

Specimen Paper Answers – Paper 3

Cambridge International AS & A Level Law 9084

For examination from 2023



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Introduction

These specimen answers have been produced by Cambridge ahead of the examination in 2023 to exemplify standards (high) for those teaching Cambridge International AS & A Level Law 9084. We have selected questions from Specimen Paper 3, Questions 2 and 4.

The marks given are for guidance only and are accompanied by a brief commentary explaining the strengths and weaknesses of the answers. Comments are given to indicate where and why marks were awarded, and how additional marks could be obtained. There is also a list of common mistakes and guidance for candidates for each question.

The specimen materials are available to download from the [School Support Hub](#).

2023 Specimen Paper 03

2023 Specimen Paper Mark Scheme 03

Past exam resources and other teaching and learning resources are available from the [School Support Hub](#).

Details of the assessment

Paper 3 Law of Contract

Written paper, 1 hour 30 minutes, 75 marks

Section A: one scenario-based problem question from a choice of two

Section B: two essays from a choice of three

Topic 3, Law of contract, links with Topic 1, English legal system.

Knowledge of material from AS Level Topic 1 is assumed knowledge for A Level Topic 3.

Externally assessed

25% of the A Level

Assessment objectives

AO1 Knowledge and understanding

- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

AO2 Analysis and application

- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

AO3 Evaluation

- Evaluate legal concepts, principles and rules
- Communicate legal argument coherently on the basis of evidence.

Assessment objectives as a percentage of Paper 3

AO1 Knowledge and understanding	50%
AO2 Analysis and application	20%
AO3 Evaluation	30%

Question 2

On 1 July, Spool Fashions (SF) enters into a contract with Tara to make her a dress for her wedding. They agree a collection date of 1 August. Tara makes an initial payment of £500 and agrees to pay the balance of £1500 when the dress is collected.

One week later, Tara regrets her decision to spend such a large amount of money. She telephones SF to cancel the order and to ask for her deposit back. SF is busy completing other contracts and has not yet begun to make Tara's dress. However, Tara is told that she can no longer change her mind and that the dress will be ready to collect as agreed.

The next day, a gas explosion causes damage to SF's workshop and destroys its equipment. SF's workshop is officially declared as unsafe and its use is prohibited for two months until repairs have been carried out. SF is forced to suspend business.

Advise SF and Tara of their respective contractual rights and obligations throughout the course of these events.

Specimen answer

Tara's request to cancel the order for the dress is likely to be considered an anticipatory breach. A breach is when a contract is not performed, or the performance is defective. Spool Fashions have agreed to make the dress, and Tara has agreed to pay an agreed price. In attempting to cancel, Tara is breaching her agreement to pay. Clearly this happens in the world of retail and other businesses, where some cancellations are accepted as part of commercial reality, in order to maintain good customer relations. However, a proposal to not pay is an anticipatory breach.

*In the case of *Hochster v De La Tour* a courier was employed for a holiday season. The courier was then informed, before the start date of his work, that he would not be needed after all. He sued successfully for damages for anticipatory breach, before the start date, since his wages would be needed to live on during that season when he would have been employed.*

Applying the principles of this case to Tara, SF could sue for the whole of the payment since the income from the contract would be important to SF. Since Tara's breach is anticipatory, SF could sue right away. However, SF has not yet begun to make Tara's dress, so they could therefore mitigate their loss by not going ahead with the contract.

*A similar situation arose in *White and Carter v McGregor*, where advertisers continued to place advertisements even though the other party had stated that they did not wish the contract to go ahead. Payment for the full contract price was awarded by the House of Lords.*

Regarding the gas explosion, this may be a situation of frustration of the contract. When an event occurs during the lifetime of a contract, at the fault of neither party, which makes the

contract impossible to perform, illegal or radically different from what was undertaken, the contract is said to be frustrated. It could arise, for example, in the case of a natural disaster, outside the control of the parties.

At one time contractual obligations were very strict, but in *Taylor v Caldwell* a more practical solution was sought. A music hall and gardens were hired for a concert, but before the performance the hall caught fire and was destroyed. The contract was held to be frustrated as it was impossible to perform, and not the fault of either party.

Similarly in *Morgan v Manser*, a music hall compere was called away for war service and therefore unavailable. It was unknown how long the war would last and as performance was impossible, the contract was held to be frustrated.

Certain contracts were held to be frustrated following the illness of King Edward VII in 1903, since they had been formed on the basis that the coronation would take place. They were not impossible to perform, but just pointless, for example in *Krell v Henry*, where a room had been hired to watch the coronation procession which had been cancelled. However, if there was still some point to a contract, such as in *Herne Bay Steam Boat Co v Hutton*, where a pleasure boat trip could still go ahead, then it was held to be valid rather than frustrated.

