

Legal Profession Admission Board

October 2024

Contracts

Examiner's comments

General comments:

1. Candidates were required to provide answers in response to two problem questions. Both problem questions were compulsory. All topics were covered in the exam.
2. 116 candidates sat the examination. Final marks (defined as the total sum of a student's examination mark and the assignment mark) ranged between 15 to 78. Four candidates were awarded a Pass Distinction grade, 8 candidates were awarded a Pass Merit grade and 62 candidates were awarded a Pass grade. The exam was designed as an opportunity not only for the student to showcase their knowledge of the principles of contract law but also their examination technique.
3. It was common to see responses which identified and discussed as many issues or causes of action that the student could identify (within the allotted time) without engaging with the applicable prompt: that is, to 'advise' a particular person. Students need to think critically about whether the issue or cause of action is beneficial to the commercial interests of a particular person. While students should identify and discuss the issues or causes of action they identify as arising on the facts, the hallmarks of a better response included (i) a brief rationale for why the issue or cause of action was beneficial (or not beneficial) to the person's interests; and (ii) prioritising the discussion of issues or causes of action that were likely to advance that person's interests. Less time should be spent on issues that appear uncontroversial, or analysing issues or causes of action that are at least arguable on the facts but will likely fail for one or more reasons.
4. It also goes without saying that students need to actually **analyse** the controversial legal issues in their responses to the problem questions. It was disappointing to see far too many responses that simply identified an issue or cause of action and stating a conclusion without giving a considered analysis. No significant marks can be awarded for conclusionary or superficial responses. It is suggested that students spend their reading time planning their responses to the questions with a view to identifying the critical issues for detailed discussion and those issues which do not need to be analysed in the same level of detail.

Questions:

- (a) Question 1 focused on issues of contract formation, implied or express terms, termination of contracts (including the consequences of termination) and remedies. Students generally struggled to respond to this question. Far too many responses failed to recognise how terms might be incorporated or implied into informal contracts, such as an implied term to the effect that a person is obliged to exercise reasonable care and skill in the provision of a service. Similarly, students struggled to demonstrate a clear understanding of the principles governing termination of contracts.

- (b) Question 2 focused on vitiating factors (under the general law and statute) and damages. This was objectively more straightforward than Question 1, but students generally struggled with the point of the question – many responses concentrated on legal issues or causes of action that would not assist the person you were asked to advise. Students need to remember that the point of an ‘Advise X’ question is to showcase knowledge of the legal principles applicable to the relevant causes of action that appear on the facts **and** whether those causes of action would generally be of assistance to that person.
5. Overall, students would benefit from practising adapting the key principles to the problems and thinking more deeply about the practical issues that arise from the question.