Chartered Institute of Legal Executives (CILEX)

Paralegal Apprenticeship End-Point Assessment

Contract Law and Civil Litigation

Timed assessments

Sample assessment materials – sample model responses

Introduction

Sample model responses

The following sample model responses have been produced to support apprentices with preparing for their timed assessments.

The responses provided are a suggestion and other acceptable valid responses will be accepted.

Please note that the word count recommendations in the tasks are given as a guide. We do **not** negative mark if the word count goes above or below the recommendation.

In order to get the most out of these samples model responses, we recommend apprentices should:

- familiarise themselves with the grading criteria in the assessment plan, especially the distinction requirement
- carry out the research as stated in the advance materials
- sit the sample tests — you can do this as many times as you like.

TA1 – Task

This task requires you to produce a report based on the information provided by Isaac in the memorandum below. The memorandum will outline to you the content of the report and key information that you will need to include.

You should refer to the advance materials you were previously issued (also attached below), which outline the relevant facts and suggested legal sources for this client.

Internal memorandum

To: Paralegal
From: Isaac Connell
Client: Jonah Graham
File Reference: IC/37/Graham

Further to my previous memorandum to you regarding this client, you now need to write a report providing the details of your findings and conclusions from the research you have previously carried out.

In particular, can you please prepare a report showing your findings and conclusion on the following.

Findings

By referring to the relevant legislation and case law, the report must explain the following.

- Explain, with reference to relevant case law, the requirements of a valid contract.
- Explain the statutory rights of consumers in a contract for the sale of goods.
- Explain how written terms can be incorporated into a verbal contract.

Conclusions

Based on your research findings, applying relevant legislation and case law, explain the following.

- Whether a valid contract exists between Jonah Graham and Keen's Floors Ltd for:

  a) the sale of the rug at £18,500

  b) the sale of the rug at £18,500, less a 5% discount.

- Explain whether any of Jonah's statutory consumer rights have been breached.
- Assuming there is a valid contract between Jonah Graham and Keen's Floors Ltd, explain whether the term specifying no refunds for bespoke/hand-made to order items has been validly incorporated.

It would be helpful if you could conclude with your suggestions as to the most suitable advice for us to give to the client, based upon the law and practice that you have researched.

Your report should relate only to the issues that I have asked you to research. Your report should be at least 1250 words.

As I will be using this to advise the client, you must ensure that your report is structured logically and not provided as bullet points. It is also important for you to check your spelling, punctuation and grammar.

All legislation and case law included in the report must be explained in your own words to show understanding of the research that you have undertaken.

You must ensure that at the end of your report, for billing purposes you provide the amount of time taken.

Thank you.
Isaac Connell

Model response

Introduction

Further to instructions received from Isaac Connell in the matter of Jonah Graham's contractual dispute, this report will set out research findings on the law and practice as relevant to contract formation, implied statutory terms and incorporation of written terms into a verbal contract.

The report will conclude as to how the research applies to Mr Graham's contractual dispute with Keen's Floors Ltd.

Findings

Formation of a contract - creating a valid contract

There are four key requirements to form a valid contract: agreement, being offer and acceptance, consideration and intention to form legal relations. Furthermore, contracts can only be formed between those with capacity to enter into a contract.

Agreement firstly requires **an offer** that is sufficiently certain and definite as confirmed in Gibson v Manchester City Council [1979]. The offer must be capable of being accepted and made with the intention for the offeror (the person making the offer) to be bound, e.g., Carlill v Carbolic Smoke Ball Co Ltd [1893]. Offers are distinguished from 'invitations to treat', such as goods on display, which are not 'offers' capable of being accepted, as confirmed in Fisher v Bell [1960].

To form the agreement, the offer must be accepted. **Acceptance** is the unconditional assent to the terms of the offer; any attempt to introduce new terms will be a counter-offer and not accepted as determined in Hyde v Wrench [1840]. Acceptance must be communicated, as confirmed in Entores v Miles Far East Corporation [1955], except where acceptance can be by conduct (as seen in the case of *Carlill*) or where acceptance is by post, when the rules from Adams v Lindsell [1818] will apply. Briefly, the *postal rule* provides that an offer is accepted by post as soon as the letter of acceptance is placed in the mail by the offeree (the person accepting the offer), not when it is received by the offeror.

In addition to agreement, a valid contract requires **consideration**, that is something given in exchange for the promise made. Usually, this will take the form of payment. Consideration can be defined as *the price paid for the promise* as set out in Dunlop Pneumatic Tyre Co v Selfridge & Co Ltd [1915] or explained by reference to the concepts of a *detriment* to one party and a *benefit* to the other as expressed in Currie v Misa [1875].

