



Concentrate Questions and Answers Contract Law: Law Q&A Revision and Study Guide (3rd edn)

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Abstract

The *Concentrate Questions and Answers* series offers the best preparation for tackling exam questions. Each book includes typical questions, answer plans and suggested answers, author commentary, and other features. *Q&A Law of Contract* provides guidance on answering questions on the law of contract. This chapter provides advice on preparing and writing an answer to a coursework question. It looks at: researching, planning, and preparing to write; critical analysis and evaluation; structure; writing your answer; relevance and sticking to the word limit; and referencing and citation of legal authorities. It also provides example coursework for you to look at.

Keywords: law of contract, answer to coursework question, referencing, preparing an answer, writing an answer

When preparing and writing an answer to a coursework question you need to consider the purpose of the exercise. For example, the exercise will often be designed to allow you to demonstrate to a marker that you understand an area, or areas, of law and that the process you have employed shows a sound method of collection, interpretation, and use of appropriate legal source material. Depending on the type of exercise set, it will also often allow you to demonstrate higher level skills such as analysis, synthesis, evaluation, and application. So before embarking on this process you should consider carefully what is expected of you; guidance will be found in the assessment criteria as it is against these that your answer will be judged.

Researching, Planning, and Preparing to Write

Your starting point must be a careful analysis of the question asked. Identify the subject matter of the question and then consider what you are asked to address in answering the question. Are you expected to compare the law pre- and post- a particular change or to seek to reconcile authorities or to make a judgement on the effectiveness of the operation of the law? Key words in the question must be identified and, of course, the instruction, for example, to discuss or critically evaluate must be followed. In answering a question, you will be required to make express reference to primary, and possibly secondary, legal source materials.

Having unpacked the question and identified the subject matter of the question, your next task will be to locate relevant materials. Starting points will include your lecture notes and appropriate textbooks. Consult the major textbooks such as: *Treitel; Anson; Cheshire, Fifoot, and Furmston*; and/or *Chitty*. Read these to get an overall appreciation of the area of law and the important source materials available.

In researching an area of contract law, the sources you will be seeking to locate are primary source materials, such as cases and legislation, and secondary sources, such as textbooks, journal articles, and reports. Make a list of materials as your research progresses, ensuring that you fully note the reference for each (it is very time-consuming to hunt down a source reference when you are putting the finishing touches to your coursework). Journal articles are an important source of analysis of cases and of reviews of areas of law. An essay will benefit from the arguments or interpretation of legal authorities provided by academics. Of course, the sources must be carefully attributed in footnotes and bibliographies, so it is clear that you are using the ideas or comments of another person.

p. 227 ↵ What you have learned about IRAC and PEA in answering examination questions may be used in writing your coursework. The important point to recognize is that writing skills are transferable between forms of assessment and indeed subject areas.

Critical Analysis and Evaluation

Use of IRAC and PEA will form the basis for the analysis of the question asked. By using these approaches, you should avoid producing a merely descriptive account of the area of law identified in a question.

In problem questions the first stage of your analysis is to identify the issues raised and then to explain the law relevant to each issue before applying the law to the specific issue.

Structure

A clear and logical structure to your answer is essential. An introduction should identify the elements of the question, thus demonstrating that the requirements of the question have been understood, and then indicate briefly how such issues are to be tackled in the body of the essay. The main body of the essay should then deal with the issues in turn. Having discussed the issues, an overall conclusion may be reached based upon the material already explored; new material should not be introduced in a conclusion.

Writing Your Answer

One difficulty faced by law students is determining the level of explanation to be employed in an answer. It is crucial to identify the audience at which your writing is directed. If you are writing for a lawyer, you may be able to assume that lawyers will possess basic legal knowledge which therefore need not be explained. However, if you are writing for a layperson, such an assumption may not be made, and basic concepts must be explained. At first-year undergraduate level your tutors will usually be seeking to assess, amongst other things, *your* understanding of basic legal concepts and rules so you will be expected to give explanations, for example, of what is an offer, what is meant by consideration, what is misrepresentation, and so on. Undergraduate students in later years or GDL students may face questions which are more searching or have a different emphasis. The question asked should give an indication of the audience to be addressed. As always, if in doubt ask your tutor.

The style of writing you employ will depend upon the task that has been set, for example, are you instructed to write an essay or a report or an advice note for a lawyer? Look for examples of the type of writing that is required and make notes of the features that may be used in your answer.

In producing an essay, it is more usual to write in the third person singular; rather than saying 'I think the argument is ...', you should write 'It may be argued that ...' or 'It may be contended ...'. Ensure that your writing does not use colloquialisms and avoids a conversational style of writing. Adopt a more formal style of expression; examples of formal styles of writing may be found in journal articles in publications such as the *Cambridge Law Journal* and *Law Quarterly Review*. It is also advisable wherever possible to keep sentences short and not to overcomplicate writing by using long words where shorter words would suffice. Remember, you are seeking to demonstrate that you understand a particular area of law and/or that you can construct an argument. However, in legal writing precision and accuracy are paramount so the use of legal language is expected. Detailed advice on writing style is beyond the scope of this chapter but you may like to consider S.I. Strong's *How to Write Law Essays and Exams* (6th edn, Oxford University Press, expected 2022) which contains a chapter giving tips on legal writing.

