

Applied Business Law

Sample paper

Suggested answers

Important notice

When reading these answers, please note that they are not intended to be viewed as a definitive 'model' answer, as in many instances there are several possible answers/approaches to a question. These answers indicate a range of appropriate content that could have been provided in answer to the questions. They may be a different length or format to the answers expected from candidates in the examination.

1. **Peter wishes to buy a new laptop computer. Advise him in the following circumstances:**
 - **On Monday 1 December, he writes a letter to David, who is an independent retailer selling computers. The letter asks David if he stocks the Aver 330 model laptop and, if so, whether David can deliver it by 20 December.**
 - **David replies that he does stock the Aver 330 model and includes an invoice with the reply and a letter stating that because of the Christmas holidays he will not be able to deliver the laptop until 12 January.**
 - **Peter then telephones David at 5.30 on 5 December but the telephone is not answered.**
 - **He immediately sends an email to David stating that he would like to purchase the Aver 330 model and that delivery on 12 January is acceptable but, if it could be delivered at an earlier date, it would be very much appreciated.**
 - **The email is read by Susan, David's secretary, at 9.00 am the following day. She prints off the email and puts it in her in-tray to give to David when he arrives at the office.**
 - **Peter, meanwhile, discovers that he can purchase the Aver 330 model at a cheaper price from another supplier.**
 - **He telephones David on 6 December to tell David that he (Peter) no longer wants to purchase the laptop. David, who has just been given the printed email by Susan says, that as far as he is concerned, there is a contract between him and Peter and that he will be delivering the laptop on 12 January as agreed.**

Required

Advise Peter.

(25 marks)

Suggested answer

The answer requires analysis of the rules relating to offer and acceptance and assessment of whether a contract has come into being. The actual conclusion reached is less important than the reasoning behind the conclusion.

Better answers could consider the status of the original letter from Peter and discuss whether this was an offer to purchase or simply an enquiry.

If Peter's letter is regarded as an enquiry only, it should be considered whether the reply from David amounted to an offer to sell. As he included an invoice, this could have been construed as a definite offer to supply the laptop.

Analysis of whether there had been a valid acceptance of the offer or if Peter had made a counter offer is also required. Relevant case law should be included to support arguments made, such as *Hyde v Wrench* [1840] (counter offer) and *Stevenson v McClean* [1879] (request for further information). The answer also requires consideration of whether Peter's statement, that an earlier delivery date would be appreciated, was a request for further information or a counter offer.

The following points may be discussed:

- The general rule is that acceptance must be communicated: *Felthouse v Bindley* [1862]. Only when acceptance has been communicated does the offeror know that he is bound by the contract and the other party knows that he can rely on the existence of the contract. But what is the position if the acceptance does not reach the offeror? The answer depends on whether the method of communicating the acceptance is instantaneous or postal.
- Where the postal rule applies, the acceptance is valid as soon as it is posted: *Adams v Lindsell* [1818]. Where it is instantaneous, it takes effect when it actually comes to the offeror's attention. Hence, an offer can be revoked any time before this: *Payne v Cave* [1789]. If it is two-way (for example, by telephone) then the acceptance has to be heard, as both parties are present and there is no delay between the sending and receiving of the acceptance. Also, any failure of communication will be apparent immediately.
- Otherwise, it will depend on fault. If the offeree should have realised there had been a communication failure, his acceptance will be ineffective, for example, if the telephone line goes dead then the offeree should telephone back to complete the acceptance. Where neither party is at fault, the rule requiring actual communication of the acceptance favours the offeror, per Lord Denning in *Entores v Miles Far Eastern Corporation* [1955]:

"if the offeror without any fault on his part does not receive the message of acceptance – yet the sender reasonably believes it has got home when it has not – then I think there is no contract".

- However, where there is one-way instantaneous communication such as email, and the message arrives instantly but the recipient is not at the other end to receive it, the position is different, per Lord Wilberforce in *Brinkibon v Stahag Stahl and Stahlwarenhandels GmbH* [1983]:

"no universal rule can cover all such cases, they must be resolved by reference to the intentions of the parties, by sound business practice and in some cases by a judgement where risk should lie".

