

Support Materials

Contract Law (G145)

These materials should be read alongside the approved specimen question paper and mark schemes and specification.

Section C Question 7:

Sue owns a hotel and is having 20 rooms redecorated before the summer season. The work is to be completed by Hamish at a cost of £400 per room. Hamish completes 12 of the rooms and then informs Sue that he is unable to purchase materials he needs in order to complete the other 8 rooms. Sue does not have time to look for another decorator and is worried that she will have unfinished rooms for the summer season. She offers Hamish an extra one-off payment of £600 to help pay for the materials. Hamish accepts and continues with the work. As Hamish is grateful he also promises to paint the entrance hall. Some time later Sue is refusing to pay the extra £600 and Hamish has not painted the entrance hall.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

Statement A: Hamish has provided good consideration for the extra payment.

Statement B: Sue would be estopped from going back on her promise to pay the bonus.

Statement C: Sue can avoid paying the extra £600 on the basis on economic duress.

Statement D: Sue has not provided any consideration for Hamish's promise to paint the entrance hall.

[20]

Example Grade A Answer

Hamish has provided good consideration for the extra payment

Every promise must be matched by consideration in order for it to be enforced. A second promise needs further consideration in order to be enforced.

Where the person who makes a further promise gains some benefit from making that second promise that may be seen as consideration from the person to whom the promise is made. When Sue ensures the work is done in time for the summer season, the consideration that comes from Hamish will be allowing Sue to avoid that detriment.

Sue would be estopped from going back on her promise to pay the bonus.

Promissory estoppel requires a promise to be made not to enforce a contract, which is subsequently relied on. In this case Sue makes a promise to Hamish and he relies on it, however here the promise is to give something extra rather than not to enforce a contract, this is using estoppel as a sword and not a shield, which is not its correct usage. Sue would not therefore be estopped from going back on her promise.

Sue can avoid paying the extra £600 on the basis of economic duress.

Economic duress will apply if an illegitimate threat was made by Hamish which left Sue with no alternative but to comply. When Hamish said he could not complete the work on time that may be seen as an illegitimate threat however it is not certain that Sue was left with no alternative, it might have been seen as reasonable to sack Hamish and take on another decorator. If the court decides this is the case, Sue cannot rely on economic duress.

Sue has not provided any consideration for Hamish's promise to paint the entrance hall.

Hamish promised that he would paint the entrance hall after Sue promised the extra money, her consideration is past and this is not generally good consideration.

There are exceptions to the rule against past consideration; these would apply if Sue requested Hamish to paint the entrance hall, or if some payment for the work was always expected. The exceptions are unlikely to apply here as there was never any expectation that Hamish painted the entrance hall at the time that Sue made the promise and she did not request the work.

Examiner's commentary

This would be a grade A answer. The candidate has explained the relevant legal principles in each case and has applied them clearly to the problem. They have explained their reasoning and given an answer to each question. Case law is not expected in these answers as all the marks are for AO2 application.

Example Grade E Answer

Hamish has provided good consideration for the extra payment

Consideration is the value that someone gives to the other person in a contract. Hamish did not do any extra work and so did not give any consideration.

Sue would be estopped from going back on her promise to pay the bonus.

Estoppel is where someone is stopped from doing something, Sue would be estopped because she has promised to pay the money and so she can't go back on her promise.

Sue can avoid paying the extra £600 on the basis of economic duress.

Economic duress is where someone uses force to make someone else do something. As Hamish said he would not go on with the work Sue had to agree the extra money.

Sue has not provided any consideration for Hamish's promise to paint the entrance hall.

Sue's consideration is the £600 she has to pay to Hamish. She offered this after the contract was made and so she does not have to pay it.

Examiners commentary

This would be a grade E answer. The candidate has identified some of the legal rules but without discussion of details or the possible exceptions. In some answers there is no clear conclusion although there is an effort to relate the rules to the question in each case.

Section A Question 2: (from June 2006, unit 2574)

‘The presumptions relating to an intention to create legal relations serve an important purpose in the formation of a contract.’

Discuss the law relating to legal intent, in the light of the above statement.

[50]

Example Grade E/D Answer

In contract law the intention to create a legally binding relationship is one of the key factors in actually determining whether or not a binding contract exists between the two parties. When this area is being examined the kind of relationship between the parties can be classified as either a social/domestic one or a commercial one. Different presumptions are made for each of these classifications. With social/domestic agreements there is an automatic presumption by the courts actually intended to create / enter into a legally binding contract with each other. With commercial agreements there is an automatic presumption by the courts that both parties did intend to create / enter into a legally binding contract with each other.

