

DROIT ANGLAIS DES CONTRATS

Durée de l'épreuve : 1 heure.

SUJET SUR 4 PAGES

Document autorisé : NEANT.

Remarques : Chaque question est notée sur 1 point. Chaque question peut appeler 1, 2, 3 ou 4 bonnes réponses. Il existe toujours au moins 1 bonne réponse. Toutes les bonnes réponses attendues doivent être cochées pour obtenir le point.

Ex. pour la question X, les réponses a et c sont correctes ; les réponses b et d sont fausses. Pour obtenir le point, il faut cocher les cases a et c. Si seule la case a ou seule la case c est cochée, aucun point n'est compté.

1. Contractual terms

- a. can be express or implied.
- b. are of paramount importance in the English law of contract because of the lack of default rules applicable to special contracts.
- c. cannot be implied by statute.
- d. cannot be directly controlled by the courts.

2. *Wells v Devani* is a case which

- a. involves a written contract which was modified orally.
- b. shows that English courts are inclined to enforce a contract concluded between commercial parties which have started to act upon it.
- c. addresses the completeness requirement for a contract to be binding.
- d. illustrates the difference between interpretation and implication.

3. The requirement that a contract must have consideration

- a. is met even if one party only provides nominal consideration.
- b. can be circumvented if the parties use a deed.
- c. can be circumvented if the parties prove that they intended to create legal relations.
- d. makes the variation of existing contracts difficult unless both parties benefit in some way from the changes made to the contract.

4. A contract is voidable

- a. for mistake.
- b. for breach of contract.
- c. for duress.
- d. for misrepresentation.

5. Rescission

- a. is a remedy which can only be awarded by a court.
- b. can sometimes be a self-help remedy.
- c. is a remedy that is incompatible with damages for breach of contract.
- d. is a remedy that is incompatible with damages in tort.

6. M. Jones is looking to buy a piece of equipment for his business, but he fears making a mistake. If he were to ask you for advice, would you

- a. tell him not to worry, as the English law of contract is notoriously protective of the buyer?
- d. advise him to ask the seller as many questions as possible, so as to be able to invoke misrepresentation if the answers turn out to be incorrect?
- c. advise him to always act in good faith, as this is something to which English courts pay close attention?
- d. advise him to try and specify in the contract exactly what he intends to use the equipment for, so that he may claim damages for breach if the equipment is unfit for that purpose?

7. During pre-contractual negotiations,

- a. the parties must act in good faith.
- b. a duty of care may exist between the parties in specific circumstances.
- c. one party's conduct may give rise to damages in tort, in contract or for breach of confidence, depending on the circumstances.
- d. parties should keep in mind that the deliberate breaking-off of negotiations at a late stage, with the knowledge that a loss will be inflicted on another party, creates liability in tort.

8. Terms can be implied

- a. by statute.
- b. even when they conflict with express terms.
- c. in particular types of contracts.
- d. in a particular contract.

9. The *contra proferentem* rule

- a. is a rule of interpretation.
- b. protects the weaker party.
- c. can be used as a way to indirectly control a contractual term.
- d. can be used even if the meaning of a term is clear, if that term appears to be grossly unfair.

10. The doctrine of unconscionable bargains

- a. significantly overlaps with the doctrine of duress.
- b. is rarely invoked successfully before English courts.
- c. is a creation of the courts of equity.
- d. , as the name suggests, comes into play whenever, from an objective point of view, a contract is massively unbalanced.

11. In England, statutes

- a. tend to be drafted in greater detail than in civilian jurisdictions.
- b. play a limited role in the law of contract.
- c. are sometimes adopted to change a solution worked out by the courts.
- d. cannot be interpreted by the courts.

12. Economic duress

- a. follows exactly the same rules as the other types of duress.
- b. is a creation of the courts of equity.
- c. is the most frequently invoked type of duress.
- d. was recently addressed by the Court of Appeal in *Times Travel (UK) Ltd v Pakistan International Airlines Corp.*

13. Faced with an unbalanced contract, an English judge

- a. is always tempted to restore the balance, even if it means interfering with the contract.
- b. may try to use the doctrines of incorporation and construction in order to exercise some form of indirect judicial control over unfair terms.
- c. may, in some cases, infer undue influence if a particular relationship exists between the contracting parties.
- d. will look at whether the contract was concluded in good faith.

14. In England, good faith

- a. is generally viewed unfavourably by the courts, because of its perceived inherent uncertainty.
- b. plays a greater role than in the laws of other common law jurisdictions.
- c. offers protection to third-party buyers even if the original contract is void.
- d. has been defended by some courts in recent high-profile cases.

15. Parties who want to make their contract 'judge-proof'

- a. can rely on the tendency of English courts to respect the letter of the contract.
- b. do so because they prioritise legal certainty.
- c. can insert an entire agreement clause into their contract.
- d. cannot insert a 'no-representation' clause into their contract.

16. The *Patel v Mirza* case

- a. involved an insider trading agreement.
- b. led the Supreme Court to abandon the reliance test according to which the claimant would be barred from obtaining restitutions if he had to rely on an illegality in order to bring his claim.
- c. led the Supreme Court to abandon the rule according to which the claimant would never be able to claim in restitution if he had concluded an illegal contract.
- d. led the Supreme Court to rule that restitution could not be denied for the sole reason that the money which the claimant sought to recover was paid for an unlawful purpose.

17. A contract

- a. can be terminated if it is frustrated.
- b. can be terminated for breach.
- c. can be terminated for misrepresentation.
- d. is terminated if supervening circumstances make the contractual performance illegal.

18. A party who has fallen victim to a misrepresentation

- a. may benefit from basing its claim on mistake instead.
- b. must be able to prove that they have relied on the misrepresentation if they want to avail themselves of one of the available remedies.
- c. may be barred from invoking it if the contract contains a 'no-reliance' or a 'no-representation' clause.
- d. may choose to affirm the contract.

19. Under English law, background documents

- a. such as the negotiations of the parties can be taken into account for the purpose of contractual interpretation.
- b. such as the negotiations of the parties are inadmissible in an action for rectification.
- c. such as the negotiations of the parties are admissible in an action for rectification.
- d. such as parliamentary material can never be used for the purpose of statutory interpretation.

20. A mistake

- a. can only relate to the identity of the other party or the subject-matter of the contract.
- b. can be invoked fairly easily even by a commercial party.
- c. relative to the subject-matter of the contract can vitiate the contract only if a common mistake is involved.
- d. which might vitiate a contract ceases to do so if the mistaken party affirms the contract.