This will be decided by asking when a reasonable offeror would access the message, taking into account all of the circumstances. This approach allows the court to balance the parties' interests on a case by case basis. In *Brimnes* [1975] it was held that a revocation by telex was effective when it was received on the machine, even though not read, provided it was sent during normal business hours. Arguably, Peter's email will be deemed to be communicated the following morning. As he phoned at 5.30 pm and got no answer, it would be reasonable to assume that David had closed business for the day and, therefore, the email will be deemed communicated during the next normal business hours, the following morning.

Peter should be advised that a valid contract came into being with David when the email was communicated on 6 December, either when it was picked up by Susan or when Susan gave the printed email to David, before Peter phoned to cancel the order.

2. **Greg owns an engineering business making precision parts for hi-fi equipment. In January, he was successful in bidding for a contract with Panhellenic, a major manufacturer of hi-fi equipment. In order to fulfil the contract, Greg entered into an agreement with Proton, a Malaysian company, to manufacture and supply certain precision parts by 30 April. The agreement was priced in pounds sterling and provided that English law would govern it.**

In February, Proton contacted Greg and told him that because of increased costs due to a change in market circumstances, it was no longer economical for them to continue with the contract at the current price. Greg protested that if Proton did not fulfil the contract, this would mean that he could not perform his contract with Panhellenic. The upshot was that Proton then offered to supply the parts by the end of April and Greg reluctantly agreed to the increased price.

Greg paid Proton (including an additional £5,000 which resulted from the increased costs) and the parts were delivered on time. Greg completed the contract with Panhellenic.

Required

- (a) Explain the requirement of consideration for contractual obligations in English law. (10 marks)**

Suggested answer

The answer requires application of the legal principles to the facts of the question. The actual conclusions reached are not as important as the reasons those conclusions have been reached. Arguments made should be supported by reference to appropriate case law.

Part (a) requires a discussion of the doctrine of consideration and application of the rules of consideration to the facts of the question. Better answers will analyse the need for consideration and the purpose it is designed to fulfil – to establish that the parties intended to be bound by their agreement and that English law does not enforce a bare promise (*nudum pactum*) but will only enforce a bargain; consideration is the price for which the other's promise is bought: *Dunlop v Selfridge* [1915].

Answers need to consider the debate about the requirement for consideration. The requirement of consideration in English law has resulted in the courts trying to contrive the presence of consideration when they think that an agreement should be legally enforceable, as in *Ward v Byham* [1956], and denying the existence of consideration if the court does not think that an agreement should be enforced in the courts: *White v Bluett* [1853].

A detailed discussion of the decision in *Williams v Roffey* [1991] should be attempted, together with a discussion of the controversy over whether the performance of an existing duty can amount to consideration. The traditional view is that if the promisee is doing no more than he is already obliged to do, then he is suffering no detriment and the promisor is only getting a benefit to which he is already entitled. Therefore, performing that duty does not amount to consideration. However, in recent years, the courts have been prepared to find consideration in the performance of an existing duty.

To illustrate the position in answers, cases should be referred to such as – *Collins v Godefroy* [1831], *Glassbrook Brothers v Glamorgan CC* [1925], *Harris v Sheffield United FC* [1988], *Ward v Byham* [1956], *Stilk v Myrick* [1809], *Hartley v Ponsonby* [1857] *Williams v Roffey* [1991], *Pinnel's case* [1602], *Foakes v Beer* [1884] and *Re Selectmove* [1995].

(b) Advise Greg whether he can recover the extra £5,000 he has had to pay Proton, stating reasons for your answer.

