Contact Law And Its Utilizing

Question 1

In contract law, a mistake arises when one or more person/parties incorrectly understand the contractual terms and might use it as a ground for invalidating the agreement. Besides, a mistake has been deemed as a remedy that might be raised either by equity law or common law, notwithstanding, the case law provided in Great Peace Shipping Ltd v Tsavliris Salvage International) Ltd [2003] QB 679 provides that there has been only a limited mistake that is found in the common law. In contract law, three key categories of mistake include unilateral mistake, mutual agreement mistake, and non-agreement mistake.

When in a case, a non-agreement mistake is found, and two parties involved in the contract have reached an agreement, however, they believe that the contract was canceled due to a mistake in the terms of the contract or the clause. This is commonly referred to as a normal mistake because in the case of a non-standard mistake request, both parties have to make the same mistake. The two main conditions for accidental mistakes are that the 1) parties must reach an agreement on the basis of a mistake, and 2) a party that wishes to believe in common mistakes must have a legitimate principle of loyalty.

This mistake only works if one party wants to cancel the wrong contract and the other party rejects the mistake. The three key areas that lead to a mistake include the existence of the subject matter, the quality/significance of the mistake regarding the agreements, and the mistake with regard to the title. With regards to the subject matter's existence, a mistake occurs due to the unawareness of both the involved parties relating to the subject matter, which was non-existent when the contract was formed, hence making the subject matter void. Under legal terms, this very type of mistake has been stated as res extinct. Furthermore, a mistake with respect to the title has been denoted as res sua. Lord Atkin further described this in Bell v Lever Bros Ltd [1932] AC 161 by stating that conforming to the mistake related to subject matter's existence, a mistake regarding title, when parties are unaware, the purchaser is deemed as the owner of the goods that are purported by the seller for selling it to him/her. The court stated that the parties have intended for effectuating an ownership's transfer, such a transfer has been impossible.

In Strickland v Turner (1852) 7 Ex 208 the court asserted that in this case the agreement was based on a mistake. If there is a provision in the contract that distributes goods that cannot be received or delivered to the parties, a breach of the rule constitutes a breach of contract, that is, a specious claim as per case law stated in McRae v Commonwealth Disposals Commission(1951) 84 CLR 377.

The Res Sua Mistake relating to the ownership has been a fundamental mistake category that refers to when the two parties contract for some type of property's purchase, however, is unknown to the respective parties, the property's buyer owns such property. This was provided in Cooper v Phibbs (1867) LR 2 HL 149. Mistake relating to the subject matter's quality has been a straightforward concept, it mainly denotes when the parties involved in the contract are of the opinion that the subject matter has a certain quality, however, whereas it does not have

any quality in reality.

In conclusion, it could be stated that a mistake could be found in a contract due to the misunderstanding that is created between the parties to the contract due to a fault in communication. Thus, the parties then decide to invalidate the contract formed based on the ground that the mistake occurred. Further, it could also be concluded that the mistake's main categories including unilateral mistake, mutual agreement mistake, and non-agreement mistake help the parties to determine which type of mistake has occurred, and based on the identified form of mistake, they seek remedy from the court.

Question 3

Part (b)

The English contract law has traditionally ensured that damages are intended to compensate the contracting party and that the party committing the breach is liable to the party due to a breach in the contract committed by them. However, in many complex business transactions, it may be difficult for the parties to measure the potential loss in pre-contractual negotiations. Therefore, the parties to the employment contract periodically suffer mutual damage. Historically, due to the independence of the dominant treaty in the 19th century, the parties were allowed to use guests voluntarily and autonomy was considered paramount.

There are two ways to do this: quick damage and fines. Although the condition of accelerated compensation is defined as an actual assessment of the damage, the condition of punishment is considered to be excluded, but it is considered as a form of incentive to deter other parties from breaching the contract through the risk of compensation. Traditionally, the court received prompt compensation, but no criminal compensation was paid. Although in Kemble v. Farren (1829), the court emphasized freedom of contract, the court rejected the contract and no penalty was imposed.

Historically, the challenge that the court has always faced is the difference between these two categories. In Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd [1914] UKHL 1, parties entered into a contract requiring them to withdraw from the contract and to pay any sums below the agreed Dunlop price. New Garage knows that debts are not accelerated damages and criminal damages, but the court does not consider these statements to be final statements. The House of Lords went against the opinion of the Court of Appeal, arguing that it was an accurate assessment of damages and that it was an expedited and punitive damages clause. Dunlop proposed principles that would distinguish between criminal provisions and accelerated compensation rules.

If these provisions are not understood, a comparison of the amount mentioned in the maximum damage clause, which may constitute an infringement, should be considered a penalty. Second, breach of contract does not pay the amount claimed and, if the accelerated compensation clause exceeds this number, the breach will be penalized. Third, where one or more events can be compensated, the rule is punitive in nature and some of these events may be considered insignificant. On the other hand, although the case law in Dunlop could not make an assessment, a real lien could be obtained, and this is a real agreement between the two parties on the basis of an agreed number.

