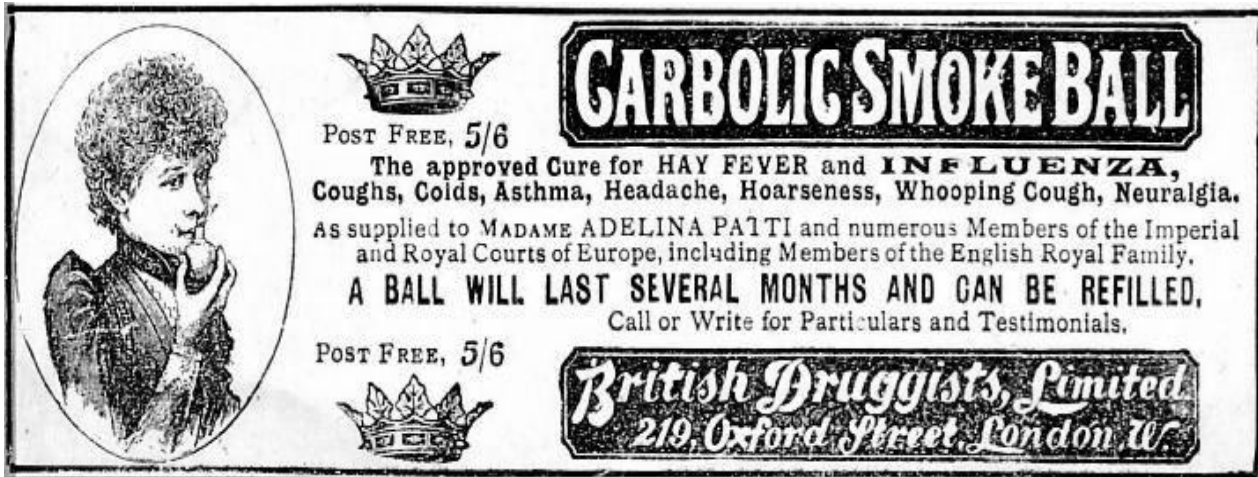


EXERCISES - LEGAL ENGLISH FOR CLAIMS AND LITIGATION

Exercise n. 1. Certainty of terms in contracts: a case study



In *Carlill v Carbolic Smoke Ball Co* (U.K., 1893), the company placed advertisements in a number of newspapers, declaring that it would pay £ 100 to anyone who caught the flu after using its smoke balls according to the product instructions. The company further stated that it had deposited £ 1.000 at the Alliance Bank as a guarantee against any possible claims. Mrs Carlill bought one smoke ball, used it as indicated in the instructions, but still caught the flu. She claimed the sum of £ 100 stated in the advertisement but the company refused to pay her. Mrs Carlill then sued the company, which argued that the advertisement was too vague to be considered a contract. The court eventually held that the product instructions were sufficiently clear and defined to constitute the terms of a contract and that the reference to the £ 1000 deposit was evidence enough of the company's intention to be bound. The court concluded, therefore, that Mrs Carlill was entitled to recover the £ 100 stated in the advertisement.

Mark "true" or "false" for the following sentences.

1. Carbolic Smoke Ball Co advertised its smoke balls as a product which would prevent people from catching the flu.
2. Mrs Carlill bought a smoke ball but did not follow the instructions for their use.
3. Carbolic Smoke Ball Co had provided a bank deposit of £ 1000 as a security for the reliability of its smoke balls.



4. Mrs Carlill was awarded £ 100 by the Carbolic Smoke Ball Co because she had caught the flu despite having used the smoke ball.

5. Carbolic Smoke Ball Co argued that its advertisement on the smoke balls was too vague to be considered a contract.

6. The court held that Mrs Carlill was not entitled to the sum of £ 100 since the advertisement was too vague to be considered a contract.

Exercise n. 2. Please prepare a brief letter in response to the following letter before action.

