

A LEVEL

Candidate Style Answers

LAW

H415

For first teaching in 2017

H415/03 Further Law – Section B

Option 2: Law of contract

Version 1

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Introduction

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Option 2 – Law of contract

Part 1

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Danny owns a café, employing two waiters, Bill and Lucy. Bill becomes unwell. To avoid having to employ any extra staff Danny promises Lucy a bonus if she will do all the work by herself until Bill returns. Lucy works extra hard while Bill is unwell but Danny does not pay her any extra money. One of the waiters normally fetches fresh flowers every day from Sara, a local florist, for the tables in the café. Sara tells Danny that she will bring the flowers to the cafe while Bill is unwell. When Bill returns to work Danny says he will pay Sara some money for making these deliveries. When Sara asks for this payment Danny refuses.

Sanjit wants to buy a new car for driving his children to school. He goes to a car showroom and Geoff, a salesman, shows him a model which includes built in satellite navigation. Sanjit places an order for the car at a special promotion price. When it arrives it does not have the satellite navigation system. Sanjit questions this at the car dealership and is told that this item is only found on more expensive models. When Sanjit takes out insurance for the car he does not tell the insurance company that he had an accident the previous year. This information was not requested by the insurance company and Sanjit did not realise that he should have told them. The insurance company would have charged a lot more if they had known about the accident.

- 9 Advise whether Lucy or Sara have given good consideration for Danny's promises. [25]
- 10 Advise whether Sanjit has the right to return the car **and** what the rights of the insurance company are with respect to Sanjit not mentioning his previous conviction. [25]

Essay question on the law of contract

- 11* Discuss the extent to which the rules on intention to create legal relations are in need of reform. [25]

Section B Question 9

Advise whether Lucy or Sara have given good consideration for Danny's promises.

[25]

Level 4 answer

This question concerns consideration which is the value that each side gives to a contract. This can be a promise of payment or a promise to do or not to do something, like in *Chappel v Nestle* where they promised to give a record in exchange for 1s 6d and 3 chocolate wrappers.

In Lucy's case the issue is about whether she is going above her normal duty in order to provide consideration for Danny's promise of a bonus. Normally each new promise must be matched by consideration from the other side. Lucy has a contract as a waiter and so carrying on as a waiter might not be seen as good consideration. This can be seen in *Stilk v Myrick* where some sailors were promised extra money if they sailed a ship home after two other sailors deserted when the ship was in Cronstadt in the Baltic. When they got back they asked for the money but were unable to enforce the promise because they hadn't given any consideration for it. If this case was followed Lucy could not enforce Danny's promise.

There are exceptions to this rule though. In *Hartley v Ponsonby*, 17 sailors from a crew of 35 were imprisoned and the rest were offered extra wages if they sailed the ship home. As this meant they were dangerously shorthanded, the sailors who sailed the ship back did provide extra consideration because they went above their existing contract. In *Williams v Roffey* a carpenter ran out of money and couldn't complete a contract for a building company. The building company offered extra money if he would get back on the job - and he did. He could enforce the extra promise because his extra consideration was helping the building company avoid the detriment of the penalty clause. If these cases are applied it could be argued that Lucy went above her contractual duty when she had to work extra hard, so this would distinguish *Stilk v Myrick* and follow the decision in *Hartley v Ponsonby*. Also it seems that Danny avoided extra costs by not having to get a replacement for Bill when he was off sick which would follow the reasoning in *Williams v Roffey*, therefore if either of these cases was followed Lucy has provided extra consideration for Danny's promise.

In Sara's case the issue is past consideration as she wasn't offered extra payment until after she had done the work. An example of this was in *Roscorla v Thomas* where a horse was sold and after the sale the seller promised that the horse was sound in wind and limb. The horse wasn't sound so the buyer sued for breach of this promise; the court held that it didn't become a part of the contract as it was made after the offer and acceptance and so no new consideration was given for it.

