

Examples of Trans-systemic Exam Questions for Contractual Obligations

Technique 1: Using the fictitious jurisdiction of Transania:

Example 1(1):

The country of Transania is presently looking to reform many aspects of its law of contracts. Having heard about the unique, creative and trans-systemic legal education you have received, you have been hired as a consultant to comment on the following draft provision proposed for adoption by the Legislative Assembly of Transania.

“Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship:

(1) There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party’s performance has increased or because the value of the performance a party received is diminished through events that are beyond the control of the disadvantaged party.

(2) In case of hardship the disadvantaged party is entitled to request renegotiations. Upon failure to reach agreement within a reasonable time, the party may resort to judicial proceedings pursuant to which the court may terminate the contract or adapt the contract with a view to restoring its equilibrium.”

Please comment on this draft provision supporting your remarks with reference to legislative and jurisprudential material from both legal systems. Discuss whether your opinion would change in any way, and if so how, depending on whether Transania is a civil law or common law jurisdiction.

Example 1(2):

The country of Transania is presently looking to reform many aspects of its law of contracts. Having heard about the unique, creative and trans-systemic legal education you have received, you have been hired as a consultant to comment on the following draft provision proposed for adoption by the Legislative Assembly of Transania.

“Upon the demand of one of the parties, the judge may modify the effects of a contract, or he may set it aside in whole or in part on the basis of unforeseen circumstances which are of such a nature that the co-contracting party, according to the criteria of reasonableness and equity, may not expect that the contract be maintained in an unmodified form.”

Please comment on this draft provision supporting your remarks with reference to legislative and jurisprudential material from both legal systems. Discuss whether your opinion would change in any way, and if so how, depending on whether Transania is a civil law or common law jurisdiction.

Technique 2: Fact Pattern that arises somewhere in the world (or in several different jurisdictions):

Example 2(1):

Barry is a fertilizer supplier who has had a lease arrangement with Alvin for some 10 years now, always on the basis of a renewable year-to-year lease. Barry leased from Alvin the facility where it made and stored the fertilizer before shipping it to farmers. In addition to the landlord/tenant relationship (Alvin being the landlord and Barry the tenant), Alvin supplied Barry, under separate agreements, with the goods necessary to make fertilizer which Barry then sold to farmers.

By the terms of the original lease, either party had the ability to terminate the lease effective June 30th in any year so long as notice was given by April 1st of the year in question. Otherwise, it would be renewed. The term was set because of the nature of the fertilizer business. Briefly, the most important time for the supply of fertilizers to farmers is from March to June. Once the end of June arrives, farmers no longer need fertilizer. The fertilizer supplier then returns to building up its supply over the summer, fall and early winter and begins supplying again the next March.

In January of 2006, Alvin decided that the contractual relationship with Barry was not commercially advantageous. Alvin did not want to terminate the lease but wanted to add more flexibility to his options with respect to the leasing arrangement. Alvin approached Barry and suggested that the yearly lease be converted to a month-to-month lease, whereby either party could terminate the lease on 30 days notice at any time. Alvin assured Barry that no other terms of the lease would be changed in any way. Barry was not too happy with this new arrangement but felt that if he did not agree, he would risk Alvin terminating the lease at the very next opportunity (ie the next April 1st) and he did not want that to happen.

Barry continued to operate at the site through 2006 and 2007. On November 1, 2007, as he had done many times in the past, Alvin supplied Barry with 88 tons of urea, one of the products needed to make fertilizer. However, on December 1, 2007, Alvin served Barry with a notice to terminate the lease, demanding vacant possession one month later. Barry does not want to comply, claiming that terminating the lease now would be detrimental to his business, causing him an irreparable loss of reputation and customers.

Barry asserts further that he had no way of anticipating this notice to end the lease, particularly in light of Alvin's recent delivery of 88 tons of urea, which farmers would not use until the Spring of 2008 and which he would now have nowhere to store.

Alvin responds to all this by saying, “no hard feelings but I am merely carrying out my clear right to terminate the lease with 30 days notice. I expect a new tenant to move in in the New Year so you better pack up”.

Barry has come to you for advice. Advise Barry. In advising Barry, would your answer differ, and if so how, depending on where this fact pattern arose?

Example 2(2):

For several months, people have been eagerly anticipating the Royal Wedding between Prince Charles and Camilla Parker-Bowles which had been set for Friday, April 8, 2005. The Royal Family decided that the best and most uncomplicated way of organizing this event would be to confide all the arrangements to the firm of Party Planning Professionals (hereinafter “PPP”), owned and operated by Penny. The Royal Family entered into a contract with PPP for a set fee which was to cover all the expenses of the wedding as well as remuneration for Penny’s professional organizing activities. It was up to Penny to enter into separate contracts for all the arrangements of the wedding.

