

**REVISE
SQE**

Focus on passing SQE2

Revise only the key skills

Learn to answer SQE2 questions

Written Skills for SQE2

Questions & Answers in

Dispute Resolution

**LINDA CHADDERTON
DAVID SIXSMITH**

revise4law.co.uk

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Introduction

Welcome to *Revise SQE: Legal Skills for SQE2*! This series of revision guides is designed to guide you through the second element of your Solicitors Qualifying Examination, in which you will be tested on your ability to put the legal knowledge you acquired for your SQE1 assessment into six different practical contexts.

The key to successfully navigating your SQE2 assessment can be split into three distinct areas:

- understanding how you are being assessed and what you are being assessed on
- practising example scenarios
- comparing and contrasting your answers with sample answers.

Our SQE2 guides are here to help you with this process, providing you not only with helpful guidance and top tips for approaching all of the relevant skills, but also with multiple sample questions for each assessable skill in each of the relevant legal disciplines. Samples of high and lower scoring threshold answers to each question are provided, to guide you in good practice and steer you away from potential pitfalls.

Using this series in conjunction with our series of SQE1 revision guides, to ensure that your legal knowledge is accurate and up to date, will enable you to tackle your SQE2 assessment with confidence.

PREPARING YOURSELF FOR SQE

The SQE, introduced in 2021, is the new route to qualification for aspiring solicitors, and one of the final stages towards qualification.

The SQE consists of two parts:

Assessment	Contents of assessment
SQE1	<ul style="list-style-type: none">• 360 multiple-choice questions• Closed book• Assessed by two sittings• Over ten hours in total
SQE2	<ul style="list-style-type: none">• Practical legal skills• 16 written and oral assessments• Assesses six practical legal skills• Over 14 hours in total

In addition to the above assessments, all candidates will have to undertake two years' qualifying work experience. More information on the SQE assessments can be found on the SRA website.

It is important to note that the SQE can be perceived to be a 'harder' set of assessments than the Legal Practice Course (LPC). The reason for this, explained by the SRA, is that

Case and matter analysis

■ MAKE SURE YOU KNOW

This chapter deals with the skill of case and matter analysis in the context of dispute resolution. This is one of the legal skills that may be assessed in dispute resolution on day one of the SQE2 assessments (see the Introduction for more detail). You will be required to apply contractual or tortious principles to the processes associated with dispute resolution, so you will need a sound knowledge of these different areas of the law. We therefore advise you to revise the contents of ***Revise SQE: Dispute Resolution***, ***Revise SQE: Tort Law*** and ***Revise SQE: Contract Law*** before attempting the questions in this chapter.

Some of the scenarios used in the practice examples contained in those books are built on below, to show you how the SQE2 skills assessment tests your knowledge of the legal principles you will have learned for your SQE1 examinations. This chapter provides examples of how different elements of contractual and tortious disputes can arise in the context of an SQE2 case and matter analysis assessment.

■ SQE ASSESSMENT ADVICE

As you work through this chapter, remember to pay particular attention in your revision to:

- identifying the relevant facts
- providing client-focused advice
- ensuring your advice demonstrates an understanding of the problem from the client's point of view and what the client wants to achieve, not just from a legal perspective
- using clear, precise, concise and acceptable language
- applying the law correctly to the client's situation
- applying the law comprehensively to the client's situation, identifying any ethical and professional conduct issues and exercising judgement to resolve them honestly and with integrity.

■ INTRODUCTION TO CASE AND MATTER ANALYSIS IN DISPUTE RESOLUTION

The SQE2 assessment will probably replicate scenarios that occur in everyday legal practice. When practising in the field of dispute resolution, you need to develop the ability to consider the details of a case, analyse the facts to ascertain whether the matter can be resolved in the best interest of the client and then provide advice to the client.

The SQE2 assessment in case and matter analysis will be based on a case study with documents on which you will be asked to produce a written report to a partner, giving a legal analysis of the case and providing client-focused advice. This may or may not

2 Case and matter analysis

include options and strategies for negotiation. This chapter will provide examples of how you can do this whilst meeting the assessment criteria for SQE2 case and matter analysis.

To create a logical and clear response to your SQE2 case and matter analysis assessment, approach the question in a structured manner. Try adopting the following method:

1. Once you have read the case details and the documentation, write down the key facts and legal issues that are relevant to the matter.
2. You can then structure your written report around those key facts and legal issues by using headings or sub-headings.
3. Complete your written report.
4. Review your answer, keeping in mind the SQE2 case and matter analysis assessment criteria.