These presumptions do serve an important purpose in the formation of contracts. The presumption related to commercial contracts is especially important as it is instrumental in providing consumer protection because if businesses weren't bound to contracts with consumers they could disown responsibility.

The presumption related to social / domestic agreements is important in the way that it reinforces that theory of 'freedom of contract'. It does this because in these kinds of circumstances neither party is actually expecting to enter into anything legally binding and so they should not be made to, as seen in a case a husband who was abroad was sending his ill wife regular sums of money after making an agreement with her that he would do so. The husband ceased the payment and the wife claimed that there had been a contract between the two of them and that he (the husband) was in breach of it. The court held that as the husband and wife were still very happily married at the time of this agreement, that it was a domestic agreement and that there was no presumption of legal intent.

Parties are able, however, to rebut (prove wrong) these presumptions if they can provide proof that there was (or was no) intention, but this can prove difficult.

A unanimous and amicable way of stating intention is through an honourable pledge clause. This is merely a statement from both parties affirming that neither of them wish to enter into a legally binding contract with each other. These are very useful as they automatically rebut presumption and create certainty.

Another very important advantage concerning presumptions of intention is that they create certainty within this area of law.

Examiner's commentary

AO1 10/25 Level 2

This answer has a good level of general understanding but is hindered by a lack of case law, one case is described but not named.

AO2 12/20 Level 3

There is a well developed point of evaluation in the second paragraph, beyond this there are several evaluative points throughout the answer that are less well developed.

AO3 4/5 Level 4

Quite clearly written and quite well structured.

Total 26/50

Example Grade A Answer:

Legal intent is one of four components needed to form a contract. It means that for a contract to be valid parties must have had an intention for it to be legally binding. Legal intent is split into two groups. The first being social and domestic arrangements and the second is commercial arrangements.

Social and domestic arrangements are contracts made between family members and sometimes friends. The presumption is that it is not legally binding. This is because most of the times members of a family don't really intend for the contract to be binding. A leading case on this is *Balfour v Balfour*. Here a husband went away promising to give his wife 30 pounds per week for maintenance when he defaulted on the payments she sued. The court held that there was no intention for this to be legally binding therefore the wife did not succeed. Sometimes however a contract between husband and wife can be legally binding. In the case of *Merit v Merit* the husband said the wife could have the house if she finishes paying the mortgage. When the husband refused and went back on the contract she sued. In contrary to the first case this was held to have legal intentions. The husband and wife were legally separated meaning there was, to some extent, an intention on both parties side for it to be binding.

The courts have dealt with these cases to bring out a fair outcome. To do this they must look to both parties and see if there were any intentions for their agreements to be binding. In *Jones v Padvatton* a mother rented out a house for her daughter while she studied law. Later on the mother wanted to repossess the house. This case involved a mother and daughter and so from first sight you can see there was no intention for them to be bound by it. The court didn't rebut the presumption and the daughter could stay in her house.

Sometimes the courts do rebut these presumptions only if it seems fair and just to do so. It can be rebutted on occasions where a formal letter of agreement over child maintenance is present, and this can rebut the presumption between family members. This was established in *Dark v Strout*.

There must be a genuine intention to create a contract. Agreements between friends is not seen as legally binding as it is just an extension of the family role that states family members agreements are not binding. In *Buckpit and Oats* a friend paid for petrol in return for a ride. The other friend agreed. When an incident happened the passenger sued for damages. Even though he gave money for petrol, which was a his consideration, it was not seen as binding. A clear contract has been formed by the friends however legal intent is missing making it void. The plaintiff failed to rebut the presumption. If this case was to come to court today the outcome may be different due to compulsory passenger insurance, which would probably pay out damages.

If there is no intention to create a contract but an event causes the parties to get to court sometimes the presumption is rebutted. In the case of *Simpkin v Pays* a granddaughter lodger and the house owner entered a competition under the house owner's name. They all agreed that if they won the prize money would be shared. When they did win the house owner refused to share. The plaintiff (the lodger) sued asking for her share. She succeeded. The court held that the presence of a lodger made it more than just a social arrangement therefore legal intent was

present and the presumption rebutted.