There are exceptions to this rule though. In *Stewart v Casey* one party offered to pay for a business service that had been carried out by the other side, gaining contracts to exploit a patent that they held. The payment was upheld because it was always expected that there would be a reward as it was a business service. In *Lampleigh v Braithwaite* someone gained a pardon from the king for their friend. When the friend offered to pay them it was enforceable, even though the pardon had already been obtained; they had only gone to the trouble to get this because the other party had asked them to, therefore there was a contract, they just hadn't specified the amount of payment at the time. In *Pao On v Lau Yiu Long* they said that past consideration might be enforceable as long as it would have been good consideration if it wasn't past, in that case the promise to hold shares for two years in exchange for an indemnity against share prices falling.

In this case Sara was not asked to bring the flowers in Bill's absence, she chose to do it herself. So although it might be seen as a commercial situation, they are both in business, and there is nothing to stop delivery of flowers being seen as consideration under normal circumstances, Sara has not provided consideration for the promise of payment.

Examiner commentary

Comments on technique

It is sensible to give a brief introduction to the topic but the case *Chappel v Nestle* adds little to this answer as it is not relevant to the specific issues in the question.

The candidate has given more detail than they need to on the facts of these cases. Candidates should avoid telling the story of a case, rather they should just stick to the critical point and the ratio. However when a particular case is critical to an answer it may be relevant to give further details, for example in order to support an argument that the facts of the problem could be distinguished.

AO1 – this is a Level 4 answer

This answer has accurate case citation and enough detail on each case to show strong knowledge and understanding, however briefer case details could gain the same level of credit. Each point arising in the scenario is addressed in detail and the answer is well focussed on the specific issues.

AO2 – this is a Level 4 answer

The answer is well structured and clear, each legal principle is well applied, and the conclusion is justified and unambiguous using appropriate terminology throughout.

Section B Question 10

Advise whether Sanjit has the right to return the car and what the rights of the insurance company are with respect to Sanjit not mentioning his previous conviction. [25]

Level 4 answer

Sanjit's first argument to return the car could be that there was a misrepresentation. Any false statement which has been relied on by the buyer amounts to misrepresentation and, unless there is a bar, any misrepresentation allows a contract to be ended through rescission.

A false statement can be made by stating false facts or by conduct which suggests certain facts to be true. In *Spice Girls v Aprilia*, a misrepresentation was made by submitting pictures of the group which suggested that the whole group were still together when in fact they knew one of the members was about to leave. When Geoff showed Sanjit a car with the navigation system this was a representation that the car Sanjit was about to buy was equipped in the same way.

In *Avon Insurance v Swire Fraser* there was no misrepresentation because the words in a booklet had not been relied on. Sanjit would have to show that Geoff's representation that there would be a navigation system was a relevant consideration in him buying the car. If Sanjit can show this then he has the right to rescind regardless of what kind of misrepresentation has occurred. Sanjit could lose the right to rescind the contract if he delays or affirms the contract, for example by using the car once he knows about the difference in specification.

Alternatively, Sanjit could reject the car under the Consumer Rights Act 2015 - the Act would apply in Sanjit's case because he is a consumer; as specified in the Act he is clearly acting for purposes outside his trade or profession. Under S.13 where goods are sold by sample, the goods must match the sample except to the extent that any differences between the sample and the goods are brought to the consumer's attention before the contract is made. In this case the car in the showroom was different to the one delivered and there was no warning or explanation of this difference by the garage, so there is clearly a breach of S.13 Consumer Rights Act.

S.19 of the Consumer Rights Act gives the remedies for breach of S.13. Under this section where the goods do not match the sample, the buyer has the right to reject the goods in the short term or to ask for them to be replaced by goods that match the sample. Therefore Sanjit has the right to return the car.

The rights of the insurance company come under the Consumer Insurance (Disclosure and Representations) Act 2012; these replace the old rules where there was an absolute duty to disclose all relevant facts in insurance contracts. The actions the insurance company can take depend on whether Sanjit's omission was made deliberately or carelessly. Any deliberate falsehood or non-disclosure allows an insurance company to void a policy and retain any premiums paid. If a false statement or non-disclosure is careless, using the formula in Schedule 1 of the Act the insurance company can reduce the amount of any payment under the policy in proportion to the reduction in premium charged.