Finally, the parties must have capacity to form the contract, and intend to be legally bound. **Capacity**, here, refers to legal capacity. Briefly, this requires that the parties have mental capacity and can make decisions for themselves; a lack of mental capacity is defined at s2(1) Mental Capacity Act 2005. The **intention to create legal relations** is a complex area of law defined by case law such as Jones v Padavatton [1969] and underpinned by two important *rebuttable presumptions*. A rebuttable

presumption is an assumption that can be overturned by evidence that the assumption is incorrect. These rebuttable presumptions are:

- Agreements reached between family members will be unenforceable, as the parties are presumed to have no intention to create legal relations (as in *Jones*); and
- Business agreements will always be enforceable, as the parties are presumed to have the intention to create legal relations.

Contracts for the sale of goods; the law relating to consumers

Implied terms are terms of the contract which are not specifically agreed between the parties but are inserted into an agreement from another source, such as by the courts, by custom or by statute.

The Consumer Rights Act 2015 (CRA 2015) governs the sale of goods from businesses, or *traders*, to consumers. The statute sets out various implied terms by which businesses are bound and it applies to all contracts made after 1 October 2015.

Under s2(2) CRA 2015 the act, a *trader* is defined as "a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf". A *consumer* is defined at s2(3) CRA 2015 as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession".

Goods are defined under the statute (s2(8 CRA 2015) as "any tangible moveable items". Goods contracts include sales contracts, where goods are exchanged for payment of money, as well as other contracts such as exchange for other consideration and 'hire purchase' agreements.

The key implied terms under the CRA 2015 are that the goods will be of satisfactory quality, fit for their particular purpose and described.

Satisfactory quality

Under s9 CRA 2015, the goods must "meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price or other consideration for the goods (if relevant), and all the other relevant circumstances". Although case law in this area pre-dates the statute, the principles still apply, such as in Bramhill v Edwards [2004] where it was founds that a small error in the statement of size of a motor home did not breach this term, as a reasonable person would have regarded the standard of the motor home as "satisfactory".

Under s9(3) CRA 2015, it is specified that satisfactory quality will include the state and condition of the goods, including the appearance and finish, durability and freedom from defect.

Fitness for purpose

Under s10 CRA 2015, where the consumer makes known to the trader any particular purpose for which the goods are required, the goods must be fit for that purpose. This applies even where that purpose is an unusual one, if the consumer has made the purpose known and relied on the trader's expertise. Where the product has only one purpose, the court will assume that the trader knew of that purpose and that the product should be suitable for it, as confirmed in Priest v Last [1903] which concerned a hot-water bottle for which the court implied a clear purpose.

Match the description

Under s11 CRA 2015, when goods are sold by description, there is an implied term that they will match that description. This is confirmed in cases such as Beale v Taylor 1967 which concerned a car being incorrectly described as a '1961 model'. Sometimes, goods are sold by reference to a sample product as well as description, and the Act provides that the goods must correspond with the description as well as the sample.

Incorporation of written terms into verbal contracts

In addition to the implied statutory terms set out above, parties are free to include their own terms into an agreement. To be enforceable, any terms must be incorporated.

Where a contract is agreed verbally, written terms can be incorporated into the contract by notice, course of dealing or common understanding of the parties. Most relevant to this matter is incorporation by notice.

Signing a written document

As established in L'Estrange v F Graucob Ltd [1934], parties who sign a written document containing contractual terms will generally be bound by them. There are some exceptions, such as for example where the signature was obtained by misrepresentation.

Crucially, to be incorporated by notice, a term must be brought to contracting party's attention at the time of making the contract, as determined in Olley v Marlborough Court Hotel [1949] which concerned terms and conditions which were only made available to the claimant after he had agreed the contract and entered his hotel room. He had not been given reasonable notice of the terms.

Factors to determine reasonable notice

Several factors must be considered to determine whether reasonable notice of a term has been given. These are:

- Timing of the document
- Type of document containing the terms
- Type of clause; unusual or onerous.

A term will not form part of the contract if the contracting party was not made aware of it at the time of entering into the contract, as per *Olley* and confirmed in Thornton v Shoe Lane Parking [1971].

The type of document is also important; terms should be contained in a document that could be reasonably expected to contain such terms, not, for example, in a seemingly unrelated piece of paper or a ticket as seen in Chapelton v Barry Urban District Council [1940]. Documents should also be in an appropriate size and position so as to be seen.