In commercial arrangements the presumption is that the contract will be binding. However this can also be rebutted. An example of this was seen in *Edwards v Carter* where a pupil barrister sued claiming his contract was made under a business context. This was true and so he would have prevailed. However at that time pupil barristers were not paid and so the lack of money didn't make it a commercial agreement which then rebutted the presumption.

Honourable pledge clauses can also come under this type of arrangement. If a clause states that the contract is not enforceable in court then it cannot be taken to court. In *Jones v Vernon Pools* a man won while playing football pool. On the back of his receipt an honourable pledge clause was present. This prevented him from claiming his win. A similar situation arose in *Rose v Crompton Brothers* where an honourable pledge clause prevented the plaintiff from succeeding.

These cases have shown that legal intent is an important factor when forming a contract. Along with offer and acceptance, consideration and capacity to contract, legal intent is needed to form a valid contract. The cases mentioned have shown that it is an important factor because if legal intent was not needed then the courts would be dealing with a lot of cases, for example if a father asked his daughter to fix his car in return for money and she did. If the father didn't pay it would be a breach of contract, however legal intent would be missing so no contract would be formed. The courts made sure legal intent is present when forming agreements because if not myriad of cases would find themselves in court unnecessarily.

So presumptions relating to an intention to create legal relations do serve an important purpose in the formation of a contract. Without the presumptions everyday agreements would be presumed to be binding between families and not binding when dealing with commercial arrangements.

Examiner's commentary

AO1 19/25 Level 4

There is a good level of case law in this answer. It lacks a case to illustrate the main presumption in commercial cases but otherwise cases are used well.

AO2 13/20 Level 4

There are evaluation points made throughout this answer but none of them are well developed enough to get higher into Level 4.

AO3 4/5 Level 4

Clear and quite well structured.

Total 36/50

Section B Question 3: (from June 2006, unit 2574)

In April Damian agrees with Great Gardens that they will landscape his garden. The work is to be finished by the end of June as he wants to hold his daughter's wedding reception there in July. Great Gardens inform Damian at the beginning of June that they are short of workers and money and will not be able to complete the work by the agreed deadline. Damian agrees to pay an extra £1,000 to Great Gardens to complete the work on time.

Damian also agrees with Careful Caterers that they will provide food and a waitress service for the reception for an agreed fee. On the day of the wedding Careful Caterers arrive to carry out these tasks. While Damian and this family are at the wedding service Careful Caterers decide to decorate the house and marquee with bouquets of flowers and balloons. After several glasses of champagne Damian, delighted with the work, promises to pay £200 to careful caterers for this service, on top of the original fee.

Advise Damian whether he is obliged to pay the extra £1,000 to Great Gardens and the extra £200 to Careful Caterers.

[50]

Example Grade D/E Answer:

This situation deals with consideration, consideration is when something is offered in exchange for a gain that the offeror will receive. So Damian's consideration is the money to be paid to Great Gardens and Great Garden's consideration is to landscape the garden for Damian.

When Great Gardens are unable to finish the work due to lack of workers and funds, Damian is left with no choice but to find someone else to finish the work or to pay Great Gardens the extra £1,000 to finish, he decides to pay them the extra £1,000.

When the date for payment is due Damian would have to pay Great Gardens. This would follow *Williams v Roffey* where the carpenters were paid more money in order to complete the carpentry for building by the set date. The builders paid Roffey extra money to avoid meeting a liquidated damages clause and for not having the inconvenience of finding more carpenters. This is similar to Damian's case because there was a limited amount of time and the inconvenience would have been too much.

In respect to Careful Caterers they were only contracted to provide food and a waitress service for the reception at an agreed price. They were not told to decorate the house and marquee with bouquets of flowers and balloons. Because Damian likes what they done he promises to pay £200. However he will not be obliged to pay this to them. This situation connects to the fact that consideration cannot be past consideration. This follows the case of *Re McArdle* where a house was repainted and instalments were made to accommodate an elderly lady in the house. Some women inspected the house and loved what they had done and promised to pay money for their work after it had been completed. When no payment had been made the parties sued. However they were unsuccessful due to past consideration. If however Careful Caterers were expecting pay for decorating the house they could have expected payment. This situation should have followed *Lampleigh v Braithwaite* where a man was given a pardon for murder that was asked by someone else for them. The man being pardoned provided to pay £100 for the others effort and



RECOGNISING ACHIEVEMENT

when no money was received he sued and successful won, because for that sort of action there was expected to be payment even though the promise was made after the pardon.

