

Tel Aviv University Faculty of Law
Legal English
Helen Motro

SAMPLE ANSWERS

FINAL EXAM MOED A 2006

Q 1

-1-

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1) The terms of the agreement between the defendant and the plaintiff were: (a) The defendant agreed to hire the plaintiff's flat, located at Pall Mall St. on the days of June 26 and 27 for the total sum of 75£; (b) The defendant paid a sum of 25£ as a deposit on the day of the agreement; (c) The defendant will pay the balance of 50£ to complete the total amount agreed upon on the day of June 26; (d) The defendant shall use the flat during the days only and not during the nights; (e) The defendant will take care of the premises and their contents.

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1) The terms of the agreement between the defendant and the plaintiff were: The flat at 56A, Pall Mall that belongs to the plaintiff will be in the use (only for the days, not for the nights) of the defendant on the days of June 26 and 27. The defendant had paid a sum of 25£ out of the 75£, which is the total sum, in advance. On the 24th the balance, viz 50£ should have been paid.

2) The action is based on the branch of Contract law.

The plaintiff seeks for performance (getting the full payment from the defendant), whereas the defendant in his counterclaim seeks to get his deposit back.

3) ⁽¹⁾ Darling J. was the judge in the trial court who

ruled for the defendant, and which on his judgement, the plaintiff appealed to the King's Bench.

4) ⁽¹⁾ Vaughan Williams L.J. is the judge in the King's Bench,

who is giving the opinion of the court in that case.

5) ⁽¹⁾ There is no factual disagreement between

the parties, The case presents a pure question

of the law (contract interpretation).

Q6

Question 6 A summary of the facts: On June 17th, 1902, the defendant agreed hiring plaintiff's flat at 56A, Pall Mall on ~~the~~ ^{the} days of June 26th and 27th, for the purpose of viewing the processions. The parties agreed on writing on ~~the~~ June 20th that ~~an~~ deposit of 25~~£~~ would be paid on ^{June} 20th, while the remaining 50~~£~~ would be paid on June 27th. Defendant paid the deposit on June 20th.

Eventually, the processions did not take place on June 26th and 27th, so the defendant refused paying the plaintiff the balance of 50~~£~~. Hence the plaintiff's action.

QUESTION



QUESTION

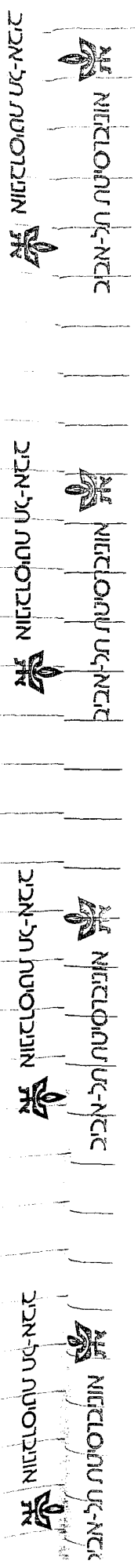


QUESTION

⑥ While the plaintiff was not in the country, ^{and} his solicitor was in charge of ~~the~~ his suite of chambers on the third floor at 56A, Pall Mall. On June 17, the defendant noticed an announcement ~~in~~ in the windows of that flat, saying the the flat ~~was~~ ~~was~~ was for rent - ~~to~~ to view the coronation ~~and~~ processions. He agreed with the housekeeper to take the flat for the two days of the coronation ~~processions~~ processions - June 26-27, during the days, for 75 £. ^{1/2} The defendant payed on June 20, based on an agreement with the plaintiff's →

Q 6 cont.

solicitor, a 25 £ deposit. He was supposed to pay the rest of the amount on June 24, but didnt - since the coronation of His Majesty was unexpectedly canceled and he never used the flat. The plaintiff sued the defendant for the amount of 50 £, basing on ~~the~~ his solicitor's agreement (on his behalf) with the defendant. ~~The~~ The defendant counter-claimed for the return of the deposit. The lower court gave judgment for the defendant on the claim and the counter-claim. Therefore, ~~the~~ ~~the~~ the plaintiff, Paul Krell, appealed this court against that judgment in favour of C.S. Henry.