Case law determines that the more unusual or onerous the clause, the more notice will be expected from the person wishing to rely on it. Denning LJ's famous *red hand rule* was established in J Spurling Ltd v Bradshaw [1956] wherein he stated "I quite agree that the more unreasonable a clause is, the greater the notice which must be given of it. Some clauses which I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient." A further example of onerous clauses is seen in Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1988].

Conclusions

The contract for sale of a rug between Jonas Graham and Keen's Floors Ltd

The parties to this contract are presumed to have a capacity to enter into a contract, as there is nothing to suggest a lack of capacity on either side.

In terms of the intention to form legal relations, the parties are contracting in a business-to-consumer setting, not social and domestic, and so the rebuttable presumption is that they did intend to create legal relations.

The issues arise when considering the agreement reached between Jonah and the salesperson for Keen's Floors Ltd. We are told that the salesperson, Francesca "quoted a cost of £18,500 for the rug" and that she confirmed the size and other specifications. Further, we are told that "Jonah agreed" and was at this point provided with a written document described as "an invoice". At this point, there appears to be an offer which is sufficiently certain and definite, per Gibson and by which Keen's appeared to intend to be legally bound, per Carlill. In addition, Jonah appears to confirm his unconditional assent to the offer, as he does not seek to introduce any new terms when he agrees (Hyde and Entores). Consideration is provided in the contract as the *price paid for the promise* per Dunlop when the parties exchange promises to supply and pay for the rug.

There appears to be a valid contract for the sale of the rug at £18,500.

Further to this conversation, and after Jonah is handed the "invoice", Francesca mentions the prospect of seeking a 5% discount from her manager. This lacks the certainty required for an offer (Gibson) and is said after Jonah has confirmed his agreement. The discounted price would therefore appear to be unenforceable, as it is neither certain nor communicated at the time the contract is formed.

Breach of statutory rights

As a consumer in contract with a trader, Jonah is protected by the CRA 2015. He is therefore entitled to receive goods that are of satisfactory quality, fit for purpose and corresponding with the description (and sample) provided (Ss 9, 10 and 11 CRA 2015).

The rug does not appear to meet the requirements for satisfactory quality, as under the act this is considered "taking account of any description of the goods, the price…". Under s9(3) CRA 2015, this includes the appearance and finish. We are told that Jonah was shown a silk rug and told by Keen's salesperson, Francesca, that "most of their hand-made rugs were made of silk". In fact, the rug Jonah received is said to be made of "cheaper" fibres, and so the implied term of satisfactory quality has been breached.

Further, Jonah was sold the rug he ordered by both description and sample, being shown a good-quality silk rug as an example product. He specified the colours he required and was told that Keen's offer a "colour-matching service". The rug he received is said to be made of cheaper fibres and does not appear to be as good quality as the sample he was shown. It has also been made in the wrong colours. The implied term as to corresponding with description also appears to have been breached.

Incorporation of written term specifying no refunds

Based on the information provided, there is no suggestion that Jonah was told about Keen's refund policy at the time of entering the contract. We are not told that Jonah has signed the document, which would generally mean that he is bound by the terms as in *L'Estrange*. The question of whether Keen's

term relating to the refusal of refunds for hand-made/bespoke orders will therefore turn on the issue of notice.

In terms of the type of document, an invoice is likely to be considered a reasonable type of document to include such terms and conditions. It is not an unrelated document or an informal 'ticket' as seen in *Chapelton.* The requirement for the type of document is satisfied. However, there may be an issue with the size of the notice, which the client states as being written in "tiny font" and the position of the notice, being on the back of the invoice.

Following *Olley* and *Thornton*, reasonable notice of the term must have been given at the time the contract was formed, not at a later point. We are informed by the client that "on the back of the paper copy of the invoice are some terms and conditions, printed in tiny font that is difficult to make out. It does state that there are no refunds or replacements on made-to-order items, but the salesperson made no mention of this during our discussion." It would therefore appear that timing is an issue, and the term will not be incorporated as it was not brought to the client's attention at the time of contracting.

Further, applying *J Spurling Ltd* and Denning's *red hand rule,* the strict refund policy for bespoke items is likely to be considered an onerous clause, and therefore required more notice from the salesperson as to its existence.

In summary, due to the timing of the document being given to Jonah Graham, the small font and the onerous nature of the term, it is unlikely to have been incorporated into the contract.

Billing record

Research time 2 hours [20 units]

Report preparation 1.5 hours [15 units]

TA2 – Task 1

You have been given a task via email from Isaac in relation to your client (see below).

