



Pearson

International Advanced Level Law YLA1

Paper 2

The Law in Action

Exemplar scripts with examiner commentaries

Question 4

Introduction

This set of exemplar responses with examiner commentaries for IAL Law, Paper 2, The Law in Action, has been produced as additional guide to support teachers delivering and students studying the International Advanced Level Law specification. The scripts selected exemplify performances in this paper in the June 2017 examination series and indicate standards expected to achieve the different levels of award.

Paper 2 assesses Law in action in the A Level Law specification and is split into five questions. Questions can cover a diverse range of issues. Except for questions 1 and 5-part (a) and (b) questions test students' knowledge, understanding and application of the law.

All other questions require students to analyse and often evaluate a problem using their knowledge and understanding of appropriate legal principles.

The exam duration is 3 hours. The paper is marked out of 100 and is worth 50% of the qualification. The command words used are defined in the [Getting Started Guide](#) and the [Sample assessment materials](#). They will remain the same for the lifetime of the specification. Questions will only ever use a single command word and command words are used consistently across question types and mark tariffs.

This document should be used alongside other IAL Law teaching and learning materials available on the [website here](#).

The IAL Law Mark Scheme for the June 2017 examination series is [here on the website](#) for reference.

Example 8 – Question 4(a)

Robbie, a famous DJ, had agreed with Joanna that he would perform at her nightclub for £10,000. £4,000 was to be paid in advance and the remainder after the performance. Joanna also agreed with Robbie to spend £1,000 on equipment for the performance. She also hired extra staff for a further £900. Joanna had sold advance tickets for Robbie’s performance amounting to £20,000.

Joanna had contracted the services of Martin to act as a security guard before and during the performance; this included making sure that the building was secure. The night before the performance was due to take place, Martin mistakenly left a window in the building unlocked, allowing someone to get in and start a fire. This caused extensive damage to the building, resulting in the nightclub being unsafe for the performance.

Identify the consideration that exists in the contract between Robbie and Joanna. (4)

Question number	Answer	Marks
4(a)	<p style="text-align: center;">(4 AO2)</p> <p>One mark for each element of consideration linked to details in the scenario, up to four marks.</p> <ul style="list-style-type: none">• Robbie agreeing to appear at the night club (1)• The £4,000 paid in advance by Joanna to Robbie for the performance (1).• The £6,000 payable to Robbie once the performance has been concluded (1).• The £1,000 spent on extra equipment for the performance (1).	(4)

The command word is **'identify'** which requires candidates to give a brief explanation and/or examples of the focus of the question. There is no requirement or expectation to write a lot about a topic. With this question candidates need to identify what the specific consideration is between the two parties. There was no need to show any knowledge of consideration, in terms of case law or definitions. All the marks are gained from application alone.

Student answers to 4(a)

(a) Identify the consideration that exists in the contract between Robbie and Joanna. (4)

The consideration ^{existing} ~~existing~~ between Robbie and Joanna is the fact that the concert will be carried at the nightclub with some amount being paid in advance to ensure the credibility of the contract.

Examiner comments

This response is awarded 1 mark.

One application mark is awarded for identifying that 'some amount being paid in advance...'

(a) Identify the consideration that exists in the contract between Robbie and Joanna. (4)

The consideration that exists between Joanna and Robbie was the advance of £4,000 and Robbie's promise to perform at her night club. Consideration is the promise to show the intention between the two parties to create legal relations. Consideration shows that the two parties have the intention to be legally bound by the contract. A consideration need not be adequate but must be sufficient. Consideration need not benefit the promisor e.g. (Pa-on) and (Re McArdle).

Examiner comments

This response is awarded 2 marks.

Two application marks are awarded for '£4,000' and 'Robbie's promise to perform...'

The rest of the answer is knowledge regarding the legal rules on consideration, and whilst accurate, can gain no marks as there only application marks available.

Candidates need to understand what the question is asking them to do gain marks and

Avoid wasting valuable time.

(a) Identify the consideration that exists in the contract between Robbie and Joanna.

⁽⁴⁾
~~The~~ consideration is where a party exchanges promises. There are a few elements on consideration, among of them are consideration need not be sufficient but must be ~~at~~ adequate, consideration must not be the past, a contractual duty can not be a consideration and a legal duty is not a consideration. The exchange of promises between Robbie and Joanna took part when Robbie had agreed to perform at her night club for £1000 and £4000 would be paid in advance and Joanna ~~also~~ ^{also} agreed to spend £1000 on equipment for the performances, and also hire extra staff for £900.

Examiner comments

This response is awarded 3 marks

The candidate identifies the promise by Robbie to perform, £4,000 advance and the £1,000 for equipment.