Assessment technique

When reviewing your answer, check you have dealt with each relevant fact or legal issue, cross-referencing the relevant information presented in the documents and case study. This prevents you from omitting important information.

SQE2 case and matter analysis assessment criteria

Try to remember these points as you construct your answer:

Skills

1. Identify relevant facts.
2. Provide client-focused advice (ie advice which demonstrates an understanding of the problem from the client's point of view and what the client wants to achieve, not just from a legal perspective).
3. Use clear, precise, concise and acceptable language.

Application of law

4. Apply the law correctly to the client's situation.
5. Apply the law comprehensively to the client's situation, identifying any ethical and professional conduct issues and exercising judgement to resolve them honestly and with integrity.

In chapter 2 of **Revise SQE: Contract Law**, we considered the performance of existing duties and consideration. Question 1 below demonstrates how your knowledge of this topic could be tested in the context and format of an SQE2 case and matter analysis assessment.

■ QUESTION 1

Email to candidate

From: Partner
Sent: 2 April 202#
To: Candidate
Subject: Amir Singh, Singh Electrical Ltd

Yesterday I spoke to a new client, Amir Singh. Amir is the director of Singh Electrical Ltd, which is a medium-sized local business providing electrical services to the local area. Amir explained that he started the business ten years ago and has gradually built up a good client base. He provides electrical services for some local companies and also long-standing clients in the community.

Amir admitted that he is not great with paperwork. Most of his clients are repeat business, and over the years he has come to various ad hoc agreements with them about the cost, supply and billing of his services. Most of his original agreements were verbal but he has started to draw contracts up for his new business clients. Amir feels that due to his kind nature and relaxed attitude to payment, some of his clients are taking advantage of him. Some clients have fallen behind on their payments to him while others have failed to pay for the services provided. His company is now suffering cash-flow problems as a result. I took details of the payment issues he is experiencing with two separate clients. They are as follows:

Saaima Iqbal

Saaima Iqbal runs a number of beauty salons in the town and intended to expand her business by opening a further three salons. Amir agreed to undertake all the electrical work for the new salons last year. They agreed that the work would be completed for all three salons in four weeks, as Saaima wanted to time the launch with a new advertising campaign she had committed to.

Unfortunately, some of Amir's employees contracted COVID-19, and being short-staffed he advised Saaima that he would be unable to complete the work to the original four-week deadline. Amir explained to me that Saaima was really disappointed and wanted him to prioritise her work. She offered Amir an extra 20% on the price she had agreed to pay if he completed the work to the original four-week deadline. Amir agreed and managed to complete the three salons on time. The original price agreed was £10,000 and Saaima had offered a further £2,000 if completed on time.

Saaima has only paid Amir £10,000. He wants to know whether he can pursue her for the extra £2,000. There was no written agreement, as Saaima is a friend of his wife's and he did not think about putting the verbal agreement or the offer of extra payment in writing at that stage. Amir is also rather concerned that he gave Saaima a low quote because she is a friend of his wife. On reflection, he explained that the work was really worth about £15,000.

Shakira Umbridge

Amir has recently agreed to undertake some work for Shakira Umbridge in their property. He rewired the house, and purchased and fitted new light fittings. His total bill came to £2,500. He was due to complete the work on 1 April and as with all his invoices, payment was due 14 days after completion of works.

Shakira is a self-employed joiner and was recently involved in a road traffic accident in which they suffered soft tissue injuries, which have prevented them from working for the last two months. Shakira spoke to Amir at the beginning of March before he had finished the work, telling him they were experiencing financial hardship and cash-flow issues. As a concession, Amir verbally agreed to reduce the bill to £1,250, but on condition that it was paid on the date of completion. Shakira paid £1,250 on 1 April when the work was completed. However, as Amir is now experiencing cash-flow problems, he wants to know whether he can go back to Shakira and ask for the residual amount. He explained that Shakira is now fully recovered and that they received compensation for their road traffic accident so are likely to be able to afford the remaining amount.

Advice and analysis required

Amir would like advice on how best to secure the amounts owed to his company. He does not want to damage his reputation but is under increasing pressure due to lack of cash flow caused by clients not paying his full bill.

Please provide advice and analysis for me to use as the basis of a letter to the client. In providing your advice, please bear in mind that Amir is not a lawyer but does have experience of running a business. The client would like brief explanations of the relevant law, where appropriate, so please include these in your advice and analysis. Do not include advice about the procedure at this stage as we have just been asked to provide an overview of Amir's legal position in respect of the outstanding amounts. There is also no need to explore promissory estoppel.