(5 marks)

Suggested answer

Greg should be advised that he has a good case to argue that he can recover the extra £5,000 paid to Proton, as this was paid under duress. In *North Ocean Shipping Co v Hyundai Construction Co. (The Atlantic Baron)* [1979] the defendants threatened to breach a contract for the construction of a ship unless the plaintiffs agreed to pay 10% extra on top of the contract price. The plaintiffs agreed to make the extra payment because if they had not, they would have lost a valuable charter. Eight months after the delivery of the tanker, the plaintiffs attempted to recover the extra payment. The court held that the defendant's claim for extra money did amount to economic duress, making the contract voidable. (However, on the facts of this case, the plaintiffs could not recover the extra 10% but this was due to the fact that they had delayed in bringing the action and had, therefore, affirmed the contract.)

There is nothing in the question to indicate that Greg had delayed in bringing the action. Therefore, he should be able to establish economic duress and recover the extra £5,000 he has paid.

(c) Would your advice be different if Greg took delivery of the parts, but had not paid the extra £5,000 and is now refusing to do so? Give reasons for your answer.

(5 marks)

Suggested answer

Greg should be advised to argue that he is not bound to pay the extra £5,000, as Proton were only doing what they were already contractually bound to do and had not provided any consideration for his promise of extra payment. Application of appropriate case law, referred to above, should be made to support this argument.

Greg should further be advised to argue that his agreement to pay the £5,000 was made under duress and, therefore, he was not obliged to pay. A discussion of the law relating to duress and the decision in *Atlas Express Ltd v Kafco Ltd* [1989] is also required in answers.

(d) What would be the position if, in February, Proton promised, at Greg's request, to deliver the parts by 1 April?

(5 marks)

Suggested answer

If Proton promised to deliver by 1 April, this would be a benefit to Greg, and Proton would have provided consideration to support Greg's promise of extra payment. Hence, Greg would be required to pay the extra £5,000. Application of *Williams v Roffey* [1991] is required in answers.

3. Robert is driving his employer's van at 40 miles per hour through a town with a 30 mile per hour speed limit. Whilst changing the radio station, he is distracted and does not see a child run out in front of his van. Robert swerves to avoid hitting the child but unfortunately drives into a café window, severely injuring Kathy, who was enjoying afternoon tea. Toby, Kathy's son, knew that she was taking tea in the café and witnessed the accident from across the street. He has suffered severe nightmares and is diagnosed with nervous shock which has led to him missing several weeks from work.

Required

Advise Robert.

(25 marks)

Suggested answer

This answer requires discussion of the tort of negligence. To succeed in a claim for negligence, the claimant would have to prove three things:

- (i) That Robert owed him a duty of care.
- (ii) That Robert was in breach of that duty.
- (iii) That the claimant suffered damage caused by the breach of duty, which was not too remote.

Answers should consider to whom Robert owes a duty of care and the neighbour principle as formulated by Lord Atkin in *Donoghue v Stevenson* [1932]:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to bepersons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question."

Better answers could consider issues of foresight, proximity and the operation of judicial policy in negligence cases: *Caparo Industries v Dickman* [1990].

More specifically, analysis is required of the case law pertaining to psychiatric injury and post traumatic stress disorder: *Dulieu v White & Sons* [1901], *Hambrook v Stokes Bros* [1925], *McLoughlin v O'Brian* [1983], *Alcock v Chief Constable of the South Yorkshire Police* [1991], *White v Chief Constable of South Yorkshire Police* [1999].

A distinction should be made between primary and secondary victims in claims for psychiatric injury. A primary victim is a person who is a participant in an accident who suffers following what he sees or hears. Such a person is usually within the range of foreseeability and will be able to claim. A secondary victim is someone who is not a direct participant but witnesses an accident or arrives during the 'immediate aftermath' of an accident. Such a person will have greater difficulty in establishing a claim, unless he can show a special emotional tie with the person injured in the accident: *Page v Smith* [1995].

The general principles of the tort of negligence should be applied to the facts of the question. Robert should be advised that, as a road user, he owes a duty of care to other road users, including pedestrians. He was driving negligently and, therefore, had breached his duty of care and caused injury to Kathy and Toby. Kathy should have no difficulty in establishing that she is a 'neighbour' according to Lord Atkin's test and therefore should succeed in a claim against Robert (or more likely his insurers) as she has been injured as a result of Robert's negligent driving and will be owed a duty of care as a foreseeable victim.

