Level 6 Professional Diploma in Procurement and Supply

PD6 - Legal aspects in procurement and supply (UK)

EXAM EXEMPLAR QUESTIONS

QUESTIONS AND INDICATIVE ANSWER CONTENT
Q1  Learning outcome: 1.0

Kendrake Ltd is a food supplier to a large retail supermarket. Kendrake was approached by the supermarket who requested that it should add an extra 25% volume to some produce to assist the supermarket with a special promotion. However, the price Kendrake would charge to the supermarket would remain the same. Kendrake was reluctant to enter into this agreement but felt compelled to agree when the supermarket suggested that it might affect future business if it did not cooperate.

(a) Assess whether there are any grounds for Kendrake to have the agreement set aside since it no longer wishes to provide the extra volume without some kind of compensation. (15 marks)

(b) Evaluate the circumstances when the law of mistake would render a contract void. (10 marks)

Marking scheme

(a) This question deals with two contractual issues. The main issue is duress and the other is consideration. At least one of these issues needs to be addressed in order to achieve the pass mark. Candidates should explain that economic duress consists of illegitimate pressure being exerted on the buyer forcing it to enter a new contract arrangement. The pressure does not have to be unlawful. Where duress is pleaded successfully, the contract will be voidable. There should be some attempt to apply the rules to the scenario presented. Factors like the threat to future business and the relative bargaining position of the parties would be useful considerations. (8 marks)

Stronger answers might refer to the leading case of Atlas Export Ltd v Kafco (Importers and Distributors) Ltd in which one party refused to continue with the contract unless a higher price was paid. Other duress cases like Universal Tankships v ITWF, CTN Cash & Carry v Gallagher, Opel v Mitras or similar might be quoted.

Stronger answers might also explain consideration and assess whether there is a lack of consideration in this case. Stronger answers might suggest Kendrake did not receive any extra for the new arrangement.

Any assessment suggesting consideration was present should receive the same credit providing it demonstrates understanding of consideration and is legally sound. (7 marks)

(b) This part of the question requires an understanding of the law of mistake. It is only in exceptional circumstances that a mistake will render a contract void. The main recognised circumstances are:

- When the goods do not exist or have perished at the time the contract is made, Cases like Couturier v Hastie (corn) could be used or alternatively an explanation is provided (2 marks).
- When the goods have been misidentified (Raffles V Wichelhaus or similar) or explanation (2 marks).
• Where the mistake concerns the identity of the other party (Lewis v Averay or Cundy V Lindsay or similar) (3 marks).

• When the mistake concerns signing a document (Saunders v Anglia Building Society or similar) (3 marks).

Stronger answers might also discuss unilateral, common and mutual mistake and/or refer to the principal of unjust enrichment.

(10 marks)

CIPS study guide reference: Chapter 6
Q2  Learning outcome: 2.0

(a) Explain the rules that would determine the legal validity of a Force Majeure clause.

(12 marks)

Desiden Group supplied some valves to Muncar for a plumbing project. Muncar, through a fax, enquiry expressly specified the valve must be compatible with the existing Corelex system. The valves provided by Desiden were of a different type with the result that the valves were incompatible, causing a property to flood. In addition, the valves were described as “suitable for use with the Corelex system”.

(b) Assess the legal basis of any claim that Muncar could make against Desiden.

(13 marks)

Marking scheme

(a) A core answer should be able to explain the reasonableness test under the Unfair Contract Terms Act 1977. This should include at least a few of the guidelines contained in Schedule Two like bargaining position of the parties, inducements, availability of other supplies, special order and knowledge of the clause. At least one relevant case should be included.

(6 marks)

Stronger answers might refer to whether the contract is subject to UK law which is imperative in order for UCTA to apply. Stronger answers will also refer to whether the clause has been incorporated into the contract (battle of the forms, clause must be introduced before or at the time of the contract and reasonable steps/notice must be provided. Stronger answers might explain the strict interpretation of clauses adopted by the courts and the need for the wording of clauses to cover the event that has happened. The contra proferentum rule might also be referred to. Stronger answers would mention S3 UCTA 1977 and why it is the critical section for force majeure clauses.

(6 marks)

(b) Candidates are expected to discuss the implied terms and particularly S13 and S14 (3) of the Sale of Goods Act 1979 (as amended) or national equivalent. S14 (3) refers to fitness for the purpose and a core answer would be expected to demonstrate a basic awareness of this provision. This Section makes it clear that where the seller sells goods in the course of a business and the purchaser, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not the purpose is that for which such goods are commonly supplied. There is an exception to this, however, where the circumstances show that the purchaser has not relied, or that it is unreasonable for him to rely, on the skill and judgement of the seller. It is probable that Muncar relied on Desiden’s skill and judgement to provide the right goods since it made it clear from the beginning, the purpose of the valves. Strong answers might include some supporting case law.