Dear Sirs,

Re: Overdue payments

We are writing on behalf of our client [•] (hereinafter "X") with regard to the invoice no. [•] dated [•] issued under the supply contract signed by you and X on [•].

Despite repeated requests for payment, you are still in default of your obligation to pay the abovementioned invoice amounts due and payable since [•].

Please consider this letter as a formal notice to you that unless payment of the above amount is received by us in full within ten (10) days as from the date of this letter, we have been instructed to take legal action against you and exercise whatever rights and remedies provided by law to enforce such payment, without prejudice to any claims for further interest and costs incurred.

Yours faithfully,

John Smith, attorney-at -law

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Exercise 3. Role Play

Please read the Claim Form and Particulars of Claim filed by Counter and Bean. You have been retained by Millenium Solutions Limited to file a defense. A meeting has been scheduled today.

1. The legal team and Millenium representatives meet and introduce themselves
2. The legal team explain the factual and legal issues contained in Counter and Bean’s Claim Form
3. Millenium reps give their version of the facts
4. The legal team and Millenium discuss possible defense strategies (Q&A phase aimed at eliciting possible evidence to be offered as grounds for defence)
5. At the end of the meeting, they all agree that a draft Defence and Counterclaim will be prepared by the legal team and circulated in the next days

* * *

Now read the Defense and Counterclaim filed by Millenium Solutions Limited.

Highlight the differences between the defence strategies discussed during the role-play and the contents of the Herbert Simmons’ Defence and Counterclaim.

Exercise n. 4. Please indicate the correct legal terms required in phrases from 1-10 in court proceedings as well as in arbitration proceedings

1. The party commencing the proceedings
2. The summoned party
3. The document filed by the person commencing the proceedings
4. The document filed as a response by the summoned party
5. The person(s) in charge of deciding the case
6. The person(s) required to deliver its opinion as a specialist on a subject, often technical
7. The person required to give an account of something seen, heard, or experienced



8. The documents submitted by the parties in the course of the proceedings
9. The final decision on the case
10. The authority of the decision to be observed and obeyed to

LAWSUIT

ARBITRATION

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Exercise n. 5. Please read the following paragraph and then mark as “true” or “false” the statements from 1 to 6 below.

DETAILS OF THE DISPUTE

The dispute arises between MGC Inc., a website-design company (the “Buyer”) and BTD Ltd, a software-design company (the “Seller”). The dispute concerns the work commissioned by the Buyer to the Seller in order to fulfill a contract with a third party, a ferry company.



The agreement between the Buyer and the ferry company states that the Buyer would provide them with a website which would, among other things, enable customers to book a ferry passage online. The Buyer commissions the Seller to write a software program for the online booking (the “Contract”) to be incorporated in the Buyer’s website.

However, the Seller delivers a program to the Buyer which results unsatisfactory and impossible to integrate in the Buyer’s website. Consequently, the Buyer decides to commit the program to another software-design company, which charges a higher fee to the Buyer, due to the urgency of the work. In addition, the Buyer has to request an extension of the Contract to the ferry company, granted in return for a 30% discount on the price of the Contract.

True or false?

1. The breaching party under the Contract is the Seller.
2. The ferry company enforced a penalty clause against the Buyer.
3. The Buyer agreed to grant a discount to the ferry company in exchange for an extension of the Contract.
4. The program delivered by the Seller was suitable but did not comply with the agreed delivery dates.
5. The Seller provided the Buyer with a new version of the program.
6. The Seller had to pay a higher fee for the re-writing of the program.

As Buyer’s lawyer, please draft a brief memorandum advising your client on the actions which may be taken to protect its interests.

“

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Role Play. Seller and Buyer meet to settle their dispute, assisted by their counsels. A mediator is also present at the meeting, appointed by the parties.

Steps in mediation process:

1) introductory remarks, 2) statement of the problem by the parties, 3) identification of the problems, 4) exploring possible common grounds, bargaining and generating options, and 5) reaching an agreement.