Returning to Tara's situation, if the gas explosion was an accident, and not the fault of SF, then the contract between SF and Tara for the dress would be frustrated. However, if the court should find that the work could have gone ahead, but would have been more onerous or less profitable, then frustration would not apply. Frustration was not found in *Tsakiroglou v Noblee Thorl*, where a journey by ship would have taken longer due to the closure of the Suez Canal. This principle was also applied in *Thames Valley Power v Total Gas*, where a contract to supply gas would no longer have been profitable because of a rise in gas prices.

Assuming that the contract is held to be frustrated, the payment needs to be considered. At one time the common law principles regarding payment would have meant that 'the loss lay where it fell', with all obligations on either side ending at the point of frustration. This would have meant that Tara would have lost the deposit. The *Law Reform (Frustrated Contracts Act) 1943* changed this position. This Act provides that any money paid will be returned. Then an order may be made for any expenses already incurred, and an order may be made for any benefits already received. This is a way of sharing the burden more fairly, rather than the outcome depending on the chance of the moment of frustration. It gives the court some discretion, as the Act states that orders for payment may be made.

So applying this Act to Tara and SF, the deposit of £500 would be returned to Tara. SF have not begun to make the dress, but if they have incurred expenses such as ordering special

fabric, they may be able to recover the cost. Tara does not appear to have received any benefit needing payment.

Total marks awarded = 20 out of 25

Examiner comment

This is an accurate and detailed account of the two areas of law involved; anticipatory breach and frustration of a contract. Appropriate legal concepts and principles are selected and explained, with good use of case examples and statute.

It is likely that the candidate will be aware of more legal material regarding the frustration aspect of the scenario than the anticipatory breach. This is fine, and a very good level of knowledge has been displayed here regarding both issues, but particularly with frustration. There are many cases to illustrate the common law, and then, importantly, the statute to explain. (AO1: 10 out of 12 marks awarded.)

Application is focused regarding both aspects of the question, considering the most likely outcomes for each one. It is supported effectively by legal concepts. *Hochster v De La Tour* and *White and Carter v McGregor* are applied effectively to the anticipatory breach. The *Law Reform (Frustrated Contracts Act) 1943* is a key matter and is applied sensibly to the situation of frustration. A little more application to the facts would attract an even higher mark, for example SF could have considered hiring alternative premises in mitigation, or not continuing to make the dress. Regarding application of statute, they may have already spent money on fabric. There is reasoned application throughout, but especially in the third paragraph regarding Tara's wish to cancel, and in the last one regarding the gas explosion. (AO2: 4 out of 5 marks awarded.)

Evaluation of the situation is coherent and well supported by analogy with case law and statute. It is seen especially when considering the way in which any loss is shared in paragraphs 10 and 11. (AO3: 6 out of 8 marks awarded.)

Common errors and general guidance for candidates

- Introducing much wider areas of law, for example, actual breach and basis of assessment of damages, which is not relevant, will waste time needed to focus on the question.
- Spending too long on the first issue (the anticipatory breach) and not having time to write fully on the legal aspects of frustration will result in not producing a fully rounded response. Use of time available is very important in scenario questions, given that time is needed initially to consider the circumstances of the problem and to identify the areas of law concerned.
- A common mistake is to spend too much time purely discussing the facts of the question. A good framework of legal rules is essential.
- Spending too long discussing what the parties may have been thinking will waste time which could be used in applying legal argument.

Question 4

English law aims to strike a balance between the freedom to contract and the need to protect people who are unable to protect themselves.

Assess the extent to which minors are protected when entering into contracts.

Specimen answer

Freedom to contract is an important principle in law and individuals are generally left to negotiate agreements as they wish. However, certain rules aim to protect more vulnerable parties in contracts, especially minors.

Minors are those under 18, following the Family Law Reform Act 1969, and are bound by contracts for necessities. These are goods or services which are essential for ordinary living. In the Sale of Goods Act 1979 there is a twofold definition. Necessaries must be suitable to the condition in life of the minor and to their actual requirements at the time of sale and delivery.

So this definition of necessities covers more than basic essentials, such as food and shelter, and takes into account a minor's status and therefore the ability to pay. This could seem to discriminate, but it does give protection to the minor, by assuring the seller or provider that payment will be made, which allows the minor to make the purchase.

*Nash v Inman illustrates the definition of necessities. A Cambridge undergraduate, the son of a wealthy architect, ordered 'eleven fancy waistcoats', but then did not pay for them. It was held that they could be classed as necessities, since they were normal clothing for a Cambridge student at the time (1908), but they were not required on this occasion. It was stated in court that the father had already provided his son with plenty of clothing. There have been suggestions by the Law Commission that the definition of necessities should be clearer, but this case is still the leading one. Other examples from the same period include *Peters v Fleming*, where an expensive watch chain was considered a necessary, since the watch itself would have been allowed, and, on the other hand, *Wharton v McKenzie*, where luxurious items for an Oxford student's dinner party, such as ices and confectionary, were held not to be necessities.*