Toby would probably be classed as a secondary victim as he witnessed the accident and knew that his mother was taking tea in the café that Robert had driven his van into. He should be able to claim for psychiatric injury based on the criteria established in *Alcock (supra)*.

4. Amy and Ben have recently moved into a new house together and have purchased a number of items with which they are not satisfied.

(a) Explain to Amy and Ben why the law implies terms into certain contracts for the sale of goods.

(7 marks)

Suggested answer

This answer requires a discussion of the terms implied into contracts for the sale of goods, under the Sale of Goods Act (SOGA) 1979. Answers should include a brief discussion of why terms are implied into contracts and provide an analysis of the movement away from the principles of 'freedom of contract' and 'sanctity of contract.'

Historically, the maxim of *caveat emptor* (let the buyer beware) applied and the principle of freedom of contract was paramount: the parties to a contract should be free to determine the clauses they wanted to include in their contract without interference from the law. This *laissez faire* philosophy was based upon the premise that the parties were of equal bargaining power. However, as social and economic conditions changed, with large retailers selling to private consumers, it soon became apparent that the notion of equality of bargaining power was a myth and that there was a need to protect the weaker party. Hence, legislation was passed whereby terms are implied into consumer contracts.

The main statutory controls are to be found in the Unfair Contract Terms Act 1977 (UCTA) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). Both the UCTA and UTCCR protect consumers but their definition of 'consumer' differ. Reg 3(1) UTCCR states that 'consumer' means any natural person who, in contracts covered by the regulations, is acting for purposes which are outside his trade, business or profession. S12 UCTA provides that a party is dealing as a consumer where:

- (i) he neither makes the contract in the course of a business nor holds himself out as doing so;
- (ii) the other party does make the contract in the course of a business; and
- (iii) the goods are of a type ordinarily supplied for private use or consumption.

(b) Advise Amy and Ben on their legal position in the following situations. They purchased:

(i) A duck down duvet from a department store but have now discovered that Ben is allergic to the duvet.

(6 marks)

Suggested answer

The relevant sections of the SOGA 1979 should be applied to the facts of the question.

The first scenario requires a discussion of s14 SOGA 1979 which imposes two duties on a seller who sells in the course of a business. First, there is an implied condition that the goods are of satisfactory quality, s14 (2), and, second, that the goods are fit for purpose, s14(3). There is nothing to indicate that the duvet is not of satisfactory quality under s14(2). In order to succeed under s14(3), the buyer must expressly or impliedly make known any particular purpose for which the goods are required and should rely on the sellers skill and judgement. In *Griffiths v*

Peter Conway [1939], the buyer of a fur coat suffered a serious and adverse reaction to the coat due to her allergies. She did not tell the seller about her allergy and therefore the coat was deemed to be fit for purpose as she had not relied on the sellers' skill and judgement.

If Amy and Ben did not tell the seller about Ben's condition, they cannot be said to have relied on the sellers' skill and judgement and any claim under s14(3) will fail.

- (ii) A desk from a second hand dealer, which was being sold cheaply because, as the seller pointed out at the time of the sale, one of the drawers was broken. They have now discovered that the desk has woodworm.**

(6 marks)

Suggested answer

S14(2) SOGA 1979 implies a term that the goods will be of satisfactory quality. 'Quality' will vary between products depending on issues such as whether the goods are brand new or used. The test is whether the goods meet the standard that a reasonable person would regard as satisfactory, taking into account the description, price and all other relevant circumstances. Features to be taken into account when assessing the quality include:

- (i) Fitness for all purposes for which goods of the kind are commonly used.
- (ii) Appearance and finish.
- (iii) Freedom from minor defects.
- (iv) Safety.
- (v) Durability.