Q 7

NIJCLONU UC-NIC

Parties to a contract may be discharged of their duty of performance, in case of an event of a character that is cannot be reasonably suppose at the time the contract was contemplated upon the contract, thus not referring to that event in the contract.

Parties entering into a contract, whereas the contract has an obvious subject-matter, and that subject matter, or foundation of the contract, was prevented due to unforeseeable circumstances, are ^{excused from} ~~discharged~~ their obligations under that contract. The subject-matter of a contract may be explicitly stated in the contract, or may be implicitly deducted from extrinsic evidence.

NIJCLONU UC-NI



NIJCLONU UC-NI

7. The legal rule for which this case can stand

is as follows: a contract shall not be interpreted only regarding the written agreement, but also concerning

surrounding circumstances. Such circumstances shall

be taken into account when they ~~seem~~ seem to be

recognised by both of the parties as circumstances which are important and necessary for the foundation of

the contract. Consequently, in case there was a change

in such circumstances, it is possible the parties will not be

bound by the contract anymore.

8 (20) The test formulated by the appeal judge consists of three ^{consecutive} steps. First, one must name the foundation of the contract - its main purpose. In order to accomplish that all circumstances are to be regarded. Second one must ascertain that the performance of the contract has been prevented. Third, one must conclude that the event which rendered the contract's performance prevented could not have been reasonably anticipated by the parties at the date of the contract.

At first glance over the parties' correspondence, ~~the case~~ in Krell v. Henry, which both parties do not deny being a contract between them, there is no mention of the King's coronation, nor the procession accompanying it. The court's important addition to the first step, accepting ~~implicit~~ a deduction of a contract's foundation based upon all relevant circumstances, brings this case within the boundaries of the first step ^③ requirements. It cannot be argued that Henry wanted to rent Keller's flat for 2 days (and not nights) for any other reason than its view upon the processions path. After determining the rent was subsidiary to the view of the processions, setting them to be the foundation of the contract, Krell v. Henry also falls to the boundaries of the



reasonably in the contemplation of the parties when they signed the k?

The facts in our case fall into the first question very clearly. The coronation was the foundation of the k (the proof is that the defendant did not want the room for the nights). The fact the coronation did not take place as planned was a substantial circumstance to the performance of the k.

Secondly, the performance of the k was prevented since the coronation, which was the foundation of it was postponed. Without the coronation the k is useless (there is a "total failure of consideration").

Thirdly, a week before the coronation, when the contract was signed, these circumstances could not have been reasonably foreseen or contemplated by the parties.

Since all three questions were answered "yes" by the judge, parties were discharged from the k.



(20)

8. The test created by the judge regarding whether performance to be excused is based on three questions.

Firstly, we shall ask what was the foundation of the contract, regarding the written term as well as other circumstances which are relevant to its purpose.

In Krell v. Henry, [1903] 2 K.B. 240 (Eng. C.A.), the foundation of the contract was hiring an apartment to view the King's coronation, as it arose from the discussion between the D and the housekeeper, the announcement the P put on the flat, etc.

Secondly, we have to examine if the performance of the contract was prevented.

In the Krell case, since the foundation of the contract was the coronation procession, the cancelling of the procession due to the King's illness prevented the contract from being performed.



Thirdly, we shall check if the cause which prevents the contract from being performed was contemplated by the parties when they signed the contract.

In our case, regarding the announcement and the prior discussion concerning the processions, it seems the parties did not mean the contract should be in force in case of cancellation of the procession.

~~space~~ To conclude, since in the Krell case the answers on all the questions were positive, the parties were not bound by the contract, so the D declaration to pay was not a breach of the contract.

(5)

The purpose of the Law Reform (Frustrated Contracts) Act is to determine the rights and liabilities of parties ~~to~~ who have a contract governed by English law, that has become impossible to perform or has been otherwise frustrated. The Act ~~sets the~~ ~~rights and liabilities~~ sets the rights and liabilities for ~~those~~ ^{parties} whom, for ~~the~~ ^{stated above} reasons, have been discharged from further performance of the contract.

