



ACCA

F4 (ENG)

Corporate and Business Law

December 2014

Interim Assessment – Answers



To gain maximum benefit, do not refer to these answers until you have completed the final assessment questions and submitted them for marking.

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SECTION A

1 A

A criminal case will be stated as R v defendant.

2 C

Options A and B are relevant to criminal law.

3 A

4 C

5 B

Beyond reasonable doubt is the standard of proof in a criminal case.

6 B

7 D

External debts are always paid off first on the dissolution of a partnership.

8 A

A specialty contract must be made by deed.

9 C

10 C

The agent just acts as an intermediary.

11 A

12 B

Volenti non fit injuria is a complete defence.

13 A

14 C

15 A

16 C

17 A

A simple contract can be in any form.

18 A

A claim for wrongful dismissal is a common law action for breach of contract.

19 C

20 B

This was established in Caparo Industries Plc v Dickman and Others.

21 C

22 C

23 B

24 D

25 B

26 A

Express terms will generally override implied terms.

27 C

28 C

29 C

30 D

31 B

32 C

33 A

In the event of conflict equity will prevail over common law.

34 A

An LLP is a separate legal entity and therefore is liable for its own debts.

35 D

36 C

Under the economic reality test this is one of the factors which suggests that the worker is an employee.

37 A

38 A

39 A

40 C

41 C

The display of goods is an invitation to treat.

42 B

A statute cannot have retrospective effect.

43 B

An appeal on a question of fact will go to the Crown Court.

44 A

45 A

SECTION B

1 ADAM

- (a) Adam made a unilateral offer to the world at large. Although Ben was not with Adam's group, the offer was made to 'anyone' and therefore open to Ben to accept it by performing the required act. He did not have to inform Adam that he was accepting the offer; he simply had to perform the act.
- (b) Adam's statement to Ben is an attempt to revoke his offer. However, it is ineffective once Ben had started to perform the required task (*Errington v Errington*). His attempt to revoke the offer would actually indicate the seriousness of the original offer.
- (c) It would therefore appear that Ben could claim the £100 from Adam.

ACCA Marking scheme		Marks
(a)	Unilateral offer	1
	Made to anyone	1
	Acceptance by performance	1
	Max	3
(b)	Attempt to revoke	1
	Revocation is invalid as performance has begun	1
	Max	2
(c)	Ben can claim	1
Total		6

2 ATKINSON LTD

- (a) G-Force Ltd has merely fulfilled an existing contractual obligation by supplying the glass on time. G-Force Ltd has applied pressure by refusing to supply the glass on time without being paid more money.

Therefore, G-Force Ltd cannot sue Glimpse Ltd to enforce payment of the extra £3,000.

- (b) HandlesRUs Ltd will be able to enforce the promise of the extra payment, as Glimpse Ltd approached the company to produce the fittings and handles before the contractual deadline, and this is clearly over and above what was specified in the original contract. This would amount to sufficient consideration to support a new promise.

HandlesRUs Ltd would therefore be able to claim the additional £500.

ACCA Marking scheme		<i>Marks</i>
(a)	Has completed an existing contractual obligation	1
	Pressure has been applied	1
	Cannot sue for extra payment	1
	Max	3
(b)	Exceeded the contractual obligation	1
	Offered extra by Glimpse Ltd	1
	Can sue for extra payment	1
	Max	3
Total		6

3 TOM

- (a) Rather than rely on one single factor, the economic reality test lays down a number of factors that can be used to make an assessment of each particular circumstance. The courts are not bound by how the parties describe the relationship. It is immaterial whether a person is described as self-employed.
- (b) It would appear that although employers determine the time, place and duration of appointment and Tom did not provide any tools or bear any financial risk, it is likely that he is an independent contractor. This is because he works for a number of different employers, for varying amounts of time, he can send a substitute and he is responsible for managing the business.

ACCA Marking scheme		<i>Marks</i>
(a)	Looks at a number of factors	1
	Not bound by how parties describe themselves	1
	Max	2
(b)	1 mark for each relevant point (max 3)	3
	Likely to be an independent contractor	1
	Max	4
Total		6

4 VANESSA

- (a) For a special relationship to exist, there are a number of elements which must be identified. Firstly, the defendant must be in the business of giving professional advice and must be giving the advice in a business context.

Secondly, the advice must be provided for the purpose of the claimant. Thus in the case of *Caparo Industries Plc v Dickman & Others*, no duty of care was owed because although the audit report was negligently prepared, the audit report is provided for the purpose of the company and not for individual investors.

However, in the case *Morgan Crucible v Hill Samuel Bank* circulars were provided for the express purpose of increasing Morgan Crucible’s bid and, as such, it was held that there could be proximity and thus a special relationship.

Finally the defendant must have intended the claimant to rely on their advice and this must have caused their losses.

In the case of *Jeb Fasteners v Marks, Bloom & Co*, the auditors negligently prepared the audit report. When Jeb Fasteners took over the company, they discovered that stock had been over-valued. As the reason for the take-over was to gain the services of two of the directors, they would have made the decision anyway and thus the claimant’s action for damages failed.

- (b) In Vanessa’s situation, it appears that there was a special relationship as the advice was provided by the company’s auditor who is in the business of giving professional advice and was providing advice in a business context.

The advice was provided specifically for the purpose of Vanessa, and Gavin would have been aware that she would rely on it when making her decision.

It appears likely that damages would be payable by Gavin for professional negligence.

ACCA Marking scheme		<i>Marks</i>
(a)	1 mark for each relevant point	—
	Max	3
		—
(b)	Advice specifically for Vanessa	1
	Was a special relationship	1
	Damages payable by Gavin	1
	Max	3
		—
Total		6
		—

5 MICHAEL

- (a) Under an order for specific performance, the court may require the party in breach to complete their part of the contract on the terms agreed. However, an order of specific performance will only be granted in cases where the common law remedy of damages is inadequate. Specific performance will not be granted where the court cannot supervise its enforcement. For that reason it will not be available in respect of contracts of employment or personal service.

Therefore, Michael will not be able to force Sam to carry out the work if he does not want to.

- (b) Measure of damages relates to the actual amount of loss sustained by the injured party. Damages in contract law are intended to compensate the injured party for any financial loss sustained as a consequence of another parties' breach.

Particular difficulties may arise in relation to estimating the damages liable in construction contracts. The usual measure of such damages is the cost of carrying out the work or repairing the faulty work. However, this may not be the case where the costs of remedying the defects are disproportionate to the difference in value between what was supplied and what was ordered (Ruxley Electronics and Construction Ltd v Forsyth).

It would appear at first sight that Michael would only be entitled to the difference between the value of the tower provided and the value of the tower he had contracted for; i.e. £1,000. However, Michael's tower was of no practical use to him in its finished state. It would, therefore, be likely that Michael could claim damages for the complete reconstruction of the tower, i.e. the £35,000.

ACCA Marking scheme		<i>Marks</i>
(a)	1 mark for relevant point re specific performance	1
	Specific performance not available	1
	Max	2
(b)	1 mark for each relevant point re damages (max 3)	3
	Claim damages for full reconstruction of tower	1
	Max	4
Total		6