(8 marks)
As the goods were also misdescribed, better answers would discuss whether S13 Sale of Goods Act 1979 (as amended) might apply. Credit should be given for supporting case law. Better answers might conclude it is necessary for Muncar to rely on the description and this would depend on where the description was published or placed. This may be in a catalogue, on a website or on the goods. If Muncar did see this description and relied upon it, then Muncar would have a strong case for breach of this implied term.

(5 marks)

Any candidate that concludes there may also have been breach of an expressed term should also receive credit, but this may be difficult if the purchase order did not state conformity with the Corelex system.

CIPS study guide reference: Chapter 10 -11
Q3  Learning outcome: 3.0

(a) Explain the criteria that need to be satisfied for a restraint of trade clause (or restrictive covenant) to be legally enforceable.  

(12 marks)

(b) Analyse the main legal rules that apply to a procurement department that is planning redundancies.  

(13 marks)

Marking scheme

(a) The courts presume all restraint of trade clauses are void unless an employer can demonstrate it has a legitimate interest to protect. This usually takes the form of trade secrets, confidential information or customer connections. The clause must be reasonable between the parties and the two main factors in determining this are the duration of the restraint and the geographical area covered. The duration of the restraint should be sufficient to protect the trade secret or confidential information. If the duration is too long, the clause will be void. Cases such as Nordenfelt V Nordenfelt or other cases could be used.

The clause should be no wider, in terms of geographical area, than necessary. Cases such as Fitch v Dewes, Littlewoods V Harris. Morris V Saxelby, Mason V Provident Clothing or many others could be used to demonstrate understanding. Such clauses also have to be in the public interest. The blue pencil test might be mentioned.

(6 marks)

A core answer should discuss the need for the employer to establish a legitimate interest and also the need to ensure the clause is no longer nor wider than necessary to protect that interest. Stronger answers will explain the rule in more depth and use supporting case law.

(6 marks)

(b) The main legal rules are found in the Employment Rights Act 1996. Candidates would be expected to define what redundancy is in terms of the employer ceasing business or relocating or where the requirements to carry our work of a particular kind have ceased or diminished. Answers might also refer to a range of issues including the need to develop an objective selection criterion that is objectively applied, the calculation of statutory redundancy pay and the employer’s duty to consult with both individuals and employee representatives including the Secretary of State for some collective redundancies. A core answer should address most of these issues and should be aware of the need for consultation and the need to use an objective selection criterion.

(7 marks)

Stronger answers might also include the requirement to consider other possibilities e.g. redeployment, short time, job sharing etc. Time off to seek alternative work might also be discussed. Answers might also conclude there is no redundancy pay if an offer of suitable alternative work has been made which is unreasonably refused.
Stronger answers are likely to assess more of these main legal issues including the problems if alternative work is offered but declined. Exceptional answers might explain that it is automatic unfair dismissal if a person is selected because of pregnancy or trade union activities.

(6 marks)

CIPS study guide reference: Chapter 20
Q4  Learning outcome: 4.0

Where a party suffers from a breach of contract, it is entitled to claim for all losses that result from it.

Evaluate the legal validity of this statement.

(25 marks)

Marking scheme

This question concerns the assessment of damages.

High scoring answers will identify the purpose of contractual damages is to place the injured party in the position they would have been in, had the contract been performed. Whilst damages are generally a legal right for every breach of contract, it is important that the party suffering the breach can demonstrate some loss, otherwise it will only be awarded nominal damages. Any case on nominal damages like Surrey County Council V Bredero Homes would enhance an answer. An injured party is only entitled to claim damages that result as a natural consequence of the breach or damages that could be contemplated by both parties when they made the contract. These are the two parts of the rule laid down in Hadley V Baxendale. A key part of the answer would be to summarise this case and at least make an attempt at either stating one of the Hadley rules or stating that only damage that is reasonableness foreseeable is recoverable.

(10 marks)

Damages must be not be too remote i.e. too far removed from the actual event or speculative. Case examples such as Heron 11 or Victoria Laundry or similar might be used to support the answer. Speculative loss is usually not recoverable. Damages for loss of reputation or goodwill are generally not allowed unless the damage is reasonably foreseeable. Strong answers are likely to evaluate the effect of mitigation on a claim for damages and the need for an injured party to attempt to minimise any losses rather than exploit the situation. A good case on mitigation is Brace V Calder but other similar cases should be accepted.

(10 marks)

Excellent answers are likely to suggest that contract provisions in the form of indemnities, liquidated damages, exclusion clauses or limitation clauses might restrict the damages that can be claimed if the clauses are found to be legally enforceable.

(5 marks)

CIPS study guide reference : Chapter 8