Here Sanjit was not aware that he had to disclose the information and therefore the omission was not deliberate. Also he was not aware that he had to disclose the information about previous accidents and the insurance company do not seem to have asked for this information; this means they will not be able to decline to pay out for an accident or reduce any payments.

Examiner commentary

Comments on technique

This candidate has given an appropriate amount of detail on cases; they show that they know the case but have avoided telling the story.

The application is extended in this answer when they give the qualifying statement about the possible limit to the Sanjit's ability to rescind.

This answer is effective in that it makes reference to specific sections of the relevant Act rather than just quoting the provisions in general.

AO1 – this is a Level 4 answer

This candidate has demonstrated accurate case citation and accurate knowledge of the relevant statutes including section numbers. This question does not require lengthy discussion of case details and the detail here satisfies the requirement of excellent knowledge.

AO2 – this is a Level 4 answer

This candidate has dealt with the common law and statutory approaches in a sensible and well-structured way. The answer avoids confusion by taking a step by step approach and dealing with one legal issue at a time. The conclusions are justified, and the length is about right for the time given.

Section B Question 11 and 14

Discuss the extent to which the rules on intention to create legal relations are in need of reform.

[25]

Level 4 answer

When assessing intention to create legal relations the court takes an objective approach and looks at the nature of the agreement rather than the actual minds of the parties. In *Eso v Commissioners for Customs and Excise* the fact that a customer would never have sued for one of the coins was irrelevant to the question of intent.

Regarding contracts made between friends or family members, there is a presumption that there is no intention to create legal relations. In *Jones v Padavatton*, a daughter was unable to enforce her mother's promise to provide a house and in *Balfour v Balfour* a wife could not enforce her husband's promise to provide a monthly sum for her to live on. It might be said that the presumption is outdated and does not reflect the greater willingness to bring legal action to enforce rights in society today. *Balfour* was decided in 1919 and the position of women has changed considerably since that time; if a contract is seen as an agreement between equals there is little reason not to enforce domestic agreements. This approach can be seen in the case *Radmacher v Granatino* where the courts gave legal weight to a pre-nuptial agreement.

The presumption can be rebutted in certain circumstances, for example where there has been reliance on the agreement. In *Parker v Clarke* a couple sold their home and changed their will based on a domestic agreement and in *Tanner v Tanner* a woman left the security of a rent controlled flat; in both these cases the contracts were upheld by the court. In both cases it would have clearly led to an injustice if the contracts had not been upheld, particularly as both concerned living arrangements and might have led to a party becoming homeless. However, every contract requires consideration in order to be enforced and as the parties gave consideration in the contracts above in the form of giving something up arguably the requirement of legal intention makes little difference to the outcome of these cases.

In commercial contracts there is a presumption that the parties intended to create legal relations. In *Edwards v Skyways* the court upheld a redundancy agreement despite the offer being made *ex gratia* and in *Carlill v Carbolic Smokeball Company* the court rejected the mere puff argument where an advertised reward was made for commercial gain. This presumption plays a key role in upholding certainty in business agreements which benefits businesses and so can be seen as being good for the economy. The presumption can be rebutted by using clear words to show no legal intent, for example in *Rose and Frank v Crompton* the agreement was in honour only and this prevented binding effect. This is also important as it allows the parties to remain in control of their obligations.

In conclusion the rules on domestic intention need reform as they are outdated, and it would be more just to base the enforceability of contracts on consideration alone. The argument that they serve a policy role in limiting trivial cases coming to court is irrelevant as contracts containing consideration tend to be enforced anyway. In commercial cases it is important that the parties remain in control of their obligations, but this is a matter of construction of contract terms and does not require a separate doctrine of intention to create legal relations.

Examiner commentary

Comments on technique

The paragraph structure used here is an effective way to balance AO1 and AO3 content. The theme is clearly introduced and is backed up by relevant case law. This serves as a base for the AO3 evaluation content which follows.