A copy of the advance materials is attached, see below.

Once you have completed Task 1, please move on to Task 2.

Internal email

To: Paralegal
From: Isaac Connell
Client: Jonah Graham
File Reference: IC/37/Graham

Thank you for your report on this client's case which I found very useful in preparing to progress the matter.

Please draft an email to the client that addresses the following points.

- Explain, with reference to relevant legislation and professional conduct rules, why we will require the client's proof of ID and proof of address before we can act for him in this matter.
- Explain, with reference to relevant legislation, the remedies available to a consumer for a breach of their statutory consumer rights, and how this might be relevant in the client's case against Keen's Floors Ltd.
- Explain, with reference to relevant case law, the requirement that damages should not be too remote, and the relevance of this in terms of the losses that the client seeks to recover.

As always when writing to the client, please ensure that the tone of your email is appropriate and be aware that the client is not familiar with the law and so you will need to write clearly so that they understand your explanation of the law. As usual, please pay particular attention to correct spelling, punctuation and grammar, and your presentation.

You should include a short introduction to set out the purpose of your email and a suitable ending. Your email should be at least 900 words.

The client has also asked us to update them on the **costs incurred in this matter so far**. Please provide the client with a brief overview of your time records for this task and outline any potential timing considerations, moving forward, that they will need to be aware of.

Thank you.
Isaac Connell

Model response

Dear Mr Graham,

Your contractual dispute with Keen's Floors Ltd

I write regarding the above matter and to introduce myself as [apprentice], assistant paralegal to Isaac Connell with whom you met recently to discuss your instructions. Mr Connell has asked me to write to you to confirm some information in advance of your meeting with him next week which I set out below.

Your proof of identification and address

Please be advised that we will require the above documentation and information to begin acting for you in this matter. We appreciate that our clients may require reassurance and explanation regarding the documents and information we have requested.

As a firm, Hedley, Smith & Cutler are regulated by the Solicitors Regulation Authority and all members of the firm are required to comply with the SRA Standards and Regulations Code of Conduct 2019. Principle 7.1 of the Code requires that we follow the law and regulation governing the way we work, and principle 8.1 requires that we identify who we are acting for in a matter. Further, in accordance with legislation such as the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, we are required to demonstrate that we have undertaken sufficient Customer Due Diligence to reduce the risk of money laundering, which all law firms face. Customer Due Diligence simply means ensuring that our customers are who they say they are, which is why we ask for photographic ID and proof of address. We ask for proof of funds to prove that the monies used to fund a transaction are from a legitimate source. Please ensure that you bring the required documentation to your next meeting with Mr Connell.

Remedies under the Consumer Rights Act 2015

We are pleased to advise you that, as you are a consumer in a contract for the supply of goods with Keen's Floors Ltd, you are protected by the Consumer Rights Act 2015. This means that, in addition to any terms and conditions agreed between you and Keen's, there are some additional statutory terms implied or inserted into your contract by the law. This also means that there are statutory remedies available to you under the Act. These remedies are:

- Short term right to reject (Ss20-22 CRA 2015)
- Right to request replacement or repair (s23 CRA 2015)
- Right to a price reduction, or to finally reject the goods (s24 CRA 2015)

Further information is set out in relation to these remedies below. Briefly, they are available where goods received are not of satisfactory quality, fit for purpose or as described (including where they do not match a sample shown to a consumer, which is of course relevant to your case).

The short-term right to reject is available to you for 30 days after the goods have been received. This has the effect of releasing you, the consumer, from all your contractual obligations, and you are entitled to a refund within 14 days of returning the goods.

You also have the right, either within the first 30 days or later, to request that Keen's repairs or replaces the faulty goods. The trader is required to replace the item or attempt the repair within a reasonable period of time, to bear the cost of the repair or replacement and to do so without causing significant inconvenience to you, the consumer. A replacement would appear to be the appropriate option in your case. You must allow Keen's a reasonable time to replace before asking to reject the rug altogether and received a refund. Under s22 CRA 2015, after the replacement is completed, you would have either remainder of the 30 days, or a further seven days (whichever is longer), to consider whether you wish to reject the rug.

Finally, under s24 CRA 2015, you do have the right to either keep the rug despite issues which amount to a breach of your statutory rights, and insist on a price reduction, or you have a long-term right to reject. Generally, these options will only be available in the alternative, i.e., you must choose one or the other, and only when the repair/replacement remedy has not been successful or possible. Under s20 CRA 2015, you would be entitled to receive a full refund within 14 days of the agreement to reject and

refund. The trader, Keen's, would be permitted to reduce the refund to reflect any use of the goods but, generally, no deduction will be made in the first six months.

