

Legal Profession Admission Board
Examiner's Comments
04 Contracts Examination - March 2025

The exam comprised of four questions.

Candidates were required to answer three questions:

Question 1, which was compulsory, plus any two of Questions, 2, 3, and 4.

Question 1 was worth 40 marks. Questions 2, 3, and 4 were each worth 30 marks.

Question 1

What issues or areas of knowledge was question 1 seeking to test?

1(a) dealt with (i) the requirement of certainty and completeness of essential terms of a contract; and (ii) whether the agreement was enforceable in the absence of the anticipated formal contract.

1(b) dealt with whether a statement made constituted a term of the contract, and if so, whether the breach of it justified termination of the contract.

Question 2

What issues or areas of knowledge was question 2 seeking to test?

2(a) dealt with whether an offer had been made, and if so which of the two offerees accepted the offer. The application of the postal acceptance rule was the key to the second point.

2(b) dealt with the issue of past consideration which, if it applied, raised the question of whether a claim based upon the principles of promissory estoppel applied.

Question 3

What issues or areas of knowledge was question 3 seeking to test?

Part A raised the requirement for bringing a claim for a fixed sum in a contract and whether the claimant had substantially performed in order to recover that sum less the cost of remedying the defective performance.

Part B the application of the right of a wife pursuant to the principles outlined in *Yerkey v Jones* and *Garcia v National Australian Bank Ltd*.

Question 4

What issues or areas of knowledge was question 4 seeking to test?

This question dealt with principles relating to the recovery of damages for breach of contract and raised the following principles: (a) the recovery of indemnity losses; (b) the principle of mitigation; and (c) the circumstances in which damages for non-economic loss could be recovered.

Characteristics of poor or average responses

What characterised very poor or average responses to the examination paper?

Poor or average answers stemmed from not identifying the legal principles that were relevant to the problem question and/or poorly structuring an answer. Many of these students could answer questions of the type that required them to state the law on a particular matter. This resulted in answer stating that the question raised principal “X”, where in fact it raised principle “Y”.

Characteristics of very good or excellent responses

What characterised very good or excellent responses to the examination paper?

Correctly identifying the legal issues raised by each question, stating the relevant legal principles, and applying the principles to the facts of the problem question.

Common mistakes

Were there commonly encountered mistakes as to the law in student responses?

A very common mistake, in Question 1(b) was not knowing the difference between termination of a contract for breach and rescission of a contract for a vitiating factor, such as misrepresentation. In other cases, it was simply clearly not having gone through or understood relevant parts of the course.

Areas for improvement

Were the identifiable areas for improvement in the students’ legal knowledge tested by the examination paper?

See previous comment. Also, students need to pay close attention to what the question actually asks them to do and avoid reciting facts as set out in the question. Facts only need to be referred to where necessary in applying relevant legal principles to the facts of the question.

Other comments

Any other comments and/or comments about marks awarded.

The failure rate for the subject was 46.15%. The failure rate for the previous two sessions was 33% (March 2024) and 41% (September 2024).

However, a more meaningful comparison is between the failure rates for the previous two sessions based upon performance in the examination only for those two sessions. In March 2024, 43% of students failed the examination and in September 2024, 48.3% of students failed the examination.

I should also note that there was a different Examiner for the previous two sessions.