No marks are awarded for £1,000 as the agreed fee is £10,000.

No credit was awarded for the explanation of consideration as no knowledge marks are associated with this question.

Example 9 – Question 4(b)

Analyse whether Joanna is able to terminate her contract with Robbie following the damage to the building. (6)

Question number	Indicative content	Marks
4(b)	<p style="text-align: center;">(2 AO1), (2 AO2), (2 AO3)</p> <p>Responses are likely to include:</p> <ul style="list-style-type: none">• The contract could be terminated through the concept of frustration• Frustration is where due to no fault of either party an unforeseen event occurs which makes completion of the contract impossible• The general principle which states frustration occurs when an event makes performance of the contract 'radically different' from what was originally agreed• in this case frustration occurs due to impossibility of the contract being completed due to the night club being extensively damaged• Consideration of anticipatory breach and damages• reference to cases such as Paradine v Lane; Taylor v Caldwell; Krell v Henry.	(6)

The command word in this question is '**Analyse**', which is looking for a detailed answer, identifying the key issues regarding whether or not Joanna could terminate her contract with Robbie. There is no need for candidates to provide a conclusion.

Student answers to 4(b)

(b) Analyse whether Joanna is able to terminate her contract with Robbie following the damage to the building.

(6)

Joanna will be ~~not~~ able to terminate her contract with Robbie because the damaged has been caused to the night club and also the damaged has been caused ~~after~~ ^{before} the course of performance. The loss is caused to Joanna rather than Robbie. The night club is also unsafe for performance so performance cannot take place in an unsafe night club.

Examiner comments

This response is awarded 1 mark.

The candidate scores level 1 and one mark for indicating isolated knowledge of Joanna's ability to terminate the contract and why this might be the case, i.e. 'cannot take place in an unsafe night club'.

(b) Analyse whether Joanna is able to terminate her contract with Robbie following the damage to the building.

(6)

She will be able to terminate her contract due to the damages she faced. According to the law Joanna will be able to terminate her contract, but she will not be able to take the money given in advanced. According to the contract she ~~pa~~ had paid £4,000 in advanced and ~~she~~ the total amount they discussed was £10,000. She will not have to pay the rest of money. Joanna ~~will~~ will have to take witnesses of the event and Martin ~~so~~ as well to the Court. Then only she will be ~~able~~ able to terminate the contract.

Examiner comments

This response is awarded 3 marks.

The candidate shows limited knowledge and application of the law on termination rights in this situation, such as the discussion regarding the money 'advanced'.

As it has errors and fails to discuss frustration and relevant case law in the context of the problem it gains level 2.

(b) Analyse whether Joanna is able to terminate her contract with Robbie following the damage to the building.

(6)

A contract is frustrated when an unforeseeable circumstance arises which renders the performance of the contract unenforceable. In Taylor v Caldwell, the C hired a hall from D to hold a series of concerts, but before the concerts could take place the hall was destroyed by a fire. Here the contract was frustrated as the hall was important to the contract. Similarly, Joanna will be able to terminate her contract with Robbie, the DJ due to the fire which caused extensive damage to the building, resulting in the building being unsafe for performance. Neither party can sue for breach of contract. The Law Reform (Frustrated Contracts) Act 1983 provides ^{reasonable} ~~that~~ expenses are recoverable and money paid before the frustrating event is recoverable. Thus Joanna will be able to recover the £1000 spent on equipment and £900 on staff and Robbie the £4000 advance paid to Joanna.

Examiner comments

This response is awarded 6 marks.

The candidate defines frustration, relates Joanna's situation to Taylor v Caldwell, a similar facts case and briefly discusses the effect on the parties, including the issue of damages, gaining level 3 and full marks.

Example 10 – Question 4(c)

The planned performance has been cancelled due to the fire.

Assess Joanna’s rights and remedies under contract law and the Supply of Goods and Services Act 1982 against Martin for the cancellation of the performance. (10)