Claiming damages

I understand that you wish to recover some additional losses in relation to the contractual issue with Keen's, namely your lost earnings for time taken off work to deal with the problem. I must manage your expectations in this regard. Under common law, it is your duty as the claimant to prove your losses and, in addition, a requirement that your losses must not be *too remote*. This is a concept established in common law, in a case called Hadley v Baxendale [1854], which states that a person or company in breach of contract is only liable for losses that they were specifically warned about or that a reasonable person would have anticipated as being a *reasonably foreseeable* result of their breach. It is unlikely that your time off work would be considered reasonably foreseeable and that damages claimed for your loss of earnings would be deemed too remote.

Billing

Finally, Mr Connell has asked me to update you on the costs incurred in this matter so far. I can confirm that the firm has spent 5 hours on meeting and preparation time so far. Any further work will be charged at the hourly rate set out within our client care letter, charged in 6-minute units of time (being 10 units per hour).

Please do not hesitate to contact myself or Isaac Connell should you have any further queries.

Kind regards,

[Paralegal]

Task 2

You have been given a task, via memorandum, from Isaac in relation to your research.

A copy of the advance materials is attached, see below.

Internal memorandum

To: Paralegal
From: Isaac Connell
Reference: Development work

Our department has been tasked with producing some content for the firm's social media account, with a view to generating instructions for new clients.

As our clients sometimes ask if we can represent multiple parties in a matter, I think it would be useful to produce a short, interesting article explaining conflict of interests and confidentiality.

Please produce a short article explaining the following. Make sure you refer to any relevant legislation and professional conduct rules.

- The legislative framework underpinning our duty of confidentiality, and some of the practical ways that we keep our clients' data safe.
- The meaning of the term 'conflict of interest' and the regulatory requirements around such conflicts for Hedley, Smith & Cutler as an SRA regulated firm.

Remember, the article should be drafted suitably for our intended client audience and be as engaging as possible. The article should be at least 300 words.

Thank you.
Isaac Connell

Model response

We keep your data safe

At Hedley, Smith & Cutler, we are passionate about providing an excellent standard of service to our valued clients. We want to reassure you that we take our duties as lawyers seriously, and to share with you our responsibilities around confidentiality and keeping your affairs private.

Complying with the law

Many of our clients will be aware of the Data Protection Act 2018 and the UK General Data Protection Regulation. As a law firm, we are entrusted with our clients' personal information and are legally required to make sure that information is kept safe. Under the Data Protection Act 2018, we are required to hold only the data that we need to work on your matter and satisfy our legal and regulatory requirements, and to hold your data for no longer than is necessary. We have strict policies and procedures in place in relation to gathering, storing and disposing of client data, such as using password-protected systems, encrypted emails and secure document destruction. We also have an in-house Data

Protection Officer whose role it is to promote best practice across the firm in relation to collection and management of client data.

Meeting our regulatory duties

As a firm, we are regulated by the Solicitors Regulation Authority (the SRA). Some of our staff are members of the Chartered Institute of Legal Executives (CILEx) and are therefore also regulated by CILEx Regulation.

Both the SRA and CILEx Regulation require us to comply with their Codes of Conduct. Outcome 5.12 of the CILEx Regulation Code of Conduct 2019 and Principle 6.3 of the SRA Code of Conduct require that we keep the affairs of our current and former clients confidential. We would therefore be in breach of our regulatory requirements if we were to share information about your case while it is ongoing, or after it is concluded, without your permission. Of course, there are some important exceptions where the law will require us to disclose information to relevant authorities, but we would never discuss your case with another client or outside of our offices.

Working with our clients

At Hedley, Smith & Cutler, our clients come first. Whenever we are instructed by a new client, to ensure that we can represent you and act in your best interests, we undertake careful checks that we refer to as 'conflict checks' to ensure that we do not currently or have not previously represented any other party involved. This is to satisfy ourselves and our regulator that there is no 'conflict of interests'. This term refers to a situation that arises if we are acting for two or more clients in the same or a related matter, and our duties to act in the best interests of each of those clients 'conflicts', i.e., our duties to each client are incompatible.

Therefore, in order comply with our regulatory duties, we undertake conflict checks to ensure that we are meeting Principles 6.1 and 6.2 of the SRA Code of Conduct and Outcome 7.1 of the CILEx Regulation Code of Conduct.