The Act deals ~~with~~ with the sums already paid, the sums ^{still} payable and ~~the~~ ^{matter} ~~of~~ ~~the~~ ~~contract~~ of expenses. →

Q 9 cont.

-14-

(5)

① The purpose of this Act is to solve situations exactly as mentioned at the end of Justice Williams' opinion in Krell v. Henry⁽²⁾ - is Krell obliged to pay back Henry his 25£ down payment? Although in this case the counter-claim was withdrawn, yet it is a very common situation. In most of the non-performance of contracts there is a liable party who breached the contract in any given way. In these cases the injured party is entitled to the large variety of contractual remedies.

↙ @ Id.

The question is what happens when no party is responsible for the event that caused the frustration of the contract? What would happen to the obligations performed so far by the parties? Who would bear the reliance expenditures already

lost? This Act answers these questions exactly. Its purpose is to put both

parties in the situation they had been in prior to ^{the} contract, yet leaving the court

the necessary discretion to resolve special situations. The Act deals with contracts frustrated due to a third party act or a force majeure. (5)



Q 9 cont.

Q 9 The purpose of this Act is to govern the remedies to which the parties are entitled in cases of frustrated contracts. It should be noted that the act does not determine or define a frustrated contract. It does not tell us ^{in what cases} when the prevention of performance will constitute a frustrated contract. The act only lays out the remedies ~~app~~ applicable to cases when the performance of a contract is impossible.

The remedies set forth in the Act are, in general, the recovery of paid sums, the cessation of sums payable, and the balance of such remedies against reliance expenses invested by parties.

NATIONAL UNIVERSITY

NATIONAL UNIVERSITY

Q 10

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10 Firstly, we have to decide if the contract was frustrated. The purpose of the contract is to visit Antarctica,

the storm prevented the contract from being performed and the parties did not contemplate to perform the

K in case of storm in Antarctica. Regarding the Krell case test this contract should be held as frustrated contract.

Secondly, the contract is between Australian people and an Australian company, so it is unclear whether

the English law governs the contract. Although

Australia was a British colony, since now it has its own law system, I assume the English law

does not govern the contract, and therefore

the group cannot sue under this Act for return of its deposit.

Nevertheless, the Australian courts may use the Act, as well as ^{the} Krell case, as interpretation leads for

Q10 cont

(5)

Question 10. No, the group cannot sue the Australian company under this Act for return of its deposit, since according to Section 1(1), the Act applies to contracts governed by English law, whereas the contract between the group and the Australian company is governed by Australian law.*

* I figure out that the Australian law is the governing one of the fact that both parties to this contract are Australian, and also the contract has probably been signed in Australia.

(5)

10. The group cannot sue the company under this Act for return of its deposit. The Act pertains only to contracts governed by English law, and since this contract was entered into in Australia, the English law does not apply.

Q 11

(5)

11. Since the exhibition hall was burnt down, the contract between the nursery and the English organizers becomes impossible of performance. Under section two of the Act, amounts paid previous to the time of discharge shall be recoverable.

NIELLOU UC-NEC

"subject to incurred expenses before the time of discharge."

Pending the discretion of the court probably the nursery will be able to deduct the expenses of the trip from the ~~5,000~~ ²⁵⁰⁰ deposit the same deposit (it now needs to return).

NIELLOU UC-NEC

Q12

-19-

⑫ The dog trainers have a case to demand payments.

The first and most important reason is that the contract

was not frustrated and has not become impossible

to perform. Had the Dog Show been cancelled, things

would have been similar to the Quill V. Henry case,

since the only thing that had changed since the contract

was made was the realization that the trainers don't

have enough time to reach the level of the other dog

clubs poodles, that fact should have been ^{considered} ~~cont~~

before hand and is not sufficient for the court to

be regarded as unforeseen events.

