**LAWS20028: BUSINESS LAW**

**WRITTEN ASSESSMENT 40%**

**APPROXIMATELY 3500 - 4000 WORDS**

**10 marks**

1. Matthew and Anna made plans to marry in the historic Botanic Gardens (BG) in Melbourne with a scenic view of Yarra River. Anna’s father Brian paid the BG Secretary the standard hire fee of $2000 in advance for its use for three hours from 1.00pm to 4.00pm on Sunday 2nd February 2014. The wedding was due to begin at 1.30pm as arranged. However their wedding plans went badly astray.

* Botanic Garden employee had mistakenly double-booked the 1.00pm to 4.00pm time slot at the same location. The other people arrived early, well before 1.00pm, and quickly took up possession of their site.
* Since it was a hot summer’s day, all the guests had to stand under the shady trees in the park for about an hour.
* A much shorter than planned wedding ceremony went ahead at 3.00pm under the temporary shed which was arranged by a friend of Matthew using his contacts.

Matthew, Anna and her father Brian now plan to take legal action in the courts against Botanic Gardens and sue for damages in contract as follows:

* $3,000 for recovery of the standard hire fee;
* $1,500 for hiring the tent, paid for by Matthew’s friend;
* $5,000 for the wedding photographer loss of time.
* $40,000 for general distress and disappointment at the wedding not proceeding as planned.

Required:

Advise Matthew, Anna and Brian as to whether the various proposed damages claims for a breach of contract are likely to be successful. Give reasons and explanation for your advice. Support your answers with legislation and cases.

**15 marks**

1. In April 2013, two firms – BDM and AWB – entered in a $2 million contracts for the sale and purchase of goods by instalments. The contract contains the following clause:

**Clause 4: If a dispute arises out of the agreement, the parties promise that before taking court action they will first try in good faith to resolve the dispute resolution by arbitration under the Commercial Arbitration Act (2012).**

The two parties later on had a major dispute about whether BDM had supplied goods of the agreed standard. AWB tried to terminate the contract. AWB took court proceedings to make BDM took back the goods it supplied, to recover $350,000 that AWB had paid for those goods and to obtain a further $200, 000 in damages.

Required:

1. What disadvantages does the court system have as a system for resolving disputes between the parties to a commercial contract? **5 marks**
2. Whether Clause 4 is enforceable in the contract between the two firms? **5 marks**
3. Advise BDM as to its legal rights against AWB under Clause 4 of their contract.

**5 marks**

**Support all your answer with legislation and cases.**

**15 marks**

1. Andrew, the Managing Director of Andrew & Co, recently entered into a contract of $100,000 with Logitech Pty Ltd for 10 computers at $10,000 each for use by senior staff. Andrew & Co had developed expensive software and spent $90,000 in the development. In negotiations to buy 10 computers, Logitech promised Andrew that the computers could easily run that software. The two parties signed a standard form of contract but there was no mention of that requirement. Further, the contract had a standard whole of agreement clause: **that the written agreement was the entire agreement between the parties.** The standard form contract also contained an exclusion clause as follows:

**Clause 5- Exclusion Clause: Logitech is not liable to the purchaser (Andrew & Co) for any loss or damage due to the failure of the computer equipment supplied to run any software which is also not supplied by Logitech.**

When Andrew asked about the effect of Clause 5, Logitech told him that it was a standard industry wide clause designed to exclude liability for the failure of computers supplied to run illegal software as well as free software that was often of poor quality.

After delivery, the 10 computers performed very poorly and each required a $3,000 upgrade ($30,000 in total) to bring their performance up to an average standard. Andrew & Co spend $5,000 investigating the problem and also lost $20,000 in business income due to the computers poor performance and losing data.

**Required:**

Answer the following question with reference to the common law principles of contract law supported by cases and relevant legislation.

1. Can Andrew & Co sue Logitech for breach of their contract? **5 marks**
2. What is the effect of the Clause 5 : Exclusion clause? **5 marks**
3. Can Andrew & Co sue Logitech for misrepresentation? What remedy would it be likely to obtain under the Australian Competition and Consumer Act (2010)? **5 marks**