Everything went smoothly until April 2, 2005 when Pope John Paul II died. While the world mourned the Pope’s death, Penny worried about the impact this news might have on the Royal Wedding. At first, she was relieved when spokespersons for the Royal Family insisted the wedding would go on as planned, but when it became clear that the Pope’s funeral would be held on Friday, April 8th, the exact same day as the wedding, it became clear that for all sorts of reasons relating to public relations and protocol (after all, Prince Charles was to attend the funeral), the Royal Wedding had to be postponed until the following day, Saturday, April 9th.

As soon as Penny learned of the change of date, she went about informing all the service providers, such as photographers, caterers, limousine drivers and the like who all agreed to provide the same services, for the same fee, the following day. However, Penny ran into a problem with Fanny the florist. As per the request of PPP, the floral arrangements were to include exceptionally rare tulips that have the most exquisite bloom that, alas, lasts only for one day. PPP was to pay Fanny, a specialized florist located in France, \$20,000 for these rare and beautiful flowers. Fanny had been timing the cultivation of these tulips meticulously so that they would be in their fullest glorious bloom on Friday, April 8th. They would not, however, look good at all the following day.

When Fanny informed Penny of this, her response was that she would not accept or pay for anything less than perfect floral arrangements suitable for a Royal Wedding. Penny said, “It’s not my fault the Pope died and the wedding is postponed”.

Not wanting to lose a contract to provide flowers for the Royal Wedding, risk losing her reputation as a good and reliable florist, and lose the \$20,000 contract fee, Fanny went out onto the wholesale flower market to find replacement tulips to supply for the Royal

Wedding. She didn't have much time as the wedding was, by this time, only two days away and she knew that most florists would not be in a position to supply so many rare flowers on such short notice. However, Fanny found Danny, a Dutch supplier of tulips who said he could help her out and supply the flowers for \$40,000. Danny was in fact the only florist who had a large enough supply of these rare tulips to provide to Fanny. When she balked at the price for she knew that tulips of this nature never went for so high a price, Danny responded, "well, you can try and go elsewhere to satisfy the future Queen, but in the circumstances, I am sticking to this price as the best I can do for you". With time ticking away and the urgency of the situation trying her nerves, Fanny agreed. The Royal Wedding took place without incident but now, with some time to reflect, Fanny comes to see you to ask your legal advice. All PPP has paid her is the \$20,000 agreed to in the original contract.

(10%) (i) She tells you that she was prepared and able to execute her obligation to provide the flowers on April 8th, the date set in the contract. She asks if Penny would have been within her rights to refuse to pay her for the flowers had she delivered them on the Friday as agreed.

(10%) (ii) She asks you further whether she has to pay Danny what she considers to be the steep price of \$40,000 for the replacement tulips.

(10%) (iii) On the assumption that the answer to (ii) above is yes, Fanny asks if she alone has to bear this cost (in addition to her wholesale costs of the flowers that were intended for April 8th and were simply wasted) or whether Penny can be made to contribute something to these extra costs?

(5%) (iv) Finally, Fanny wonders if the Royal Family has any potential liability towards her for this whole mess?

As the parties all live in different jurisdictions, it is unclear what law governs these contractual dealings. As such, your advice should not be limited to the law of any one jurisdiction in particular and should anticipate that the various contracts involved may be subject to either civil or common law.

In your answers, canvass all relevant arguments.

Technique 3: Essay question incorporating comparison of legal traditions:

Example 3(1):

Professor Stephen Smith, in his book *Contract Theory*, examines the underlying justification of contractual obligations on the basis of two theories. One is the **utilitarian theory** of contract which justifies contract law on the ground that it promotes human well-being or 'utility' broadly defined. This includes, in particular, efficiency theories that regard contract law as an instrument for promoting economically efficient behaviour.

According to this view, contract law promotes utility for all members of society by establishing incentives for people to act in “utility-promoting” ways.

The other major theory is a **rights-based theory** which justifies contract law as giving legal force to obligations not to infringe individual rights. This theory views rights from the individualist perspective and is concerned with enforcing duties that contracting parties owe to each other, rather than promoting any broader social goal.

Using **two** substantively different areas of contract law we covered in this course, discuss whether a utilitarian or rights-based theory is a more appropriate explanation of the legal outcomes in each area. Incorporate both civil and common law traditions into your answer and discuss whether both traditions evidence the same or different theoretical underpinnings in each of the areas you choose to discuss.

Example 3(2):

Waddams has defined a contract as “a promise that the law will enforce”. Thus far in the Contractual Obligations course, we have seen many reasons why the law will not enforce a given promise. In your answer to this question, you are asked to:

- 1) identify **two** such reasons;
- 2) explain the underlying rationale for each of these reasons;
- 3) discuss the extent to which these reasons are treated in a similar manner across legal traditions;
- 4) discuss whether the law’s treatment of the two reasons you identify is satisfactory or not. If satisfactory, explain why, and if not, what could be done to improve the law’s treatment?