2025-2026



2025-2026



Q 12 cont

12 Yes, the trainers have a case to demand payment because it is not considered

a frustrated contract. ~~Section~~ According to Section ¹¹¹ ~~111~~ (1) to the Law Reform

Act (frustrated contracts) Act (hereinafter "the Act") a contract has to become

impossible of performance or otherwise frustrated. In this case the contract did

not become impossible ~~of~~ of performance, but only ^{or unworkable} inefficient for the club to

be fulfilled. In the ~~the~~ Krell case the contract ~~was~~ could not have been said

to be impossible of performance, but ~~its~~ ~~substantial~~ substantial part ~~is~~ was unable

to be fulfilled. ^{In the Krell} ~~the~~ ~~case~~ case the court was willing to let the defendant

^{the contract} ~~without demanding him to pay the~~ off ~~consideration~~, but that was only because ~~of~~ the parties could not have

anticipate at the time the contract was made that the king would be ill.

In this case ~~is~~ the participation of the opponents in the show was not

something that the club could not have anticipated ~~at~~ at the time of the contract.

Therefore, ~~it~~ The Act does not apply to this case and it is atypical

breach of contract.



Q 12 cont

5 The trainers can demand their payment, plus any compensatory damages they may have decided upon with the Liverpool Kennel Club. They are entitled for their work fee because the contract between them and the Club was not frustrated, but breached

לוגו של מוסד חינוכי

by the Club owners. The rumors that reached the owner, upon which he decided to ⁴ cancel his dog's participation in the Dog Show, ~~was not a claim~~ present his decision as a speculative one. As in all dog shows or competitions, one cannot guarantee ^{an interpretive} his (or his team's) winning. That said, the foundation of the contract ~~between~~ with the trainers is not winning, but merely training the dogs. The first step of the Krell v. Henry test is not met, and the contract is not frustrated.

לוגו של מוסד חינוכי

לוגו של מוסד חינוכי



13

(5)

The main tool for the court to use is the statutory context of the statute, that helps the court ^{also} determine what the legislator's intent is. The statutory context

can be learned from other sections in the ~~the~~ statute. Moreover, the court can

use interpretation made to the statute ~~by~~ in other legal precedents and cases ^{of frustrated contracts}

For example it can compare the term reasonable as was interpreted by

lower or ~~colateral~~ ^{colateral} courts. ~~That way~~ ^{in these cases.} ~~the court can also achieve~~

coherency and harmony ~~between~~ between the courts. Furthermore, the court

can also compare ^{the term "reasonable" under} Section ~~11(4)~~ ^{expenses} to statutes from other legal systems.

The court can surely address the legislative history and the historical

context ~~of~~ that led to the enactment of this Act.

13 (5)

Q 13. When judges interpret a certain law, ^{don't use I} I believe that the fir-

logical step should be to start from the "smaller picture" and or then moving to the "bigger picture".

What I mean by that is that the first ~~and~~ ^{interpretation}



a statute should focus on the statute itself, after reading and comprehending the meaning of the words "per se". A judge should ^{search} within the statute itself, reviewing other articles and sections, then moving to the Preamble of the statute, thus receiving the "bigger picture" within the statute's boundaries.

However, most of the time the statute itself is silent in relating to specific cases that are pending before the court. If so, the judge must use "external aids" as tools for interpretation. One of these tools is the legislative history, not found within the statute itself but is being published in the Public Records. Other statutory means are Constitution, Bill of Rights or even other statutes or sometimes regulations, where one may find provisions of the legislative system.

Moreover, a most "handy" tool is using other judgments of similar cases, especially if those cases are regarded as compelling precedents (meaning that they were delivered by a higher court).

Furthermore, over the years legal doctrines have evolved; such →

Q 13 cont.

as 'the reasonable prudent person' doctrine, applicable in torts.

Nevertheless, many times the local legislative system is

silent about certain situations ("lacuna"), thus a judge may use the

provision of the international law, treaties or even laws

enacted by another country (see Mr. Justice Kennedy's opinion in that

subject).

Even so, not all answers lay ^{within} the legislative legal systems. In some

cases judges use the interpretation of outside factors, such as

economic doctrines from the market or even from ~~merchandise~~

Finally, after all the tools above presented, I must bring a criticism

said by Professor Mouton, suggesting that every judge "filters" the

information in his own mind, sometimes using common sense that seems

to be outside the boundaries of the legal system.