Please set out your advice and analysis on the following:

1. If Saaima Iqbal refuses to pay the extra 20% on the price, does Amir have any legal entitlement to require her to do so?
2. Can Amir pursue Shakira for the full amount now that they have received money from their compensation claim?

You do not need to consider any client-care matters.

Thanks,

Partner

* * *

■ YOUR TURN

Have a go at answering question 1, remembering the guidance on pages 1–2.

- Refer to the structured approach in the SRA's assessment criteria on page 2.
- Create a list of the most salient legal issues raised by the question.
- Timings are important: you will need to prepare and write your answer in one hour.

SQE1 Functioning legal knowledge link

Remember from chapter 3 of **Revise SQE: Contract Law** that the intention to create legal relations is one of the four key requirements to make a contract legally binding, and it is required for all contracts.

EVALUATING YOUR ANSWER

When you have attempted question 1, mark it yourself against the SQE2 case and matter analysis criteria. Do you think your attempt met the threshold standard?

Now compare your attempt with the following key legal points and two sample answers to the question. A circled number indicates that commentary is provided for this part of the answer. The commentary explains whether or not the sample satisfies the assessment criteria, and accordingly likely to meet the threshold SQE2 standard.

➡ Key legal points: Question 1

- Contract: you will need to explain the requisite ingredients to form a legally binding contract. You will then need to consider whether an oral agreement can constitute a legally binding contract. In order to consider whether Amir and Saaima, and also Amir and Shakira, have a contract, you will need to consider whether there has been an offer, acceptance of the offer, consideration and certainty of terms, and whether both parties intended to enter legal relations.
- Consideration: you will then need to explain consideration – promise/act of value in exchange for an act/promise of value. Is the offer of money by Saaima to Amir in the first instance, in exchange for services, consideration? Have the parties given consideration for any of the arrangements? Is Saaima's offer to pay an extra 20% adequate or sufficient consideration? Remember that consideration must not be past.
- Consequences of a promise: the issues in respect of Amir and Saaima are the consequences of a promise to pay more for the performance of an existing contractual duty owed to a promisor; and in respect of Amir and Shakira, the consequences of a promise to pay less under an existing contract.

■ SAMPLE ANSWER 1 TO QUESTION 1

The requisite ingredients to form a legally binding contract are offer, acceptance, consideration and intention to create legal relations. A contract can be verbal or in writing. Amir has conceded that his business arrangements going forward will be evidenced in writing, which is appropriate. ①

Offer and acceptance along with an intention to create legal relations are all evident in respect of both the work completed for Saaima Iqbal and Shakira Umbridge. Whether or not Amir can pursue either party for outstanding amounts will depend upon whether there was consideration. Consideration is generally a promise of an act or omission, or an act or omission in exchange for the same. Consideration does not need to be adequate but only sufficient, although it must not be past. The amount offered under the contract does not need to match the value of the work done. Also of note is the fact that the work was carried out after the contract was entered into. ②

Saaima Iqbal ③

Constituent parts of contract are evident – offer, acceptance and the intention to create legal relations. Turning to consideration, Amir did what he was already bound to do under the verbal agreement. He agreed with Saaima that the work would be complete within four weeks, due to Saaima's offer to increase payment by 20%. The general approach is that if parties to a contract agree that one party will pay more than was agreed under the original contract, the promise to pay more is not binding unless the promisee makes an additional promise, act or omission as consideration. Without this Amir is doing nothing more than he was contractually bound to do under the original

agreement with Saaima. As long as Amir has not provided any additional consideration then he is unable to pursue Saaima for the 20% uplift on his bill. If Amir had, for example, employed more staff to get the job done on time then potentially he could pursue Saaima for the extra 20%, because a key element of consideration is 'exchange', and Amir would have provided something additional (ie more staff) for Saaima's additional offer of 20%. ④

We must also consider the additional test of practical benefit. Did Saaima obtain a practical benefit as a result of making the promise to pay more? If she did, the practical benefit is the consideration itself, which makes the promise legally binding. We may be able to argue that the practical benefit for Saaima was the opening of her salons on time without having to delay publicity and marketing, etc. We could advise Amir that reimbursement of the 20% is likely to fail due to lack of consideration, but we could try to negotiate with Saaima on that basis. If she is a friend of his wife, she might wish to settle this amicably. ⑤

The fact that Amir feels he had undervalued his work is of no consequence, as consideration only has to be sufficient not adequate. Amir agreed the figure of £10,000, and whether or not this is adequate has no effect on the contract as it was sufficient. ⑥

