

DAMAGES

RELEVANT TO ACCA QUALIFICATION PAPER F4 (ENG), (IRL), (SCT)

A LIKELY CONSEQUENCE OF A BREACH OF CONTRACT IS A CLAIM FOR DAMAGES FROM THE INJURED PARTY. THIS ARTICLE AIMS TO ILLUSTRATE HOW THE LAW OF DAMAGES OPERATES IN RESPECT OF CONTRACT LAW.

A likely consequence of a breach of contract is a claim for damages from the injured party. This article aims to illustrate how the law of damages operates in respect of contract law.

THE SCENARIO

Carlos Kickaball is the South American superstar player of the Premier League team Scouse City. As the end of another successful season draws to a close Carlos decides to treat himself to an upgrade of his Cheshire mansion. Carlos contracts with John Wayne Builders Ltd (JWB) to perform the following alterations:

- ▣ alteration of the swimming pool to include a five-metre deep end and diving platform
- ▣ construction of a 12-lane ten-pin bowling alley
- ▣ construction of a 60-seat cinema.

During discussions between himself and John, the owner of JWB, Carlos enthused about the proposed diving pool pointing out that it would help improve his already renowned 'diving technique'.

A total contract price of £125,000 was agreed along with a four-week deadline for completion. The parties also agreed that the contract price would be reduced by £1,000 a day in the event of late completion. During final negotiations Carlos revealed to John that he was planning to pay for the work out of a £200,000 bonus he would receive from his club for making 50 appearances that season, adding that he had played in every match so far this season and needed to play just twice more in the last six matches to qualify for payment.

Initially, construction was ahead of schedule and the pool alterations were completed within a fortnight. After checking with John that the pool was fit for use Carlos threw himself off the diving board in trademark fashion only to suffer severe head and facial injuries when he hit his head on the bottom of the pool. It transpired that JWB had not deepened the pool from its original depth of two metres when fitting the diving board, as agreed in the contract.

Unfortunately Carlos was unable to play in the Cup Final the following day due to his injuries and was advised by his doctor that he would also miss the remaining fixtures, leaving him stranded on 49 appearances for the season.

Carlos was even more upset when *Goodbye* magazine rang him in hospital to cancel the photo shoot planned at his mansion to celebrate the completion of his building works, saying that his face would scare its readers. The stress of the accident caused John to temporarily stop working, and as a result the remaining construction was completed five days behind the agreed schedule.

John has now received a letter from Doowe Cheetah and Howe, a legal firm representing Carlos. The letter detailed the following claims against JWB:

- 1 A claim of £5,000 for the late completion of the construction work.
- 2 A claim for £200,000 for the loss of the appearance bonus.
- 3 A claim for £1m for the mental anguish suffered by Carlos as a result of missing the Cup Final.
- 4 A claim of £12,000 to rectify the depth of the swimming pool.
- 5 A claim of £100,000 for the loss of the photo shoot contract with *Goodbye* magazine.

THE QUESTION

Advise JWB as to their liabilities in respect of the claims by Carlos.

How to answer this question

In order to answer questions in a Paper F4 exam you will need two things:

- ▣ a knowledge of the law
- ▣ an ability to apply the law.

Each of these will be illustrated below.

Learning legal knowledge

A good way of learning legal principles is to construct diagrams and mind maps. These should contain all of the legal facts, principles and cases relevant to an area of law. Once constructed you should then practise recreating these diagrams until you can do so accurately.

At this point you should notice that jotting down one word such as 'damages' will trigger a lot of associated words helping you recall all of the legal facts and cases associated with a topic. An example of a diagram for damages is shown in **Figure 1** on **page 4**.

AFTER CONSTRUCTING YOUR DIAGRAM, TRANSPOSE THE RELEVANT AREAS OF LAW FROM IT INTO YOUR ANSWER. REMEMBER, IN THE PAPER F4 EXAM YOU MUST WRITE IN PROPER ENGLISH SENTENCES, SO YOU SHOULD NOT USE THE BULLET POINTS AND NOTES THAT APPEAR IN THIS ILLUSTRATIVE EXAMPLE.

Applying legal knowledge – how to answer a question

Having seen above how to learn legal facts you now need to apply these to questions in the exam. To do this we'll work through our scenario using the 'ISAC' (issue, state, apply, conclusion) approach.