Essay

20

In John D. Wladis, Common Law and Uncommon Events: the Development of the Doctrine of Impossibility of Performance in English Contract Law, 75 GEO L.J 1575 (1987) (hereinafter, "the Article"), this author sets a new thesis regarding the Krell case.

In fact, the author fully agrees with the court's decision in the Krell case. Nonetheless, the author asserts the Krell case (hereinafter, "the Case") did not set a new principle of impossibility law, but it rather applied the impossibility law on a very unique circumstances.

The author contends that the coronation was not cancelled, but only only postponed, and the owner of the rooms did not expanded any reliance expenses regarding the contract. Therefore, the court stated the contract was frustrated in order not to let the owner to profit twice: first time from the money he got regarding the original contract, and second time

PART C cont.

-26-

From the money the owner would get from the hiring of the apartment during the occurrence of the coronation at the new date. Accordingly, the author asserts the court did not set up a new principle, but only apply the law on the certain situation to preserve principle of justice, and to prevent unjust enrichment of the owner.

To sum up, the author also stated law professors shall continue teaching this case while emphasizing its unique circumstances, and not as a case which made up a new principle of the common law.

Part D.

Blake & Clay

Solicitors

33 Garden street

Oxford, England

555-5555

25

Without Prejudice

Mr. Martin Ted, director

International Trekkers Co.

42 Flower street

London, England

777-7777

Re: Your contract with Mr. Kool Kamping

~~Dear International Trekkers~~

Dear Mr. Ted,

As I promised you ~~yesterday~~ in our meeting

yesterday, I made a research in order to assess what

a court might rule in case you decide suing Mr. Kamping.

I am glad to tell you that we believe that there is

a significant chance to win such suit, namely that

you probably will not have to recover Mr. Kamping for

the ~~or~~ ^{percent} ~~percent~~ that he has already paid and you will

get at least some of the sum of the remaining 75

percent.



PART D CONT.

Here are the facts as we understand them: You planned to hold a convention of trekkers in a Himalayan Kingdom. You planned to publish brochures to the participants. You signed a contract with Mr Kamping, which paid you 25 percent and committed to pay the rest 30 days after publication. In the last minute the convention ~~was~~ has been canceled, ~~and~~ ~~it has happened~~ ^{after} after you have already printed and sent 1000 brochures to the Kingdom. After the cancellation you demanded from Kamping to pay the 75 percent left and he refused.

According to the English law, in case of frustration of contract both parties are discharged from their obligations as set out in the contract. Even so, in the case that payments have already taken place,

→



PART D cont.

the Law Reform (Frustrated Contracts) Act states that

court may allow the ~~re~~ recovery of ~~payment~~

expenses incurred by a party ^{before the moment of frustration of contract} when court

~~finds~~ ^{finds} it ~~is~~ just to do so in your case, 1000

brochures have already been printed and sent, namely

you had expensed in performance of the contract

before the moment of frustration of the contract,

and therefore it is probable that court would

find it just to ^{obligate} ~~make~~ Kamping to pay you at least

the sum you had to incur in order to ~~advertise~~

print his ad.

I ~~see~~ would be glad to ~~see you~~ ^{meet with you} and

discuss ~~the~~ your matter in more detail. Please

call me if you have any questions.

Sincerely Yours,

Herbert Blake, Senior Partner
~~Herbert Blake~~

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PART D cont.

Part D.

Blake & Clay
(address)
(phone)

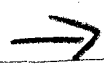
without prejudice
June 19, 2006

Mr. I Trekker
International Trekkers Ltd.
(address), London

Re: _____

Dear Mrs. Trekker,

(Ident) Following our meeting last week, we have researched the relevant law to your case, and results are mixed: On the one hand, we believe that a court is likely to decide that Kool Kamping does not have to pay you the 75% balance. On the other hand, we will probably be able to convince a court that the 25% deposit should remain in your possession.



PART D ONE.