The candidate gives a clear conclusion to the essay which answers the question, this is a requirement for the essay questions in this exam.

AO1 – this is a Level 4 answer

This is a very broad topic and candidates should not attempt to cover every aspect. The answer uses cases well to support the evaluation points which they are making. An answer on this topic would be unlikely to achieve Level 4 without covering both domestic and commercial contracts and making accurate use of technical vocabulary. This answer shows a sound understanding of the structure of intention, including both domestic and commercial cases and the presumptions and rebuttal. Each aspect of the topic is illustrated with accurate case law. The key to Level 4 is accurate case citation to support the AO3 analysis; a candidate might achieve Level 4 with more detailed analysis of fewer cases.

AO3 – this is a Level 4 answer

The evaluation comments made above are all well focussed on the specific title. The evaluation is developed by making an initial argument and then giving a counter argument in each paragraph.

The overall conclusion answers the question set and includes reasoning which prioritises points made in the answer rather than just repeating them.

Option 2 – Law of contract

Part 2

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Dylan sends an email to Ella on Monday offering to sell her a painting. He says he will leave the offer open until 5.00 pm on Tuesday. Later on Monday Dylan receives a better offer for the painting from an Ella's friend Mike and sells it to him. On Monday evening Ella sees a picture of Mike with his new painting on Mike's social media feed. Ella emails Dylan at 9.00 pm to accept his offer. The following week, Dylan phones Wendy on the Monday offering to sell her a sculpture and she agrees to buy it. The next day Dylan receives a higher offer and phones Wendy to say he can no longer sell it to her.

Abacus is a company which supplies IT equipment. It has a contract to supply Beaches, a company which is located on an island. The easiest way to get to the island is by aeroplane, however a hurricane has damaged the airport and no planes can land for a month. It would cost three times as much to take the equipment to the island by boat and Abacus would lose money on the contract. Abacus also has a contract with Sportius to supply and fit timing equipment for a major sports event. Sportius has paid half the contract price in advance, the rest is due when the equipment has been fitted. Half way through the process of installing the equipment there is a fire which destroys the venue. This results in the event being cancelled. Neither Abacus nor Sportius are responsible for causing the fire.

- 12 Advise whether there has been an offer and acceptance between Dylan and Ella **and** Dylan and Wendy. **[25]**
- 13 Advise whether Abacus' contracts with Beaches and with Sportius can be treated as frustrated and the financial consequences which would arise if they are. **[25]**
- 14* Discuss the extent to which the rules on intention to create legal relations are in need of reform. **[25]**

Section B Question 12

Advise whether there has been an offer and acceptance between Dylan and Ella **and** Dylan and Wendy.

[25]

Level 3 answer

A contract is made when there is a mirror image of offer and acceptance. The acceptance must unconditionally accept the offer with no variation or qualification. Revocation of the offer must be made before acceptance or it will not be effective.

In Ella's case Dylan has made a bilateral offer which he says he will keep open until the end of Tuesday. A promise to keep an offer open is not binding unless consideration is given from the other side. Ella does not give any consideration and so Dylan is free to revoke the offer before the end of Tuesday, *Routledge v Grant*.

Ella sees the picture of Mike with the painting, it is clear that the painting has been sold to Mike and so can't be sold to her. This has the effect of revoking Dylan's offer to her. It doesn't matter that the revocation was not notified by Dylan himself, a revocation can be made by a reliable third party, *Dickinson v Dodds*.

Ella's email of acceptance would take effect when it is reasonable for it to be seen, *Thomas v BPE Solicitors*. This is too late as the earliest this could be is immediately after it is sent and by then Dylan's offer had already been revoked.

In Wendy's case there is a contract from the moment Dylan makes an offer and Wendy indicates agreement - this is on the phone on Monday. The law says that revocation must be communicated before acceptance to be effective, *Byrne v Van Tienhoven*. When Dylan phones Wendy to say he can no longer sell her the sculpture on Tuesday he is too late as there is already a binding contract.

Examiner commentary

Comments on technique

Here the candidate has made a clear and correct statement of law. They have identified the relevant case for this point but not given any case details so this fails to maximise the AO1 marks.