There are defences available to the seller. For example, there will be no breach of s14(2) in respect of defects which have been pointed out to the purchaser or if the goods have been sold cheaply to reflect the defect. Likewise, if the buyer had examined the goods before purchase, and the examination ought reasonably to have revealed the defect, then this will be a defence to the seller.

Clearly, Amy and Ben cannot claim for the drawer being broken, as this had been brought to their attention at the time of sale. However, they may have a claim under s14(2) in respect of the woodworm, unless this would be apparent on reasonable examination.

- (iii) A dishwasher bought from their next door neighbour. This breaks down the first time it is used.**

(3 marks)

Suggested answer

With regard to the dishwasher purchased from the neighbour, this would not be regarded as a consumer sale as the seller did not sell in the course of a business. Hence, the maxim of *caveat emptor* will apply and Amy and Ben will have no redress under SOGA 1979.

- (iv) An electric frying pan from their local electric shop, which burns out when Amy uses it to heat up hair removal wax.**

(3 marks)

Suggested answer

There is nothing to suggest that the frying pan was not of satisfactory quality, provided it was used for its normal purpose. Likewise, it does not appear that Amy had made known the purpose for which she was going to use it (heating up her wax). Therefore, there will be no liability on the part of the seller under s14(2) or (3).

5. (a) You are approached by James Jolly, the Human Resources director of a large plc in Brentfield, who seeks clarification on various matters relating to the company's obligations under the Disability Discrimination Act 1995. You are required to prepare a detailed report for James:
- Outlining the provisions of the Disability Discrimination Act 1995 in relation to discrimination.
 - Detailing the company's obligations when an employee requests 'reasonable adjustments' be made to their working conditions on the grounds of disability.
- (13 marks)

Suggested answer

A discussion of a variety of employment law related issues is required for this answer. In particular, discrimination under the Disability Discrimination Act (DDA) 1995/2005. Better answers will also identify the other potential areas of discrimination and considered the purpose of the DDA in promoting equality of opportunity. Reference should also be made to the ACAS Code of Practice which is designed to assist employers and employees with disciplinary grievances in the work place.

Answers should be in a report format, detailing who the report is to, the date, the subject matter and the author. The report should also include the definition of 'disability'.

According to the DDA 1995, disability is defined as:

"Physical or mental impairment which has a substantial and long term adverse affect on the employees' ability to carry out normal day to day activities."

S4 of the DDA makes it unlawful to discriminate against existing employees or when selecting employees. S51 DDA provides that an employer discriminates against a disabled person if, for a reason which relates to the disabled person's disability, he treats him less favourably than he treats, or would treat, others to whom that reason does not apply and he cannot show that the treatment is justified.

An employer has a positive duty to make adjustments to cater for the needs of disabled workers. If any arrangements made by the employer, or any physical feature of the premises, place the disabled person at a substantial disadvantage, the employer must take such steps as are reasonable to prevent this happening. S6(3) DDA 1995 gives examples of steps which an employer might have to take:

- Making adjustments to premises.
- Allocating some of a disabled person's duties to another person.
- Transferring a disabled person to fill an existing vacancy.
- Altering a disabled persons working hours.
- Sending a disabled person to a different place of work.
- Allowing a disabled person time during working hours for rehabilitation, assessment or treatment.
- Giving a disabled person training or arranging training.
- Acquiring or modifying equipment, instructions or reference manuals.
- Modifying procedures for testing or development.
- Providing a reader or interpreter.
- Providing supervision.

In determining whether it is reasonable for an employer to take a particular step in order to comply with the duty to make adjustments, s6(4) provides that regards should be had to:

- The extent to which taking the step would prevent the disabled person from being placed at a considerable disadvantage.
- The extent to which it is practicable for the employer to take the step.
- The financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt his activities.
- The extent of the employer's financial and other resources.
- The availability to the employer of financial and other assistance with respect to taking the step.

Reference should be made in answers to the Commission for Equality and Human Rights Code of Practice, which provides guidance on matters to be taken into account in determining questions relating to the definition of disability.

