



Rogue Landscaper Scoring Guide

Rogue Landscaper Rubric

Question: Per your supervisor's instructions, review the draft complaint and identify four distinct paragraphs that are inconsistent with the facts, the law, or the client's known objectives, interests, and constraints. For each inconsistency, list the number of the paragraph in which the inconsistency occurs and explain how it is inconsistent with the facts, the law, or the client's known objectives, interests, and constraints. Assume that the bracketed information, formatting, and numbering are correct. Do not simply restate or summarize the text. You do not need to provide a revision.

Provide one answer in each answer field. The length of each answer should be about 1–2 sentences.

Grade each provided answer using the following rubric:

0–2 points per answer/box.

Score Point	Rationale
2	The answer meets both criteria below: The answer identifies the paragraph number of an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints. (Point 1) AND The answer explains the inconsistency without simply restating or summarizing the text. (Point 2)
1	The answer meets one of the criteria listed above.
0	The answer is blank, incorrect, or insufficient.
OT	The response is completely unrelated to the question, the source material, or any legal topic (e.g., random keystrokes or comments about disliking the exam itself). "Off Topic" should be marked only in very limited circumstances and only when the entire response is off topic.

Correct Answers

Only answers that list the following paragraphs are correct:

- Paragraph 30
- Paragraph 43
- Paragraph 46
- Paragraph 47

The following grid contains representative correct answers. The hollow bullets below each explanation are anticipated alternative phrasings of the correct explanation.

Paragraph Number (1 point)	Explanation of Inconsistency (1 point)
Paragraph 30 <i>"After Plaintiff completed the work under the first contract, Plaintiff and Defendant entered into a second contract for the construction of a fishpond."</i>	Paragraph 30 is inconsistent with the facts. It does not state the timeline of the transactions correctly. The parties entered into the second contract "just after" work on the first contract had started, so they entered into the second contract during the work on the backyard landscaping project. ○ The second contract was made a few days after work on the landscaping project began.
Paragraph 43 <i>"Defendant breached the contracts by failing to pay Plaintiff \$90,000: \$20,000 for the agreed-upon work on the fishpond in addition to the \$70,000 still owed under the first contract."</i>	Paragraph 43 is inconsistent with the law. It includes damages related to the first contract in violation of a provided rule, Rule 10(b), which states that the claims should be limited as far as practicable to a single set of circumstances. Here, the damages for each contract are separable. ○ The damages for the two claims should be separated.
Paragraph 46 <i>"Plaintiff seeks punitive damages in the amount of \$5,000."</i>	Paragraph 46 is inconsistent with the law. It requests punitive damages, which are not available for this breach of contract claim, pursuant to the provided case (<i>Wexler Properties LLC v. Raymond Construction</i>). ○ Punitive damages are not available here because there is no independent tort.

Paragraph 47

"Plaintiff seeks reasonable attorney's fees in an amount to be determined by the court."

Paragraph 47 is inconsistent with the law. It requests attorney's fees, which are not available for a common-law breach of contract claim in the absence of a statute or the parties' agreement, pursuant to the provided case (*Wexler Properties LLC v. Raymond Construction*).

- This is wrong because there are no grounds for recovering attorney's fees.

Notes

1. An examinee who identifies the same paragraph in multiple fields may receive credit for identification and/or explanation only once. (You may credit the answer that receives the higher score, but the other answer receives a zero.)
2. An answer that fails to provide a paragraph number does not receive the point for identifying the paragraph by number even if the answer otherwise makes clear which paragraph it is referencing.
3. An answer that identifies a paragraph with an inconsistency without providing an explanation does not receive the second point.

Rogue Landscaper Benchmarks

Examinees are given four separate answer fields to identify four distinct paragraphs and explain how each paragraph is inconsistent with the facts, the law, or the client's known objectives, interests, and constraints. Each answer is graded out of two points. Below are benchmarks from several sample responses.

Paragraph 30

Benchmark Response #1 (Score: 2)

Answer

Paragraph 30. It is factually wrong because the second contract was made a few days after the landscaping work began, not after the first contract work was completed. (2 points)

Annotation

This answer receives two points because it identifies by paragraph number an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints, and it also correctly explains the inconsistency.

It receives **Point 1** (*Paragraph 30*) and **Point 2** (*it is factually wrong because the second contract was made a few days after the landscaping work began, not after the first contract work was completed*). The owner of the landscaping company stated that they entered into the second contract "a few days after" starting performance on the first contract. Paragraph 30 of the complaint incorrectly states that the landscaping company entered into the second contract after completing the first contract. This answer correctly identifies the paragraph with this inconsistency and correctly explains the inconsistency.

