Your Rights Matter

SQE1 FLK1 Diagnostic: The 10-Question "Health Check" Answers

A curated sample of audited FLK1 questions to test your application of the law.

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1. Dispute Resolution (Part 36 Outcomes)
Answer: A
Explanation (Examiner-Style):

- Correct (A): Under CPR Part 36, an offer can be accepted at any time unless it has been withdrawn. Withdrawal only takes effect if the notice of withdrawal is served *before* the notice of acceptance is served. Since the claimant accepted within the 21-day "relevant period" (which ended on 22 June), the standard costs consequence applies: the defendant pays the claimant's costs of the proceedings up to the date of acceptance.
- Error (B): This incorrectly applies the costs consequences of a *late* acceptance (acceptance after the relevant period expires). Here, the acceptance happened within the 21 days.
- Error (C): A Part 36 offer is not withdrawn by the mere act of discovery; it requires a formal notice of withdrawal to be served *before* acceptance. Acceptance is effective upon service on the offeror.
- Error (D): Permission is not required to accept an offer within the relevant period simply because of the timing; permission is generally only required in specific circumstances (e.g., where a trial has started).
- Error (E): Candidates often confuse Part 36 with general contract law (revocation) or assume "fairness" dictates that a change in evidence voids the offer. Part 36 is a self-contained code; the offer remains open for acceptance until formally withdrawn.

2. Contract Law (Remedies & Timing)
Answer: A
Explanation (Examiner-Style):

- Correct (A): This tests the "Pivot of Election." When an anticipatory breach occurs, the innocent party has the choice to terminate or affirm. If they affirm (as the factory did by insisting on performance), the contract continues. Damages are then assessed based on the breach of the actual performance date (1 March). The difference between £50,000 and £60,000 is £10,000.
- Error (B): This assumes the date of the anticipatory breach is the mandatory date for assessing loss. This would only be true if the factory had accepted the breach and terminated on 1 February.
- Error (C): While mitigation is a factor, the factory has an absolute right to elect to affirm. They do not need to "justify" waiting until the performance date; the duty

to mitigate only triggers once the contract is actually breached on 1 March or when they accept the anticipatory breach.

- Error (D): Affirmation waives the right to *terminate* for that specific anticipatory breach, but it does not waive the right to claim damages once the actual time for performance passes and the breach becomes actual.
- Error (E): This is a "maths trap" distractor that calculates the difference between the two breach dates rather than the contract price and the performance date price.

3. Legal System & Services (Solicitor Undertakings)
Answer: B
Explanation (Examiner-Style):

- Correct (B): This tests the "Status of Oral Undertakings." A solicitor's undertaking is a formal promise made in the course of practice. It does not require writing to be professionally binding. If a solicitor gives an undertaking to do something within their control (or even something that becomes impossible), they are personally committed to it as a matter of professional conduct. The SRA can enforce this via the Tribunal.
- Error (A): Candidates often try to apply contract law "misrepresentation vs. statement of intent" logic. In professional conduct, the wording "I will ensure" is a classic undertaking.
- Error (C): Misapplies the Statute of Frauds or general property law requirements for writing. Undertakings are a matter of professional conduct, not just contract law.
- Error (D): This is the "Negligence Trap." A breach of undertaking is a "strict liability" professional issue; it does not require a finding of dishonesty.
- Error (E): In the context of SRA Standards and Regulations, the individual solicitor who gives the undertaking is personally responsible for it, regardless of the firm's structure or agency law.

4. Business Law & Practice (Director Liability)
Answer: C
Explanation (Examiner-Style):

- **Correct (C):** This tests the "Pivot of Professional Standards" under s.214 Insolvency Act 1986. Once a director knows (or ought to conclude) there is no reasonable prospect of avoiding insolvent liquidation, they must take *every* step to minimise loss to creditors. Merely dissenting at a board meeting while remaining a director is rarely sufficient to satisfy this high threshold.
- **Error (A):** While s.174 CA 2006 (Care/Skill) uses a dual objective/subjective test, in an insolvency context, the liquidator will primarily pursue Wrongful Trading as it provides a direct route to personal contribution to the assets.
- **Error (B):** Fraudulent trading requires "intent to defraud," which is a much higher bar than the facts suggest.

- **Error (D):** This refers to s.172. However, once a company is "borderline" insolvent, the "Creditor Interest Duty" displaces the "Success of the Company" (for members) duty.
- **Error (E):** This is the "Safe Option" trap. Candidates often assume a dissent in minutes acts as a "get out of jail free" card. In the SQE context, directors are expected to take proactive steps (e.g., seeking independent advice, threatening resignation, or forcing a cessation of trade) to protect creditors.

5. Tort (Causation & Novus Actus)
Answer: D
Explanation (Examiner-Style):

- **Correct (D):** This tests the "Pivot of Intervening Acts." While the driver is the factual cause (A), legal causation requires the injury to be a natural and probable consequence. The court distinguishes between "foreseeable" medical complications and "unreasonable" claimant behavior. Hopping to a bathroom against hospital protocol is typically viewed as an act that breaks the chain of causation (*McKew v Holland* logic).
- **Error (A):** This is the "Factual Causation Trap." Many candidates stop at the "but for" test and fail to apply the legal "break in the chain" analysis.
- **Error (B):** While medical negligence often does *not* break the chain, a claimant's own highly unreasonable conduct does.
- **Error (C):** While the hospital might be liable in a separate claim, the claimant's own act is the more "dominant" break in the chain regarding the driver's liability.
- **Error (E):** Contributory negligence applies when the defendant *is* liable but the claimant shared the fault. If there is a *novus actus*, the defendant is not liable for that specific head of damage at all.