If Saaima Iqbal refuses to pay the extra 20% on the price, Amir does not have any legal entitlement to require her to do so. ⑦

Shakira Umbridge

Constituent parts of contract are evident – offer, acceptance and the intention to create legal relations. Turning to consideration, a promise to pay less than is owed under an existing contract is not consideration. However, an exception to that rule is that if the payment is required before the original amount was due. Amir reduced his bill to £1,250 and required it to be paid on 1 April instead of within 14 days of completion of the works: Shakira has therefore provided consideration, and as a result Amir is unable to pursue them for the outstanding amount. The fact that they received compensation due to an accident recently is not relevant. ⑧

COMMENTARY

- ① The introductory paragraph sets out the relevant facts, and the purpose of the memorandum. It is important to clearly establish the relevant facts from the outset, and what the client is seeking advice on – the candidate then needs to maintain that client-focused approach throughout the memorandum. The candidate should remember to show the examiners that they can analyse a case and apply the law to the scenario to give a solution to the client. The analysis starts with an overview of the requirements of a legally binding contract, which should be a starting point for any discussion on whether the parties are bound by their subsequent additional agreements. It is important to note that the contract can be verbal or in writing, and that the client has been conducting his business without written agreements, although it is not advisable to do so.
- ② Moving on from dealing with the basics of a contract, the analysis discusses consideration, which is a constituent element when entering into a contract. The language is clear and will be easily understandable for the client.
- ③ This section deals with aspects of the first contract with Saaima Iqbal. The candidate has remembered the SQE2 assessment criteria and set out their answer logically and clearly. Breaking the issues down in this way and using headings makes for better reading.
- ④ Now that the basics have been explained, the analysis goes into further detail about whether Saaima is bound to pay the extra 20%, and what other elements need to be considered. Using an example is a good way of explaining a legal principle to a client.

Explaining the issues relating to the client and applying the principles here shows the examiner that the candidate not only understands the law but can apply it to the scenario.

- ⑤ The candidate should always be ready to argue a counterpoint or highlight weaknesses in the argument put forward on behalf of the client. They need to ensure the client's expectations are managed. Dealing with each issue/third party in turn presents a clear structure and ensures that the issues are explored in sufficient depth, applying relevant law and providing the client with a clear answer. Here the candidate considers that the client has a connection to the third party and this should be taken into consideration when attempting to negotiate the issue.
- ⑥ The law is again applied to the scenario, showing the assessor a firm grasp of the issues, which in turn provides clarity on the client's legal position.
- ⑦ The candidate should always provide an answer to the question posed. It is not sufficient to write about contract law. The assessors are judging the candidate on whether they can use the information supplied, apply the law and actually present the client with a solution or answer to the problem.
- ⑧ Reiterating the issues and dealing with them in a methodical manner ensures that all points are dealt with. It is important to manage the client's expectations regarding the third party's receipt of compensation, namely that this is of no consequence to the legal issues involved.

Does this answer meet the threshold?

The sample answer above contains all of the information that the client requires and that the candidate has been asked to provide. It is therefore likely to meet the threshold standard for the SQE2 case and matter analysis. Note how each of the assessment criteria for the case and matter analysis are dealt with, and where appropriate the assessor is directed specifically to the areas of the analysis, which deal with those criteria. It is important for the candidate to show that they are familiar with the criteria by which they are being assessed.

Now consider the second sample answer to question 1.

■ SAMPLE ANSWER 2 TO QUESTION 1

In order to consider the issues we need to establish that this is a contractual matter. In order to form a contract, there needs to be offer and acceptance. An offer is a willingness to enter into legal relations and is binding as soon as it is accepted. The offer is a statement and terms that the person making the offer – here Amir – is willing to enter into legal relations with the other party. An acceptance is either an act or a promise to be bound by the terms of the offer that has been made by Amir. ①

The issue is whether Amir can force Saaima to pay him the extra 20% and whether he can force Shakira to pay him the £1,250 owed. ②

Amir had agreed to pull out all the stops and get Saaima's salons up and running, and he was kind enough to reduce the bill for Shakira. He now wants to know whether he can sue them for the outstanding amounts. ③

The issue here is whether there was consideration between any of the parties. When Amir agreed to put in extra work for Saaima, he provided consideration as he would have to get more staff or work longer hours. ④

When he reduced Shakira's bill, he did so to maintain good will with clients. Now that Shakira has received more money, a claim against them is possible. We could write