*Services may also be necessities, as in *Chapple v Cooper*, where a young widow was obliged to pay for her late husband's funeral. On the other hand, a contract which is particularly onerous on the minor will not be enforced, such as the sale of a car in *Fawcett v Smethurst*. This left the seller at a disadvantage.*

A contract of training and employment, often called a beneficial contract of service, may be enforceable against the minor if, on the whole, it is for the minor's benefit. This can be seen as an

extension of the idea of necessities. It is a 'kind of education', as pointed out in *Roberts v Gray*, regarding a billiards player. Similarly in *Doyle v White City Stadium* a contract with a young boxer was held binding, even though some aspects of payment were not advantageous, because of the benefit of the training that he received. On the other hand, in *De Francesco v Barnum* a young dancer was under such oppressive restrictions that her contract was seen as not beneficial to her, and not binding. In these cases, the level of protection can be seen to be broadly fair.

Contracts of an ongoing nature may be regarded generally as voidable. This means that they may be repudiated by minor until the age of majority (18) is reached, or within a reasonable time afterwards. In *Steinberg v Scala* a contract involving shares was repudiated, but the minor had to pay the initial cost of the shares. In *Edwards v Carter* a young man agreed to invest any property that he acquired into a trust fund. He later inherited his father's estate, and regretted having made the agreement, but it was held to be too late to repudiate the contract. This was rather harsh situation, as it depended on the legal knowledge of the minor at the time.

The *Minors' Contracts Act 1987* changed the situation regarding the balance of protection of minors. The main provisions of the short Act concern loans (S2) and restitution of goods (S3).

The common law position regarding loans is that the repayment of a loan by a minor is unenforceable. Now, under S2 of the MCA, if a loan to a minor is guaranteed by an adult and the minor defaults on payments, then repayment is enforceable against the adult guarantor. This makes it more likely that a minor will be able to actually obtain a loan.

Until 1987 the law was quite harsh on the adult if a minor obtained goods which were not necessities, and then did not pay for them. Under S3 of the MCA the court may order the restitution, or handing back of goods obtained in this way, or other property representing the goods. If, for example, *Nash v Inman* occurred now, the court could order the waistcoats to be handed back to the tailor.

So, we can see that there is some protection for the seller of goods who contracts with a minor for non-necessaries, as they may be able to recover some of their loss. However, it does not help if the goods have been sold on, and then the proceeds have been spent on things like hotels or food. Also, some goods are worth much less as second-hand items, such as worn clothes, so the law does protect both parties.

There are still some problems, such as the difficulty at the time of sale for a seller to know whether a person is a minor, and also in deciding whether the item being bought is likely to be a necessary. Even if a minor is bound to pay for a purchase, the *Sale of Goods Act 1979* states that they only need pay a 'reasonable price' for it. This provides good protection for the minor, especially if goods are overpriced. Regarding contracts of training and employment, an adult

could invest time and effort, just to find that the minor is able to escape from the contract. A way around this is for the employer to agree to generous terms.

Generally, the paternalistic approach of the law means that minors can obtain shelter, food clothing and other required items essential for living, and the seller should have confidence that payment will be enforced if a dispute arises.

Total marks awarded = 20 out of 25

Examiner comment

The first paragraph shows a clear intention to address the issues in the question, without being too broad in approach, given the time available.

An accurate account follows of the three main areas required, e.g. necessities, including beneficial contracts of employment, etc, voidable contracts and the *Minors' Contracts Act 1987*. Thorough knowledge is shown of legal cases and statutes relevant to the question and legal terminology is used appropriately. Some detail is given of cases and statute, showing understanding in using authorities appropriately. Fuller detail is welcome, but within the time constraint this is difficult given the breadth of the topic. A brief account of facts is often preferable to merely quoting case names, or, on the other hand, giving unnecessary detail on only very few cases. (AO1: 10 out of 12 marks awarded.)

Analysis is found throughout, and is both focused and reasoned, especially in the discussion of necessities and of training and education. It is supported by well-developed legal principles, cases and statutes. (AO2: 4 out of 5 marks awarded.)

Some further comment on the balance of protection given by the MCA would help to achieve even higher marks, as would some comment on the proposals of the Law Commission on the definition of necessities, or the age of a minor in law. Equally a comment on the balance of protection against the freedom to contract would be welcome. Evaluation is particularly evident in the last three paragraphs with consideration of the protection provided for minors by the MCA and any problems that could still arise. (AO3: 6 out of 8 marks awarded.)

Common errors and general guidance for candidates

- It is important to not stray from the area of law required (e.g., formation of a contract, or capacity of intoxicated people) as time is limited.
- Too much detail on a few cases means less time for other examples. A balance is needed.
- Spending too much time on a common law area of capacity of minors, for example necessities, may mean having no time to include the MCA, which is more important.
- Balance of time is important. In order to gain high marks, it is essential to allow time for analysis and evaluation, rather than spending it all on purely explaining legal rules.

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