6. **Dispute Resolution (Interim Remedies)**
Answer: B
Explanation (Examiner-Style):

- **Correct (B):** This tests the "Sequence Pivot." Under *American Cyanamid*, the steps are rigid: (1) Serious question to be tried? (2) If yes, are damages an adequate remedy for the claimant? If damages *are* adequate, the injunction is refused. The court only moves to the "balance of convenience" (D) if damages are inadequate.
- **Error (A):** The court specifically avoids a "mini-trial" of the merits at the interim stage unless the evidence is undisputed.
- **Error (C):** An undertaking is a *requirement* of granting an injunction, but it is not the next analytical step in deciding *whether* to grant it.
- **Error (D):** This is the most common error. Candidates jump to the "balance of convenience" (the general "fairness" test) before checking the "adequacy of damages" (the specific legal threshold).
- **Error (E):** "Irreparable harm" is a general concept, but the SQE tests the specific *Cyanamid* terminology regarding the adequacy of damages.

7. **Business Law & Practice (VAT Recovery)**
Answer: B
Explanation (Examiner-Style):

- **Correct (B):** This tests the "Pivot of Recoverability." Input tax is only recoverable if the services are used for the company's own taxable supplies. Employment contracts relate to the general operation of the business and are recoverable. However, legal advice for a *share sale* is generally treated as being for the benefit of the shareholders (or an exempt supply), making the VAT non-recoverable by the company (*Customs and Excise v Midland Bank* logic).
- **Error (A):** This is the "General Purpose" trap. Candidates often assume any "business" expense is 100% recoverable, ignoring that share-related legal work is often carved out.
- **Error (C):** Legal services are not "exempt" (like insurance or postal services); they are standard-rated (20%). The issue is recoverability, not the rate itself.
- **Error (D):** There is no such thing as a "standard-rated employee"; this is a fabricated distractor to catch those confusing VAT on goods with payroll.
- **Error (E):** Completion of the sale does not change the nature of the supply. If the advice is for a share sale (exempt/non-business), the VAT remains non-recoverable regardless of the outcome.

8. **Tort (Occupiers' Liability - The 1984 Act)**
Answer: C
Explanation (Examiner-Style):

- **Correct (C):** This tests the "Scope of Duty" pivot. Unlike the 1957 Act (visitors), the 1984 Act (trespassers) **explicitly excludes recovery for property damage** (s.1(8)). Provided the s.1(3) criteria are met (knowledge of danger, knowledge of trespassers, and reasonable to offer protection), a duty exists for personal injury only.
- **Error (A):** This fails to recognize the statutory bar on property damage under the 1984 Act.
- **Error (B):** While obviousness can be a defense, a rotten floor obscured by shadows is generally a "hidden trap" rather than an obvious risk like a cliff or a pond.
- **Error (D):** This confuses the "common duty of care" with the old pre-1957 "invitee/licensee" categories. Benefit is irrelevant to the statutory duty.
- **Error (E):** *Ex turpi causa* (illegality) rarely blocks a claim for simple trespass; it is usually reserved for serious criminal enterprises.

9. **Taxation (Capital Gains Tax - AEA)**
Answer: A
Step-by-Step Calculation

1. Gains: Painting £10,000 (full gain; proceeds=£15k triggers no chattels reduction >£6k/£15k rule) + land £5,000 = £15,000 total gain.

2. AEA: £3,000 deduction (2025/26 frozen amount) → £12,000 taxable.
3. Rate: 24% (higher-rate, non-residential/chattels) → £12,000 × 24% = £2,880.

Examiner-Style Explanation
Correct (A): Combines TCGA 1992 chattels (full gain), AEA £3k, 24% rate post-Budget.

- Error (B/D): Wrong maths or VAT-style apportionment.
- Error (C): Misadds gains (£15k total).
- Error (E): Old 20% rate (£12k × 20% = £2,400).

This avoids traps: chattels relief only reduces if proceeds £6k-£15k (here full), no residential 24% split.

10. Tort (Occupiers' Liability — Business vs. Personal)
Answer: C
Explanation (Examiner-Style):

- **Correct (C):** This tests the **"Pivot of Status."** Under the 1957 Act, a visitor only remains a visitor as long as they stay within the "limit of the invitation." By entering a shed clearly marked "Private," the guest exceeded the geographical limit of their permission and became a **trespasser**. Therefore, the homeowner's liability shifts from the 1957 Act (Visitor) to the much more restrictive 1984 Act (Trespasser). Under the 1984 Act, the homeowner is only liable if they *knew* of the danger; since she had forgotten the shelf was loose, the 1984 criteria are not met.
- **Error (A/B):** These distractors tempt candidates who assume the "Visitor" status is permanent for the duration of the party. They correctly state the 1957 Act duty but apply it to the wrong legal status (the guest is no longer a visitor).
- **Error (D):** This is a fabricated legal principle. While exclusions are possible under the 1957 Act (subject to UCTA/CRA), they are not "implied" by the nature of the room.
- **Error (E):** This confuses the 1957 Act with the 1984 Act. Under the 1957 Act, you *can* recover for consequential economic loss (like lost wages). The reason they cannot recover here is the change in status (C), not a limit on the type of damages.