Reference should also be made to the ACAS Code of Practice which requires fairness and transparency in developing rules and procedures for handling grievances in the workplace. Employees should be involved in drafting these rules and procedures, which, although not legally binding, are designed to ensure that there are in place clear, specific rules and procedures for handling grievances. The Code of Practice is designed to provide a system by which employers and employees can provide a fair system for settling grievances without going to a tribunal.

- (b) Ryan, an employee of the company, has left the company without giving notice because of persistent bullying by certain colleagues. He had complained to his line manager frequently but the problem persisted.**

You are required to advise on the legal issues involved.

(12 marks)

(Note: candidates are not required to consider issues relating to vicarious liability.)

Suggested answer

The answer requires a consideration of whether the employer or Ryan was in breach of contract.

- James Jolly will argue that Ryan failed to give the appropriate period of notice to terminate his contract of employment.
- Ryan will argue that he has been constructively dismissed. Lord Denning explained the meaning of constructive dismissal in *Western Excavating v Sharp* [1978]:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract....then the employee is entitled to regard himself as discharged from any further performance.....He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all, or, alternatively, he may give notice and say that he is leaving at the end of the notice.”

- Ryan will argue that the company is in breach of contract in that it did not provide him with a safe working environment, which is an implied term of his contract of employment. In addition, he will submit that there has been a breach of the implied duty of mutual trust and confidence which left him with no alternative but to leave as, despite several complaints, no action was taken to rectify the situation. Moreover, he has suffered harassment, which was not prevented by his employer.
- There are a number of remedies available to Ryan:
 - (i) Re-instatement – involving a return to his old job in which case he will be treated as if he had never been dismissed. Such orders are rare and it is unlikely that Ryan would want to return to his old job in the circumstances.

- (ii) Re-engagement – here Ryan will not be given his old job back but the company will be ordered to give him a different job. Again, this is unlikely as mutual trust and respect between Ryan and his employer seems to have broken down.
- (iii) Compensation – this is the most likely outcome. Compensation can be awarded on the basis of two elements: a basic award and a compensatory award.

The **basic** award will be calculated in the same way as a redundancy payment, i.e. it is based on the employee's length of service within certain age categories:

- For each year worked under 22 years of age, the employee is entitled to half a week's pay.
- Between 22 and 41 years of age, the entitlement is one week's pay.
- Above 41 years of age, the entitlement is one and a half week's pay.

The **compensatory** award is not calculated to a strict formula but is based upon what is just and equitable in the circumstances. This award can include compensation for loss of, for example, overtime payments, tips and future losses. However, it will not include damages for distress, humiliation and damage to reputation and must be confined to financial losses.

James Jolly should be advised that Ryan cannot be sued for breach of contract, and that the company faces a possible claim from Ryan to the tribunal for unfair constructive dismissal. The company may also be held liable to compensate Ryan in respect of his constructive dismissal.

6. (a) **Owl Books plc ('Owl Books') discovers that two of its employees, Oscar and Ernest, have regularly been supplying their friends with books and applying a 40% discount to each sale. The employer dismisses Oscar, who has only been working for Owl Books for 14 months, but issues a warning to Ernest, who has a three-year period of service.**

Briefly analyse whether Owl Books can argue that Oscar was fairly dismissed and the likelihood of success in that argument.

(10 marks)

Suggested answer

Under the Employment Rights Act 1996 (ERA 1996), employees have a statutory right not to be unfairly dismissed (s94 ERA 1996).

To have a successful claim Oscar must show:

- (i) That he is a 'qualifying employee' under the ERA 1996, i.e:
 - An employee (s230(1) ERA);
 - for at least one year's continuous employment (s.108(1) ERA);
 - who begins a claim within three months of dismissal (s.97 ERA); and
 - is not an excluded category (for example, the police force).

Oscar seems to satisfy these criteria.

- (ii) His 'dismissal' comes under the statutory definition in s95(1) ERA:
 - An express dismissal by employer (with or without notice);
 - an expiry of a fixed term contract without renewal on the same terms; and/or

- where the employee resigns (with or without notice) in circumstances where he/she is entitled to resign because of the employer's repudiatory breach of contract (i.e. constructive dismissal).

