

Law of Contract 2004 Exam

Question 1

High Distinction

In order to get Delta to remove the tree without any additional costs, Pam has to argue that removing the tree is part of the contract between her and Delta.

The contract signed is a contract in writing, not containing a term about trees. According to the Parol Evidence rules, verbal evidence is not allowed to prove an additional term in the contract (*Goss v Nugent*). However, this rule doesn't apply until it is first proved that the contract contains all the terms. (*State Rail v Health Outdoor*). Therefore Pam can still argue that the agreement about the tree between Dan and herself was a term of the contract.

Furthermore, Pam can argue that the agreement about removing the tree could form a collateral contract – the consideration of which is for her to sign the contract (Dan: “if...we will...”) (*Shepperd v Ryde*). Then if the agreement is accepted by the court, Delta is bound to remove the tree at no additional cost as promised by Dan because the promise constitutes a legally binding collateral contract.

Although Delta has agreed to pay \$105,000, 5000 more than the original price, she can argue that she is not legally bound to pay the extra 5000 for lack of consideration on the part of Delta (provided it is determined that removing the tree is a collateral contract) because Delta is already, under the contract with Pam, bound to remove the tree, it is a pre-existing duty (*Stilk v Myrick*).

However, Delta may argue that according to *Williams v Roffey Brothers*, the Court shows a trend to depart from the traditional view and tends to look beyond the agreed consideration to see if there is any detrimental or benefits in fact (also from *Musumeci v Winadell*). Delta may argue that the benefits for Pa, is to have the trees removed before settlement, saving her trouble looking for someone else to do it, therefore, the Court may find it sufficient for consideration so that the agreement of paying \$5000 extra might be binding on Pam. Delta may further argue that the agreement of paying \$5000 was a contractual variation as that in the New Zealand case *Antons Trawling*, and therefore no additional consideration is needed as the parties are free to vary the contract. However the Court may find the situation distinguishable from *Antons* because Pam, unlike *Antons*, was unwilling to make the variation. If Pam is successful in establishing a lack of consideration on the part of Delta, she is not bound to pay the extra \$5000.

Although, Pam might also have an argument of duress against Delta in regards with the \$5000 extra payment (Delta threatens her not to remove the trees). It is unnecessary for her to argue it because she has not yet paid the extra money and duress is only for rescinding – ie getting the money back (*The Atlantic Baron*).

If, as discussed above, Pam can establish that Dan's promise of removing the trees formed a collateral contract (she signed the purchase of the house), it is then a term for

Delta to remove the trees and their failure to do so would be a breach of the contract so Pam can bring an action of damages for breach. The damages here as to put Pam into the position she would have been in had the contract been performed (Robinson v Harman) therefore she would be entitled to the extra cost she incurs to get someone else to remove the trees; as she wouldn't have incurred this cost if Delta had, under the contract, removed the trees free of charge.

So that Delta has to pay costs to Pam as damages for breach of the collateral contract.