Part (c)

The remoteness of damage depends on the type of damage expected from the breach of contract. In a neglected case, the plaintiff must prove that the defendant owes them and that the damages are not too isolated if they find that the damage caused has been damaged. The scope of compensation should also apply to claims and restrictions under the Occupiers Liability Acts. In Re Polemis & Furness Withy & Company ltd [1921] 3 KB 560, it was stated that remoteness of damage is seen often as a reduction in the damages for keeping the arrow under control. The defendant should initially be liable for any damages having a direct chain of causation by the breach of the defendant's obligations. This is usually considered reasonable because the defendant can be held liable for unforeseeable damage and therefore cannot act to prevent the damage.

The decision provided in The Wagon Mound no 1 [1961] AC 388 directly impact the test and it was rejected, and a new test was performed to determine whether the damage was negligible. By following the test in Wagon Mound no 1, the test for the damage's remoteness has been that the damage should be of a type that was foreseeable. If the damage was foreseeable, the defendant would be liable for all the damage, regardless of the extent of the damage. This test was considered and applied in Hughes v Lord Advocate [1963] AC 837 and Doughty v Turner Manufacturing Company [1964] 1 QB 518. Damage should be presumed to be serious unless it is a presumed type.

The remoteness of damage's final aspect has been the eggshell skull rule. This rule was stated and analyzed by the courts in various case laws including Corr v IBC Vehicles Ltd [2008] 2WLR 499, Page v Smith [1996] 1 AC 155, and Smith v Leech Brain [1962] 2 QB 405. By this rule, it is meant that if the defendant finds the victim, he must bear it. If the victim is particularly vulnerable to injury or damage to health, he or she may be affected exponentially compared to ordinary people, and the defendant remains responsible for all injuries.

Question 4

Under English law, the concept of frustration is considered as a device for discharging the contracts, when unexpected events occur either due to transforming the contractual obligations impossible or modifying the initial purpose of the contractual party for agreeing to the terms of the contract. If both parties fulfill their obligations under the contract, the theory of common law resistance enters into force. What actually happened was the intervention that prevented the transaction from taking place. This phenomenon is not physically, commercially, or legally possible and differs significantly from contractual obligations, and is judged on a case-to-case basis.

It is significant to note that there is no clear list of factors related to mistakes. Besides, the theory was developed using case study methods. So, a transaction equivalent to frustration is not enough. The contract can be canceled due to frustration. Once the contract has expired and the situation has changed, the contract may be disappointing, it is not the fault of any factor or party and therefore the commercial purpose of the contract cannot be lost. If the contract is breached, the parties have fulfilled their future obligations under the contract and neither party can submit it.

Frustration stems from the impossibility of a contract. This means that in the event of any damage, there may be an infringement that makes enforcement impossible. However, if the material is damaged, it does not mean that it is disappointing in the contract. The risk of loss is an important factor and should be carefully considered. This can be seen in the following example: B agrees to install the oven in the kitchen. If the kiln is destroyed at the end of the work, the contract must be disappointed, but if the kiln is still being demolished, the failures of the other party must be repeated.

On the one hand, death or illness, the outbreak of war, and even a strike are impossible. Subsequent violations are another factor that can be frustrating in a transaction. This happens when the parties are ready to implement it, but changes in the law prevented it, for example, when another country changed the law, or a war broke out. The third disappointing condition is redundant. This happens when the main purpose of the conference is destroyed. The subconscious phenomenon does not necessarily coincide with this decision, as some features refute the theory of despair.

All these circumstances are further discussed with reference to the case law in which the courts stated that contracts become frustrated due to various circumstances. These are discussed as follows. In Taylor v Caldwell 3 B & S 826, the court provided that the contract would be deemed as frustrated when the subject matter's destruction is done. Also, the court provided in Condor v Baron Knights [1966] 1 WLR 87 that the personal incapacity will generally render the contract frustrated. Besides, in Fibrosa Spolka v Fairbairn [1943] AC 32, the court stated that where the contract becomes illegal to perform it will frustrate the contract. Further, in Nicholl and Knight v Ashton, Eldridge & Co [1901] 2 KB 126, the court stated that where a contract could not be effective in a particular manner. The courts stated in Krell v Henry [1903] 2 KB 740 that circumstance in which an agreement might also be deemed as frustrated when it has been deprived of its commercial purpose. Notwithstanding, as per case law stated in Herne Bay Steam Boat v Hutton [1903] 2 KB 683, the contract should be deprived of its complete commercial purpose leading to frustration.

In conclusion, it could be ascertained that as per the aforementioned case laws and the circumstances that were identified by the courts, the contract could be frustrated due to the reason it has been deprived of the respective commercial purpose for which it was made. Further, it could also be concluded that when any contract could not be performed in a particular manner, it would be deemed as a frustrated contract. Also, it could be ascertained from the aforementioned case laws that when any contract has become illegal to be performed, it would be deemed as a frustrated contract. Lastly, it could be concluded that due to the subject matter's destruction and personal incapacity a contract is considered as frustrated.