Question number	Indicative content	Marks
4(c)	<p style="text-align: center;">(2 AO1), (2 AO2), (3 AO3), (3 AO4)</p> <p>Responses are likely to include:</p> <ul style="list-style-type: none">• Identification of breach of contract through failure to provide a standard of reasonable skill and care. Damages are the remedy.• Under the Supply of Goods and Services Act 1982 S13 services supplied in the course of a business have an implied term that the supplier will use reasonable care and skill.• Analysis of the breach and an actual breach of a condition under S13 in cases such as Thake v Maurice.• Analysis of remedy of damages including loss of bargain (i.e., £20,000 - £10,000 - £1,000 - £900 = £8,100). Distinguish between Hadley v Baxendale and Victoria Laundry v Newman Industries regarding remoteness of damages.• Mitigation of loss where White and Carter v McGregor and arguments as to whether Joanna should/could have mitigated her loss (for example by having an alternative venue).• Further evaluation of effectiveness of remedy based on arguments of difficulty of getting an award of damages from defendant, cost of taking action (monetary, mental and time). Difficulty of deciding whether the damages should be based on loss of bargain or reliance loss. Possible reference to Law Commission 1997 report on Exemplary and Restitutionary Damages• Credit can be awarded for reference to other statutory provisions• References to ‘sacking and not paying’ Martin without a justification under contract or tort are regarded as isolated reasoning and/or knowledge only (Level 1).	(10)

The command word in this question is ‘**Assess**’, which is looking for an extended answer, looking at a specific area of law. Candidates need to weigh up factors and events and identify the most important or relevant issues. There is no need for a conclusion.

Student answers to 4(c)

(10)

under their contract, Martin was responsible for the safeguarding of the building before and after the performance. However, due to Martin's negligence, someone managed to get in and start a fire, due to which the performance had to be cancelled.

As this was Martin's responsibility, therefore Joanna can legally sue him and claim for damages i.e. monetary assistance to make up for the losses incurred.

Examiner comments

This response is awarded 2 marks.

The candidate identifies Martin's responsibility in general and the fact that Martin had been negligent. The candidate then concludes that 'Joanna could legally sue him...'. displaying isolated elements of knowledge and application.

As there is no case law or legislation and very little application of legal principles to the question the answer gains level one only.

Assess Joanna's rights and remedies under contract law and the Supply of Goods and Services Act 1982 against Martin for the cancellation of the performance.

(10)

Joanna will be able to sue Martin under S.13 of the Sale and Supply of Goods and Services Act 1982. S.13 of the 1982 Act provides that a trader is under the duty to ~~stain~~ provide services with reasonable care and skill. If he fails to do so he incurs what is called negligent liability and is in a breach of a condition. Here Martin who was hired as a security guard to ensure the building was safe before and after the performance certainly did not provide the service with reasonable care and skill when he mistakenly left the windows unlocked. Thus Martin is in breach of S.13.

Joanna can also sue Martin for breach of contract. A breach can be a breach of a condition (*Poussard v Spiers*) or a breach of a warranty (*Bertini v Gye*). Here the term to provide a security before and during the show is a condition and thus allows Joanna to repudiate the contract and/or claim damages. A breach can be an actual anticipatory breach (*Hochester v De la Tour*) or an actual breach. The latter occurs if one party does not perform the contract at all or their performance is faulty. In *Bolton v Mahadava*

The court held that a ineffective installing of a central heating system was a breach of a contract as it was faulty performance. Similarly, Martin's mistake in leaving the door window & unlocked is a faulty performance and is ^{an actual} a breach of the contract.

The remedies available to Joanna are specific performance, rescission, injunction which seem to be irrelevant here, ~~and~~ and damages.

Damages for a breach of contract is assessed

c) in the light of causation, remoteness and duty to mitigate losses.

The C can only claim damages which occur as a result of the breach. (Mendham Steamships V Karisbamna). Here the loss of the ticket sales and expenses incurred on equipment are a consequence of Martin's breach of contract.

Only losses which were within the reasonable contemplation of both parties can when the contract was made can be claimed (Hadley V Baxendale). Here it is reasonably foreseeable that Martin's actions which lead to the future cancellation of the ship ^{would} result in the loss of ticket sales and expenses incurred by Joanna.

The C is also under a duty to mitigate the losses when the breach has occurred. (Payzu V Saunders). Here Joanna could have taken steps such as stopping ticket sales and expenses to mitigate her losses.

In the event Joanna is able to successfully establish the above she can claim expectation loss damages for the

ticket sales and £10,000 received from Robbie as an advance (*Ruxley V Forsyth*) which will place Joanna in the position she could have occurred had the contract as promised been performed. She can also claim ~~expectation loss~~ for the £20,000 advance tickets sales as she could have to refund them. Joanna can also claim reliance loss damages (*McRae V Commonwealth Disposals Commission*) for the £1000 spent on the equipment and £900 spent on hiring extra staff.

Examiner comments

This response is awarded 10 marks.

The candidate shows an excellent knowledge of contract law evaluating the breach of condition well, using a wide range of cases applied to the problem.

There is also an excellent discussion of the Supply of Goods and Services Act together with a very detailed evaluation of damages using case law.

Well worth level four and full marks.