



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 2 – CONTRACT LAW*

Time allowed: 1 hour and 30 minutes plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

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SECTION A

(Answer ALL questions in Section A)

1. Define a contract. **(3 marks)**
2. Explain the nature and effect of a counter-offer. **(3 marks)**
3. Explain the rule about performance of an existing contractual duty and the exceptions to that rule. **(3 marks)**
4. Explain the presumption regarding intention to create legal relations in social agreements, and describe **one** situation in which that presumption may be rebutted. **(4 marks)**
5. Distinguish express terms from implied terms. **(3 marks)**
6. Distinguish a condition from a warranty. **(4 marks)**
7. Define fraudulent misrepresentation. **(2 marks)**
8. Identify **three** types of event which may frustrate a contract. **(3 marks)**
9. Describe the purpose of damages for breach of contract. **(3 marks)**
10. Explain what is meant by 'mitigation of loss'. **(2 marks)**

(Total Marks for Section A: 30 marks)

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SECTION B

(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)

Scenario 1

The Fruit Machinery Company (FMC) buys, sells and hires out machinery.

Iqra, a fruit grower, enquired about buying a cherry-picker. She received the following email from FMC:

'We've only got one cherry-picker left. It's a CP1 model. You can have it for £30,000. Pop into the warehouse if you want it – they're popular though!'

The next day, Eric, another fruit grower, visited FMC to buy a cherry-picker. Eric had dealt with FMC monthly for the last five years. FMC told him that they had only one available, for £30,000, for delivery next week. Eric agreed to buy it, and paid FMC. As on previous occasions, they handed him a ticket headed 'Terms and Conditions'. On the ticket was a clause which stated: 'Liability for damage to cherries is excluded'.

Eric just put the ticket in his pocket, without reading it. As Eric was leaving, Iqra arrived, and Eric shouted to her: 'Iqra, I've just bought the last cherry-picker in town! It's being delivered next week.'

Iqra quickly ran in and said to FMC that she was accepting the terms of their email.

Giles rang FMC on Wednesday about hiring an apple-sorter. FMC offered him an AS1 sorter for two weeks from the following Monday. Giles wanted to consider it. FMC told him that if they didn't hear from him within two days, they would assume that he wanted to hire it. Giles never got back to them.

Katrina also rang FMC and also received an offer to hire an apple-sorter. She also decided to consider the offer. FMC told her to decide quickly, as it was the busy summer period. Three weeks later, Katrina decided that she did need an apple-sorter, and sent an email stating that she accepted FMC's offer.

Scenario 1 Questions

1. (a) Distinguish an offer from an invitation to treat. **(4 marks)**
- (b) Explain whether FMC's email to Iqra is an offer, or not. **(5 marks)**
(Total: 9 marks)
2. (a) Identify **three** ways in which an offer can be terminated. **(3 marks)**
- (b) Assume that FMC has made offers to each of Iqra and Katrina. Explain whether:
- (i) Iqra has entered into a contract with FMC; **(4 marks)**
- (ii) Katrina has entered into a contract with FMC. **(3 marks)**
(Total: 10 marks)
3. (a) Explain the requirements for the valid acceptance of an offer. **(3 marks)**
- (b) Explain whether Giles is bound to pay for the hire of the apple-sorter. **(4 marks)**
(Total: 7 marks)
4. (a) Identify **two** ways, other than by statute, in which a term may be implied into a contract. **(2 marks)**
- (b) Identify **three** terms which will be implied by statute into the contract between Eric and FMC, and name the relevant statute. **(4 marks)**
(Total: 6 marks)
5. (a) Identify **three** ways in which terms (including exclusion clauses) may be incorporated into a contract. **(3 marks)**
- (b) Explain whether the term contained in the ticket is incorporated into the contract between Eric and FMC. **(5 marks)**
(Total: 8 marks)

(Total Marks for Scenario 1: 40 marks)

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Scenario 2

Zak is a builder.

Christine

Zak recently entered into a contract with Christine. He agreed to build a new bicycle shed and to store her husband David's bicycle at Supersafe Storage, while he carried out the work. Christine agreed to pay him £2,000 on completion of the work.

Zak finished the work and demanded payment. However, Christine is refusing to pay, as the shed windows are not frosted glass, as required by the contract, and the bike racks on the walls are 6 inches too close to the ceiling and cannot be used. The defects will cost £500 to fix.

When Christine asked for David's bicycle back, Zak admitted that he had kept it in his back garden, but a thief had stolen it.