Oscar was expressly dismissed.

- (iii) The employer must not have a **fair reason** for the dismissal and/or the dismissal must not be **fair in all the circumstances**.

Provided the employee has established eligibility and a dismissal, it is then for the **employer** to show:

- What the reason for the dismissal was.
- That this reason was an acceptable, or potentially fair, reason for the dismissal as defined by s98(1) ERA 1996.

S98 ERA 1996 provides six acceptable reasons. The fair reason Owl Books is likely to rely on to justify Oscar's dismissal is gross misconduct. By giving his friends a 40% discount, Oscar has shown bad conduct in the workplace.

However, Owl Books is likely to fail at the second hurdle of fairness in all the circumstances. Applying *British Home Stores Ltd v Burchell* [1980], the employer only needed to show that at the time of the dismissal, they had "formed the genuine belief of guilt on reasonable grounds after reasonable investigation".

In the case of Owl Books, joint offenders were not being treated equally. The length of service is unlikely to justify the difference in treatment. A full analysis would require further information to be sought. For example, consideration of available evidence of the difference in treatment, past practice of the employees, and whether Oscar was given an opportunity to be heard before being dismissed: ACAS Code of Practice on Grievance and Discipline (April 2009).

- (b) **Owl Books is also suffering financial losses due to the recession. It has decided to put on hold some of its promotional activities in order to reduce its costs. In particular, it has cancelled the World Book Day events, which their employee, Harriet, has been organising since she joined the company over three months ago. Harriet has a good working relationship with her manager, John, due to her dedication and hard work in the role. At a meeting last week, John informed Harriet of the event cancellation and handed her a formal letter confirming that her contract of employment was to be terminated with three months' notice. Harriet is angry since she accepted the fixed two-year contract with Owl Books instead of pursuing a more lucrative career as an event planner for singer Sheree Cole. Harriet is now considering re-applying for that job.**

- (i) **Advise Harriet on the main claim available to her, and whether she is likely to establish that Owl Books has liability for that claim.**

(10 marks)

Suggested answer

The main claim available to Harriet is wrongful dismissal. Wrongful dismissal is a claim for **breach of contract**.

If an employer dismisses an employee in breach of the contractual (or statutory minimum, if greater) obligation to provide notice, and the employee has not committed an act of gross misconduct, then the dismissal will be wrongful.

Therefore, to show that Owl Books is liable, Harriet must show each of the following:

- She was 'dismissed'.
- A breach of her employer's contractual obligation to give notice.
- A causal link between the employer's breach and her loss.
- Mitigation of losses on her part.

Harriet was dismissed on notice by her employer. Since there was no evidence of gross misconduct on Harriet's part, the dismissal was in breach of Owl Books' contractual obligation to give sufficient notice. Harriet entered into a two-year fixed-term contract with Owl Books, and was only given three month's notice. Since she had only been working there for around three months, Harriet was entitled to around 18 month's notice, as this was the unexpired remainder of her contract.

Harriet is, therefore, very likely to have a successful claim, since there was a clear breach on her employer's part which caused her to lose her job, and there was no evidence of gross misconduct to justify the breach.

She should be advised to continue to apply for other jobs to show an employment tribunal that she has attempted to mitigate her losses by seeking alternative payment whilst pursuing a claim against her previous employer.

(ii) Harriet asks John to provide her with a reference for the job as an event planner but he refuses to provide one. Advise Harriet whether John is obliged to give her a reference.

(5 marks)

Suggested answer

Harriet should be advised that an employer is not obliged to give references to his employees. In *Gallear v J.F. Watson & Son* [1979] a dismissed employee claimed compensation for his employer's failure to provide him with a reference. It was held that there is no implied duty to provide a reference and, therefore, he was not entitled to compensation.

The scenarios included here are entirely fictional. Any resemblance of the information in the scenarios to real persons or organisations, actual or perceived, is purely coincidental.