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- ↳ While it is perfectly permissible to use quotations, do so sparingly. If you do use a quotation ensure that it is, for example, to provide evidence to support a point previously made or to express a point of view. Often students use quotations in place of explaining a basic point for themselves. This will not score high marks as it is your understanding/analysis which needs to be expressed not that of someone else.

Relevance and Sticking to the Word Limit

One of the criteria against which your answer will probably be judged is that of relevance. By including in your answer only relevant material you will be demonstrating that you have understood the question asked. What is relevant depends upon the question and the issues raised by it. Only deal with the areas of law that relate to the issues in the question.

If your answer is constrained by a word limit you must be mindful of the consequences of exceeding the word limit. Your coursework will usually indicate the consequences of non-compliance which can range from a mark reduction to an outright failure.

Referencing and Citation of Legal Authorities

You will be expected to reference your coursework appropriately. Three points should be borne in mind. First, to avoid an allegation of plagiarism, it is important to acknowledge the sources you have used in your answer by including sources both in footnotes and in a bibliography. Secondly, as the reader of your answer may wish to check the source you have used you must give a full reference so that the source may readily be found. If you are including in your essay a quotation from a source, it is necessary to give a page reference (or a paragraph number) to precisely identify the source. Thirdly, it is important to ensure consistency in referencing and to this end the Oxford University Standard for the Citation of Legal Authorities (OSCOLA) may be followed (your university should indicate the method of citation that is to be used). OSCOLA is available online at www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf and is accompanied by a short guide, OSCOLA Quick Reference Guide, which is to be found at the end of the document. This short guide is a good starting point when using OSCOLA.

Coursework Example

Question

'The subject of whether English law does or should recognize a general duty to perform contracts in good faith¹ is one on which a large body of academic literature exists. However, I am not aware of any decision of an English court, and none was cited to me, in which the question has been considered in any depth² (*Yam Seng Pte Limited (A company registered in Singapore) v International Trade Corporation Limited* [2013] EWHC 111 (QB) at [120]³ per Leggatt J).

¹ What is meant by good faith? One difficulty when discussing the concept of good faith is that it may mean different things to different people (compare, for example, *Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40). You will need to acknowledge and briefly explore the problems of terminology.

² Essay questions sometimes incorporate a quotation which will, for example, contextualize the task or provide a starting point.

³ Consider whether any source cited in the question might assist in answering the question. In fact, *Yam Seng Pte Limited (A company registered in Singapore) v International Trade Corporation Limited* [2013] EWHC 111 (QB) provides an excellent overview of this area but have there been more recent cases? See, for example, *MSC Mediterranean Shipping Company SA v Cottonex Anstalt* [2016] EWCA Civ 789 and *Bates v Post Office Ltd (No.3: Common Issues)* [2019] EWHC 606 (QB).

Critically discuss⁴ the extent to which the Law of England and Wales does and should recognize a general duty to perform contracts in good faith.⁵

⁴ The question requires a critical discussion rather than requiring you to write all you know about good faith. Remember PEA!

⁵ Remember, there are two strands to this question: a critical discussion of the *current* position and a critical discussion of whether or not there should be a change of direction.

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Answer Guidance

The role of good faith in contract law is a very topical subject and, therefore, is a prime candidate for assessment. One of the difficulties with the debate on good faith in contract law is that it is clear that good faith may be defined in different ways. For example, at one end of the spectrum some might argue that good faith is essentially a limited negative duty not to, for example, actively mislead a potential contracting party (and, as such, it overlaps to some extent with the law of misrepresentation). On the other hand, some would argue that it is a wider, positive duty which, for example, ‘looks to good standards of commercial morality and practice’ (*Director General of Fair Trading v First National Bank Plc* [2001] UKHL 52 at [17] per Lord Bingham) or ‘commercially acceptable’ conduct (compare *Bates v Post Office Ltd (No.3: Common Issues)* [2019] EWHC 606 (QB)).

It is clear that the Law of England and Wales does not *explicitly* recognize a *general* duty of good faith in contract law. However, there are examples of more limited duties of good faith in the Law of England and Wales: for example, under the Consumer Rights Act 2015. Furthermore, subject to these problems of definition, the Law of England and Wales regulates contractual behaviour in other ways

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(e.g. through the doctrine of undue influence or the doctrine of misrepresentation) which, to some extent, in effect requires parties to act in good faith (see *Interfoto Picture Library Limited v Stiletto Visual Programmes Ltd [1989] QB 433* at 439 per Bingham LJ).

To what extent, if any at all, was this position changed in *Yam Seng*? Here you should briefly explore the use of implied terms of good faith but note the caution of Leggatt LJ: ‘I doubt that English law has reached the stage, however, where it is ready to recognize a ↗ requirement of good faith as a duty implied by law, even as a default rule, into all commercial contracts’ (at [131]).

You will need to explore why there is a reluctance to recognize an explicit general duty of good faith in contract law in England and Wales.¹ Are the reasons convincing? For example, it is sometimes argued that an explicit general duty of good faith runs contrary to the adversarial nature of contracting (such as driving a hard bargain) but good faith does not necessarily mean a party has to sacrifice their own interests (see D. Campbell, ‘Good Faith and the Ubiquity of the “Relational” Contract’ (2014) 77 *Modern Law Review* 473). This will set the grounding for the second part of the question: would you suggest that the current position needs to change and, if so, why?²

¹ H.G. Beale, *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021) 1–39ff provides an excellent overview of this area.

² Express your reasoned, argued opinion.

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