John

Zak entered a second contract, with John, to fix John's kitchen floor. A term of the contract provided as follows:

'Time is of the essence: the work must be completed by 31 August in time for me to fit my new kitchen.'

Zak had been so busy doing Christine's bicycle shed, that he could not even start the kitchen floor until September. John has now refused to let him do the work.

Nabilah

Zak entered a third contract, with Nabilah, to refit her bathroom. They agreed a price of £10,000. Zak completed the work perfectly. After Zak had finished, Nabilah asked if he would replace her bathroom door as well. Zak replaced the door, and Nabilah was so pleased, that she promised to pay him £250 for replacing it.

When Nabilah's friend came to see the bathroom, she said that it would have been easy to get the job done for £5,000. Nabilah was upset by this, and has told Zak that she will only pay him £5,000 for the bathroom refit, as that is its market value. She is also refusing to pay for the new bathroom door.

Scenario 2 Questions

1. (a) Explain the entire (or complete) performance rule. **(3 marks)**
- (b) Explain whether Zak is entitled to any payment for the bicycle shed. **(6 marks)**
(Total: 9 marks)
2. (a) Define privity of contract. **(3 marks)**
- (b) Explain who the parties to the contract for the bicycle shed are. **(3 marks)**
- (c) Explain whether David has any claim against Zak for breach of contract in respect of his stolen bicycle. **(6 marks)**
(Total: 12 marks)
3. (a) Explain what is meant by the phrase 'time is of the essence'. **(2 marks)**
- (b) Explain whether John has to let Zak fix the kitchen floor. **(3 marks)**
(Total: 5 marks)
4. (a) Explain the rule of past consideration and the exception to that rule. **(5 marks)**
- (b) Explain whether Zak will be able to enforce Nabilah's promise to pay him £250 for replacing the bathroom door. **(5 marks)**
(Total: 10 marks)
5. Explain whether Zak can enforce Nabilah's agreement to pay £10,000 for refitting the bathroom. **(4 marks)**

(Total Marks for Scenario 2: 40 marks)

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Scenario 3

In October last year, Martha decided to sell her car repair business in Acomb.

Jason visited Martha to inspect the business. Martha told him that the business was making a profit of £50,000 a year. Jason was happy with this level of profit, and said he would like to agree terms to buy the business.

During the negotiations, Martha rather lost interest in the business. As a result, by the time Jason visited to complete the deal, the annual profit had dropped to £40,000. If Martha had checked the books, she would have noticed this.

The sale of the business included the premises, the tools and the hydraulic jack used for all of the servicing. Martha promised that all of the tools and the hydraulic jack were in excellent condition. Jason explained that he planned to make some extra money using the hydraulic jack at the next Acomb Road Race, to help repair competitors' cars. They then signed a contract for the sale of the business.

Eleven months later, Jason started to prepare his year-end accounts. He discovered that the annual profits of the business in the year before the purchase had been only £40,000, and not £50,000 as stated by Martha. If Jason had not bought Martha's business, he could have bought a different business that would have made £50,000 a year.

To make matters worse, the hydraulic jack was in poor condition and kept failing during the first year. As a result, Jason lost a further £6,000 worth of general trade. On top of this, the hydraulic jack was undergoing repair at the time of the Acomb Road Race, and Jason missed out on a profit of £2,000.

The hydraulic jack has now broken down yet again, and will cost £400 to fix.

Scenario 3 Questions

1. (a) Define misrepresentation. **(4 marks)**
- (b) Explain whether Martha's statement that the business was making a profit of £50,000 a year is a misrepresentation. **(5 marks)**
- (Total: 9 marks)**
2. Assuming that Martha's statement above is a misrepresentation:
- (a) explain what type of misrepresentation it is; **(7 marks)**
- (b) explain any remedy for misrepresentation which Jason is entitled to, and any remedy which he may not be entitled to. **(8 marks)**
- (Total: 15 marks)**
3. (a) Explain the rules relating to remoteness of damage in contract. **(5 marks)**
- (b) Explain whether Jason can recover damages in respect of:
- (i) the loss of £6,000 from general trade and the £400 cost of repairing the jack; **(3 marks)**
- (ii) the £2,000 he would have made at the Acomb Road Race. **(3 marks)**
- (Total: 11 marks)**
4. (a) Identify **two** equitable remedies which may be available for breach of contract. **(2 marks)**
- (b) Explain whether Jason can now require Martha to repair the hydraulic jack. **(3 marks)**
- (Total: 5 marks)**

(Total Marks for Scenario 3: 40 marks)

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