



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 1 – 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 two 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 following CILEx qualifications: **LEVEL 4 DIPLOMA IN COMMERCIAL LITIGATION** and **LEVEL 4 DIPLOMA IN DEBT RECOVERY AND INSOLVENCY**

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SECTION A

(Answer ALL questions in Section A)

1. Distinguish an offer from an invitation to treat.

(3 marks)
2. Explain how the presumption that a contract formed in a commercial context is intended to be legally binding may be rebutted.

(2 marks)
3. Explain whether past consideration can be good consideration.

(4 marks)
4. Identify **two** of the tests a court can apply to determine whether a statement is a term or a representation.

(2 marks)
5. Identify and explain the remedies available for the various types of misrepresentation.

(5 marks)
6. Explain when a third party, such as a bank, will have constructive notice of undue influence.

(3 marks)
7. Explain what is meant by 'anticipatory breach of contract'.

(2 marks)
8. Explain the requirement for 'strict' or 'entire' performance of a contract.

(3 marks)
9. Explain the duty that a claimant has to mitigate his or her loss.

(3 marks)
10. Identify when and how a court may award damages based on reliance loss.

(3 marks)

(Total Marks for Section A: 30 marks)

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SECTION B

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

Scenario 1

Sadia wished to buy herself a special present for her 40th birthday. She visited Tabatha, who ran a specialised jewellery shop, Tabatha's Treasures, in the town of Westport. Sadia spoke to Tabatha, who told her that she could create a custom piece for her.

Sadia decided to commission Tabatha to create a custom necklace, which she planned to design herself. She created some sketches of the piece, and emailed them to Tabatha, along with a note explaining that it was important Tabatha used white gold, as Sadia suffered an adverse skin reaction to other metals. Tabatha replied, saying: 'I agree with your designs, please find quotation attached'. At the bottom of Tabatha's quotation was a line of text stating:

'All contracts formed with Tabatha's Treasures will be upon our standard terms of business. Please visit our website to view these terms.'

Sadia replied, stating that she agreed to the quoted price and asking Tabatha to begin work on the necklace. Sadia also purchased an expensive watch, telling Tabatha that this would be a present for her husband, Richard.

Three weeks later, the necklace and watch arrived at Sadia's house. Sadia opened the package, and was extremely disappointed in her birthday present, as the intricate design she had sketched had been replaced with a simpler design. However, she still wore it. Unfortunately, after two days of wearing the necklace, Sadia had a severe skin reaction to the metal, which has caused considerable scarring. Due to the medical care required, Sadia was forced to miss an expensive holiday that she had booked.

When Sadia inspected the necklace, she was shocked to find that Tabatha had used silver instead of white gold in the necklace, as well as changing the design. The necklace is now worth less than half of what Sadia paid for it. The watch she bought for Richard is also defective and keeps stopping.

When Sadia complained, Tabatha drew her attention to the terms and conditions on her website, including:

'12. When supplying custom-made jewellery, Tabatha's Treasures are not liable for any loss or damage howsoever caused.'

Tabatha has refused to allow Sadia to return the necklace or watch, or to exchange either item.

Scenario 1 Questions

1. Explain, in relation to the necklace:
 - (a) whether any statutory terms will be implied into the agreement between Sadia and Tabatha; **(5 marks)**
 - (b) whether there has been any breach of any such terms; **(3 marks)**
 - (c) Sadia's rights as a result of any such breach. **(6 marks)**

(Total: 14 marks)

2. Advise Tabatha whether she can rely on clause 12 of her terms and conditions to prevent a claim by Sadia in relation to the necklace and her injury caused by the skin reaction. **(10 marks)**

3. If Sadia is successful in a claim against Tabatha, advise her as to what damages she may receive. **(8 marks)**

4. Advise Richard whether he may sue Tabatha directly for the defective watch. **(8 marks)**

(Total Marks for Scenario 1: 40 marks)

Turn over

Scenario 2

Alberto is a professional hairstylist, who works styling models' hair on fashion photoshoots. Around four months ago, he was contacted by Beata, who owns ChicStyle, a new fashion design house. Beata asked Alberto to assist on a photoshoot she was planning. She told Alberto that because the business was new, she would need a lot of models and a lot of photographs. They agreed that the contract would be for three weeks of work, at a fee of £100 per day plus refreshments. Alberto was unsure whether to commit to this length of time, but agreed after Beata assured him that she intended to hire 'some of the most famous models in the world'.

On the first day of the photoshoot, Alberto was concerned to find that the models at the studio were from the local dance school and not famous at all. When he called Beata to ask her about this, she told him that she had had financial problems which had meant the photoshoot needed to be scaled back. Alberto was upset, as he had turned down other work to work with famous models. Beata informed Alberto that her financial problems meant that she could no longer provide refreshments for him. Alberto was so cross, that he demanded that Beata increase his daily fee to £200 and told her that, if she did not, he would refuse to continue working on the photoshoot. Beata was frightened that this would end the photoshoot, so she agreed to pay him £200 per day. She reluctantly gave Alberto £3,000 at the conclusion of the photoshoot.

Due to being forced to pay Alberto extra, Beata was unable to pay the £1,500 per month rent on her flat. Her landlord, Cheryl, was understanding when she explained the problem, and told her: 'Don't worry about paying rent for the time being'.

Now, three months later, Beata has overcome her financial problems. Cheryl is insisting that Beata must resume paying her rent, and that Beata must give her £4,500 for the unpaid rent over the past three months.

Scenario 2 Questions

1. Advise Alberto:
- (a) whether Beata has made an actionable misrepresentation;
(8 marks)
 - (b) if the court finds that Beata has done so, whether he can obtain rescission of the contract.
(7 marks)

(Total: 15 marks)

2. Explain whether the financial problems which caused the photoshoot to be scaled back and the refreshments to be cancelled could be seen as frustrating the contract between Alberto and Beata.

(7 marks)

3. Advise Beata as to any claim she may have regarding the increase of Alberto's daily fee from £100 to £200.

(8 marks)

4. Advise Cheryl whether:

- (a) she may claim the £4,500 in unpaid rent;
(7 marks)
- (b) in any event, she may resume charging Beata £1,500 a month for her rent from now on.
(3 marks)

(Total: 10 marks)

(Total Marks for Scenario 2: 40 marks)

End of Examination Paper

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