State the issue – state the area of law that is at issue to provide the context of your answer.

The issue here is whether or not John is liable to pay the damages being claimed by Carlos.

State the law – now transpose the relevant areas of law from your diagram into your answer. Remember, in the Paper F4 exam you must write in proper English sentences, so you should not use the bullet points and notes that appear in this illustrative example.

A full answer would cover the following points:

- ▣ damages are an automatic common law right following breach of contract
- ▣ damages are compensatory in nature
- ▣ damages may be agreed by the parties in contract (liquidated) – though these will not be upheld if they are penalty clauses designed to discourage either party breaching *Dunlop v New Garage* (1915)

- ▣ unliquidated damages are court determined and the injured party may sue for either:
 - losses putting them where they expected to be 'Expectation interest'
 - losses as a result of relying on the other party 'Reliance interest' (*Anglia TV v Reed*) (1972)
- ▣ damages must not be too remote (*Hadley v Baxendale*) (1854):
 - arise as a natural consequence of the breach or else
 - be in the contemplation of both parties when the contract was formed (*Victoria Laundry v Newman Industries*) (1949)
- ▣ normally actual financial losses are recoverable, however the claimant must take 'reasonable steps' to mitigate their losses (*Payzu v Saunders*) (1919)
- ▣ non-financial losses may be recovered in certain circumstances including:
 - the cost of restitution is too high per *Ruxley Electronics v Forsyth* (1995)
 - the contract was for the provision of enjoyment (*Jarvis v Swan Tours*) (1973)

For each relevant point of law/case you include in your answer you will be awarded one mark.

WHEN ANSWERING THE QUESTION, APPLY THE LAW – APPLY YOUR LEGAL KNOWLEDGE TO THE ISSUES IN THE SCENARIO, RESTATING THE FACTS IN LEGAL TERMS. THIS STAGE WILL LEAD YOU TOWARDS YOUR CONCLUSIONS.

Apply the law – apply your legal knowledge to the issues in the scenario, restating the facts in legal terms. This stage will lead you towards your conclusions.

- 1 Claim for £5,000 – this is an example of liquidated damages and will only be upheld if they are a genuine pre-estimate of losses rather than a penalty clause per the *Dunlop* case. In this instance the amount seems reasonable and will probably be upheld.
- 2 Claim for £200,000 – this is not a normal loss and so damages will only be payable under the second test in *Hadley v Baxendale*, otherwise they will be ‘too remote’. It would appear that Carlos made John aware of this bonus during negotiations and as such it was reasonably in his contemplation. It is likely therefore that this claim will also be upheld as it was only the injury to Carlos caused by JWB that prevented him playing and earning this money.

- 3 Claim for £1m – damages are generally awarded for actual financial losses only. A claim for mental distress will not be upheld as it does not fit the exceptions outlined in the *Ruxley* and *Jarvis* cases.
- 4 Claim for £12,000 – this amount will be upheld if it is not disproportionate as it reflects the cost of cure in rectifying the breach by JWB in respect of the swimming pool depth. The case of *Ruxley* does not apply, as in that case the damages claimed were in excess of the original contract price.
- 5 Claim for £100,000 – this is not a normal loss and will be deemed ‘too remote’ unless Carlos can prove that JWB was aware of this when the contract was agreed (see second test in *Hadley* case earlier). It does not appear on the facts of the scenario that JWB had any knowledge of this contract.

Conclusion – state your advice. This should be consistent with your earlier analysis.

JWB is likely to be liable to Carlos in respect of the claims for late completion, loss of appearance bonus and pool rectification. The other losses will not be upheld, either being non-financial in the case of mental distress, or too remote for the magazine contract.

FINAL WORDS

At the end of this article you should be able to do the following:

- 1 Understand how to structure your revision and learning through the use of diagrammatic techniques. These should improve your knowledge retention and understanding of how the law operates in discreet areas.
- 2 Understand how to answer problem questions in the exam using the ISAC technique. Be aware that the example used was longer and more complex than an actual Paper F4 exam question as it was designed to explore a wider range of issues than a Paper F4 exam question.
- 3 Have a clear understanding of the topic of contract law damages in the context of the Paper F4 syllabus.

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FIGURE 1: AN EXAMPLE OF A DIAGRAM FOR DAMAGES

