

CLP 2010 MOCK EXAM
CONTRACT
MARKING SCHEME

Part (a) – 15 Marks

Discussion on the locus standi for the suit, can we sue a Singaporean company in a Malaysian court? Yes, since the contract was concluded in Kuala Lumpur – Court of Judicature Act (3 marks)

Discussion on the terms of the contract, the oral undertaking that SCS is the only one who could supply the Jack and Neytini Figurine, parol evidence rule (5 marks)

Discussion on whether time is of the essence. The preferred answer is that time is not of the essence, as although it arrived late, it was still in time for the exhibition. But there was still a breach of time which compensation is payable.

(1 mark)

Discussion of 3 breaches, the contracted quantity did not arrive, everybody has Jack and Neytini Figurine and poor quality of costume. Was it a term of the contract that the costume must be of good quality? If not can the term be implied? Is there misrepresentation with respect to the Jack and Neytini Figurine. Did Rajen affirm or terminated the contract? IS there a total failure of consideration here for Rajen to terminate? Discuss the difference between *Ching Yik* and *LSSC*. Can he claimed for damages? (6 marks)

Part (b) – 15 marks

Can you apply for Mareva injunction against Tan's personal property when the contract is with Tan's company? Discussion on *BBMB v Lorrain Osman*. You must highlight the difference between *BBMB* and our case. In *BBMB*, the case was against Lorain, the court lifted the corporate veil and granted Mareva against company controlled by Lorrain. Can the same principle be applicable in our case, when the case is against the company, but the Mareva is against the company owner's personal asset? (5 marks)

Damages against Tan for breach of contract. Discussion of S74. The loss of profit for the non arrival of the 9,000 units. The cost to be paid for the unsaleable Jack and Neytiri Figurine as well as the worthless costume. Note that the rental of RM300,000.00 is a red herring. There is no issue of claiming this sum from SCS. (6 marks)

Potential liability to Jothi. Getting an order for indemnity against potential third party suit. Is there any possibility of the suit succeeding? Did Rajen breached his contract with Jothi? Can Jothi claimed for lost of reputation? (4 marks)

Part (c) – 20 marks

The headings and court where the action is commenced (3 marks)

Pleading the parties particulars and events leading to the formation of the contract (6 marks)

Pleading the damages suffered (6 marks)

The prayers (5 marks)