After looking at the two situations of Damian's he would not have to pay Careful Caterers but would have to pay Great Gardens.

Examiner's commentary

AO1 13/25 Level 3

Three accurate cases and correct on the law, a Level 3 answer that is competent but undeveloped.

AO2 9/20 Level 3

The law has been applied in each case but very briefly; this answer just gets to the bottom of Level 3 for application skills.

AO3 3/5 Level 3

Clear but grammar is not accurate enough to get to Level 4.

Total 25/50

Example Grade A Answer:

This case is an example of consideration. It could be stated that according to the rule of consideration that consideration must have some value. Damian would have to pay the £1,000 extra. This is because it would have to follow the case of *Williams v Roffey Bros*. Damian had agreed to pay the extra amount of £1000 in order to prevent the inconvenience of hiring other workers to do the work instead, or to prevent his daughters wedding from suffering. Therefore he would be obliged to pay the amount agreed. The claim of Great Gardens therefore for the £1,000 would be successful. However the fact that this decision follows *Williams v Roffey* can be questioned as to whether it is the correct decision. This is because Great Gardens are not doing anything more than what they initially contracted to do. Therefore there is no consideration on their behalf which would go against the rule of consideration that both parties should benefit. This would go against the fact that consideration must have some value. There is also the fact that the courts have not followed *Williams v Roffey* in later cases as shown in *Re Selectmove*. This shows how the decision in Damian's case is unlikely to follow this. It could be stated that the court may decide to follow the obiter dicta in *Pao On* and use economic duress as a defence against Damian's obligation to pay £1,000. This is because the case of *Williams v Roffey* was not a case of duress as decided by the courts. This is another reason why this case should not be followed.

The fact that Great Gardens did not go beyond their existing duty can also result in Damian following the *Stilk v Myrick* case, where the fact that the crew members didn't go beyond their existing duty meant they did not provide consideration and were doing what they were contractually obliged to do and could not receive the money. If this decision is followed Damian would not have to pay the £1,000.

This case can be rejected by the fact that if you go beyond your existing duty if the work is made more dangerous, as shown in *Hartley v Ponsonby*, the money would have to be paid. This however would not be the case for Damian because Great Gardens work was not made too dangerous or unbearable to continue with and could be fixed by employing more workers.

In addition it could be stated that Damian was benefiting from the work being done before the wedding in July. The fact that the contract was beneficial to him could mean he should continue to pay the £1,000 as this would be consideration on his behalf for the work to be done, following *Ward v Byham*.

In addition it could be stated that it is up to the courts to decide whether the £1,000 is paid depending on which situation seems to be reasonable.

In terms of giving the extra £200 to Careful Caterers this can be seen in the light of past consideration is no consideration. This means that a party cannot rely on an act or promise that has already taken place as the consideration for an upcoming contract. This was shown in *Roscorla v Thomas* - Damian can be seen to follow this because the work they had done was before the promise to pay £200. They could not rely on this promise so Damian is not liable to pay. The facts of this case are similar to the facts of *Re McArdle*. This is because the wife painted and decorated the house before the siblings offered to pay her out. As the same with Damian where the house was decorated before he offered the extra £200. Thus following this



RECOGNISING ACHIEVEMENT

cases decision Damian would not be liable to pay.

However it could be said that there was an intention to get a sum for the work carried out by Careful Caterers as seen in the case of *Lampleigh v Braithwaite*. Even though Braithwaite offered the £100 after the job was done Lampleigh was entitled to the money because there was always an intention that he would get rewarded for the work. The later deal confirmed the amount. However Damian would not be able to follow this case because it only occurs where the promisor asks for the job to be done. Had Damian asked Careful Caterers to do the work he would have had to pay. This shows how he is not entitled to give the extra £200 to the company.

Drunk people have a reduced capacity to contract, if one person is under the influence of alcohol and makes a contract, if the other party is unaware of this the contract is unenforceable as a person under the influence of alcohol may not be fully aware of the actions they take so the law takes a more paternalistic role.

Examiner's commentary

AO1 22/25 Level 5

Good understanding of Williams and related cases, also good on past consideration cases.

AO2 18/20 Level 5

Good application of each legal issue, particularly good on the *Williams v Roffey*, a nice comment on *Pao On* for economic duress.

Past consideration is also very well applied.

AO3 5/5 Level 5

Well written and very clear answer structure

Total Marks 45/50