loses.

The common law is very strict about recision and states that it is not possible unless absolute control and exact restitution was possible. Here M could still use the chips if he upgraded his software.

Equity however may step in and allow the contract to be rescinded even if the parties could not be restored precisely to the status quo. Equity will allow for adjustments amongst the parties (equitable indemnification) to achieve an undoing of the contract (substantial restitution) [*Vadasz*]. Here, clearly this could include a reimbursement for the unused portion of the chips. The partial recision test here [*Amadio's* case] – 'would the parties have entered into the contract at all or would they have entered with partial modifications?' - would be partially satisfied. Clearly M required chips that would be compatible with COMPUSHADE v2.0, therefore he may not have entered into the contract at all if he had known. He probably would have entered into the contract with an alternative chip supplier had be known that the chip B was supplying was not fully compatible with COMPUSHADE v2.0.

C. Parents' liability under the guarantee

It is unlikely that the parents will be able to use the excuse of unconscionable bargaining, as a requirement is that the other party to the contract was aware of their vulnerability. The other party to the contract is B who knew nothing about their special circumstances. Because M was the one who got them to sign the document, it is unlikely that the argument of unconscionable bargaining will work.

However, the rule in *Yerky v Jones* says that there is a special duty in favour of wives who sign guarantees for their husbands. *Garcia's* case suggests that this may be expanded to other publicly declared relationships of trust, confidence and dependence. Clearly the parent – son relationship is one. In obiter, the High Court opened the door to recognise the possibility to expand the special equity to such relationships. Therefore I would suggest that the special equity should apply in this context [*Amadio's* case].

Clear statement of the law

It is clear that M is using this relationship of trust and confidence to get the contract signed. His parents were elderly and had little understanding of English. The papers were presented to them in a social setting and little was explained about the effect of the contract. They did not read the document and asked few questions and relied on M to assist them with the interpretation of the document. It should have been obvious to M that his parents did not fully understand what they were getting themselves into, particularly when they inquired about what was in the document.

Excellent application

Hence it is likely that his parents will not have to honour their guarantees on the grounds of a special parents equity.

E. Damages

The breach which caused the loss is the negligent misstatement about the compatibility of the *Fasttrack* chips with the COMPUSHADE v2.0 software. This is what caused the time and money delays. Therefore to get the damages, M is claiming he cannot rely on the breach with respect to the size of the chips as this did not cause loss. *Sheville's* case also says that since he relied on an express termination clause he cannot get damages for losses in the future or that occurred after the breach.

M may claim damages under the head of 'expenses thrown away' in respect of the costs he incurred in upgrading his software. However, he has gone one step further and claimed damages for the cost of setting up his entire business venture which went sour because of a mistake by B.

The principle with respect to damages is that the damages are supposed to place the victim in the position s/he would have been under if the contract had been properly performed [*Alexander*].

The following must be proven:
- causation
- remoteness
- mitigation:

Concisely tells the marker where this section of the answer is headed.

Causation

The plaintiff must prove that the breach caused some financial loss [*Alexander*]. It may be argued that the prominent or common sense cause of M's losses in that of the costs of setting up the new business is his lack of business expertise. He is in business on his own; he doesn't have a company structure and he placed quite substantial orders without considering the demand for his product.

The substantial amount of money that M spent on upgrading his software may be argued to be an independent decision that he made on his own. He would have to argue that B caused this or he was relying on B's negligent misstatement as to the compatibility of the chip with the software and therefore organised his business around it.

Remoteness

The contract breaker is only expected to compensate for those losses which are reasonably within his or her contemplation as likely to result from failure to perform [*Hadley*]. The defendant must compensate the plaintiff for the ordinary losses which were reasonably foreseeable at the time of entering the contract, as a serious possibility arising from a breach. This I would suggest would be some damages for loss of profit, as M had to take extra time and money to upgrade the software [*Victoria Laundry*]. However, I would class the damages with respect to the set up cost of his failed business as extraordinary losses. As these extraordinary losses were not brought to the attention of B when they were signing the contract, I would suggest that she should not be compensated for them.

Mitigation

The plaintiff must take reasonable steps to minimise the loss at the expense of the party in breach. That is, there is a duty to mitigate or minimise M's losses by trying to minimise the losses flowing from the breach. It may be argued that M did try to mitigate his losses by upgrading his software.

> *Step 4-* **C**onclusion
> Each main issue is dealt with

CONCLUSION

- It seems that B will have a barrier to termination [*Foran v Wight*] due to his initial breach of the condition in not supplying the right sized chip. If M relies on this breach of the condition as a reason for his termination, then he will be justified in his termination.

- However, it seems that the actual cause of M's losses (his business collapsing) was the statement made about the compatibility of the chips with the COMPUSHADE v.2.0 software. This is what caused the time and money delays. Now M may rely on misleading or deceptive conduct or misrepresentation with respect to the statement however this will only provide the remedy of recision (again dependent on whether the status quo can be effectively returned).

- Therefore in order to get the damages he seeks, M must prove that the statement was a negligent misstatement. This would entitle him to the tort measure of damages he is seeking. However, it seems that even if he does prove a negligent misstatement and that the breach of this promise was causative of his loss and the type of damages will be found to be too remote i.e an extraordinary loss that was not brought to the attention of B at the time of the formation of the contract.

- Further, it does not seem that M's parents will be liable under the terms of the guarantee [*Garcia; Yerky v Jones*]

An effective way to wrap-up your answer. Don't forget, you are meant to be representing a hypothetical client.

ADVICE

Minh should proceed with an action for damages just for minor loss of profit and time due to reliance on a negligent misstatement as to the compatibility of the chip with the COMPUSHADE v.2.0 software.

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