This answer would have been better if the candidate explored the difference between revocation coming from a reliable third party and the situation in the question where the potential buyer found out about the sale to a third party through social media.

AO1 – this is a Level 3 answer

The candidate has made clear and accurate statements of law and has indicated the correct cases for each point. They have not given any details of the cases although this is inferred from the statements of law they follow. This response could be improved by giving further details on the relevant case law.

Candidates should include case law which is as up to date as possible. In this answer the inclusion of *Thomas v BPE Solicitors* is better than relying on older cases such as *Entores v Miles far East*.

AO2 – this is a Level 3 answer

The application is accurate and deals with each point in the scenario in a clear way, the answer could have been further developed if the case law was stronger and the facts of the scenario were compared more closely to the cases.

Section B Question 13

Discuss whether Abacus' contracts with Beaches and with Sportius can be treated as frustrated and the financial consequences which would arise if they are. [25]

Level 3/4 answer

Frustration is about contracts which can no longer be performed because of events that have happened since the contract was made, and where neither party is at fault or has anticipated the events that make performance impossible or very different to what was anticipated. The effect of finding frustration is that the contract is made void and neither party can be sued for breach.

Abacus may claim frustration because they can no longer get to the island - this would make the contract impossible to perform. In *Nichol and Knight v Ashton Eldridge* a contract was frustrated when a ship named in the contract ran aground and was no longer available. However Beaches will claim that the contract has merely become more difficult and that Abacus should have taken this possibility into account. In *Tsakiroglou v Noble Thorl* a contract was not made void when the Suez Canal closed as the ship could still go around South Africa. Abacus might also claim that the contract has been made because of a radical change of circumstances. In *Krell v Henry* a contract to hire a room became pointless when a coronation was cancelled.

It looks unlikely that Abacus' contract would be frustrated as it is still possible to perform, although at greater cost, and the obligation is not radically different to what was originally anticipated. However if it was frustrated Abacus might be able to claim back any expenses they have incurred in preparing for the contract. This would only be the case if Beaches has paid some money in advance; in that case Abacus would have to return the money minus their expenses, under S.1(2) of the Law Reform (Frustrated contracts) Act 1943.

The fire which destroyed Sportius' venue is much more likely to be a frustrating event. Following *Nichol and Knight v Ashton Eldridge* it's clear that the contract can no longer be performed.

Abacus has completed half the work before the fire which frustrated the contract and they may want to claim payment for doing this. Under S.1(3) of the Law Reform (Frustrated Contracts) Act 1943 there can be a claim for any work which has unjustly enriched the other party before the frustrating event. Under this section an unjust enrichment is measured as the benefit one side gains after the frustrating event, the value of the claim is a matter of discretion for the judge. In this case there was no benefit to Sportius after the fire as all of Abacus' work had been destroyed, therefore there would be no claim under S1(3).

Examiner commentary

Comments on technique

The second paragraph covers the different ways in which the contract might be frustrated. It has a clear account of the law and each point is applied. The paragraph would be stronger however if the different reasons for frustration were outlined first and then applied as this would allow for better development of the answer and a clearer conclusion.

In the third paragraph there is a tendency to draw a conclusion and then justify it with the law; this is not as effective as giving a clear outline of the law first, on which to base the application.

The paragraph dealing with the Law Reform (Frustrated Contracts) Act is much more effective; the law is explained to a good depth and the statutory provision is expanded with reference to relevant case law. The application shows good understanding of the law.

AO1 – this is a Level 3 answer

Each point of law is backed up by case law and there is reference to the specific sections of the Act. However, this response could be improved as the case law is not developed; for example, it would have been good to discuss the limits on the basis of frustration found in *Krell v Henry* as against circumstances where a radical change of circumstances would not be found, for example in *Herne Bay v Hutton* or *Davis Contractors v Fareham*.

AO2 – this is a Level 4 answer

Each point is clearly applied to the law and there is a well-developed discussion in the last paragraph on S.1(3) which raises the level of the answer as a whole.



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