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(ident)
→ Here are the facts as we understand them:

Your company, International Trekkers, organized a convention of trekkers to be held in a Himalayan kingdom. You planned to publish a souvenir brochure to be distributed to the convention's guest, and funded the printing of the brochure by selling advertisements.

Kool Kamping ordered such an advertisement, and paid a deposit of 25% upon signing the contract, with the balance due 30 days after the printing.

You printed 1000 brochures and shipped them to the convention office in the Himalayas.

Right before the convention started, civil disturbances erupted in the kingdom, martial law was declared and all public gatherings were cancelled by the authorities.

You sent Kool Kamping a bill for the 75% balance, but they refused to pay and also demanded a return of their deposit.



PART D CONE

-32-

English law has a doctrine, under which contracting parties may be excused from performing the contract, should an unexpected event makes such performance impossible.

According to the law, parties to a contract whose performance has been ~~to~~ prevented, should return to each other any sums of money or other good that were passed between them in accordance with the contract. Furthermore, the law states that any sum payable according to the contract shall cease to be payable.

As you can see, the law generally allows Kool Kamping not to pay the amount due of 75%, and even entitles them to ^{a reimbursement} ~~receive~~ for the 25% they paid as a deposit. However, the law ~~is~~ ^{is} also willing to consider expenses invested by a party towards the fulfillment of the contract, and deduct a reasonable amount of these expenses from the sum this party should transfer to the other party.

Therefore, we believe that ~~the~~ ^a court will likely be ~~in~~ of the opinion that your company should also be reimbursed for the reasonable



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To: International Trekkers.
From: Mr. Herbert Blake, attorney at law

Re: Sums to be paid regarding frustration of a contract

Dear Mr./Ms. (International Trekkers)

I have made a thorough research regarding the influences of the frustration of a contracts on the sums to be paid regarding the contract. Based on this research, I fear your claim regarding the 75% payment will not be fully granted by the court. Nonetheless, you may be able to get some of this payment, and you may also shall not refund the deposit.

These are the facts to date as we understand them. As part of organizing the trekkers convention in the Himalaya, you published brochures, which were mainly financed by the sums you got from advertisements.

Some of those advertisers was Koll Kamping, which paid you 25% of the sum as - 1000 TL

PART D CONT.

-35-

the sum had to be paid ~~in a later time~~. Due to civil disturbances in the Himalia the convention cancelled by the authorities; and you demand Koll kamping to paid the rest of 75%.

Firstly, it is a settled law that a change of circumstances ^{regarding} which were importance ~~is~~ the foundation of the contract, may discharge the parties from the obligations they have under the contract. In your case it ^{seems to be} is clear that the ~~advertisers~~

advertisers made the contract to advertise in the convention, and since the convention was cancelled they may argue there are not bound by the contract anymore, and ~~do~~ does not have to pay the 75% balance.

Secondly, according to the law, the parties has to retribute to each other the sums they already paid regarding the ^{frustrating} contract, and have to cease to pay payments related



PART D CONT.

-36-

to the contract. Therefore, you have to give back to

Koll Kampling (hereinafter, "the Company") the deposits, and ^{it seems} you do not have a right to get the 75% balance.

Nonetheless, the court has considered in to hold that the parties has right to get part of the sum which is necessary to recover their reliance expenditures.

In your case you had a lot of costs regarding the printing of the brochures and their shipping. Therefore,

it is possible the court state you can have the deposit. In addition, it is also possible, if your expenses exceed the sum of the deposit, that the court direct the company to pay some of the 75% balance, to the ~~extent~~ extent that would cover your printing and shipping costs. Nevertheless,

You have to take into account the Company may also have such costs that you have to pay to them.



PART D cont.

-37-

To conclude, your chances to get the payment and to get the sum of the deposit depend heavily on the amount of your shipping and printing costs, and on the Company costs.

I suggest we thoroughly discuss your issue before you brought a suit to the court. We then may evaluate the chances of such claim; and we may also evaluate alternatives to the claim (such as to negotiate with the Company regarding this issue).

Sincerely yours,

Mr. Herbert Blake, attorney at law

END OF EXAM