Benchmark Response #2 (Score: 1)

Answer

Paragraph misstates the sequence of events because the fishpond contract was signed during the landscaping project, a few days after work started, not only after that work was finished. (1 point)

Annotation

This answer receives one point because it fails to identify by paragraph number an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints, but it does correctly explain an inconsistency.

It receives **Point 2** (*paragraph misstates the sequence of events because the fishpond contract was signed during the landscaping project, a few days after work started, not only after that work was finished*). The owner of the landscaping company stated that they entered into the second contract "a few days after" starting

performance on the first contract. Paragraph 30 of the complaint incorrectly states that the landscaping company entered into the second contract after completing the first contract. This answer correctly explains the inconsistency.

Paragraph 43

Benchmark Response #3 (Score: 2)

Answer

Paragraph 43: It violates Rule 10(b) and what the supervisor said because Count 2 combines the \$20,000 fishpond claim with the separate \$70,000 landscaping claim. (2 points)

Annotation

This answer receives two points because it identifies by paragraph number an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints, and it also correctly explains the inconsistency.

It receives **Point 1** (*Paragraph 43*) and **Point 2** (*it violates Rule 10(b) and what the supervisor said because Count 2 combines the \$20,000 fishpond claim with the separate \$70,000 landscaping claim*). The provided Rule 10(b) states that claims should be "limited as far as practicable to a single set of circumstances." Also, the supervisor stated that the two contract claims should remain separate. However, Paragraph 43 of the complaint combines in one paragraph the monetary damages sought under both contracts. This answer correctly identifies the paragraph with this inconsistency and correctly explains the inconsistency.

Benchmark Response #4 (Score: 1)

Answer

Paragraph 42. It is improper because Count 2 seeks damages for both contracts, even though the supervisor specifically wanted the two contract claims kept separate for clarity and possible severance. (1 point)

Annotation

This answer receives one point because it fails to correctly identify by paragraph number an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints, but it does correctly explain an inconsistency.

It receives **Point 2** (*it is improper because Count 2 seeks damages for both contracts, even though the supervisor specifically wanted the two contract claims kept separate for clarity and possible severance*). The provided Rule 10(b) states that claims should be "limited as far as practicable to a single set of circumstances." Also,

the supervisor stated that the two contract claims should remain separate. However, Paragraph 43 of the complaint combines in one paragraph the monetary damages sought under both contracts. This answer incorrectly identifies the paragraph but correctly explains the inconsistency.

Paragraph 46

Benchmark Response #5 (Score: 2)

Answer

Paragraph 46 - This is legally unsupported because punitive damages are unavailable for a mere breach of contract absent an independent tort, and none is alleged here. (2 points)

Annotation

This answer receives two points because it identifies by paragraph number an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints, and it also correctly explains the inconsistency.

It receives **Point 1** (*Paragraph 46*) and **Point 2** (*this is legally unsupported because punitive damages are unavailable for a mere breach of contract absent an independent tort, and none is alleged here*). The provided opinion, *Wexler Properties LLC v. Raymond Construction*, states that punitive damages are only available in a breach of contract claim when the conduct also amounts to an independent tort or other wrongdoing where punitive damages are available. Here, the defendant's conduct of refusing to perform under both contracts is not an independent tort or similar wrongful act. This answer correctly identifies the paragraph with this inconsistency and correctly explains the inconsistency.

Benchmark Response #6 (Score: 1)

Answer

Paragraph 46. This is wrong because punitive damages cannot be recovered in breach of contract actions. (1 point)

Annotation

This answer receives one point because it identifies by paragraph number an inconsistency in the facts, the law, or the client's known objectives, interests, and constraints, but it fails to correctly explain the inconsistency.

It receives **Point 1** (*Paragraph 46*). However, the answer misstates the rule from the provided opinion, *Wexler Properties LLC v. Raymond Construction*. The case states the circumstances by which punitive damages are permitted in a breach of contract action. The answer correctly identifies a paragraph with an inconsistency but fails to correctly explain the inconsistency.

Paragraph 47

Benchmark Response #7 (Score: 2)

Answer

Paragraph 47. According to *Wexler v. Raymond*, attorney's fees can only be awarded when they are provided for by a statute or the contract. Here, there is no evidence of either, so requesting attorney's fees is inconsistent with the law. (2 points)

Annotation

This answer receives two points because it identifies by paragraph number an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints, and it also correctly explains the inconsistency.

It receives **Point 1** (*Paragraph 47*) and **Point 2** (*According to Wexler v. Raymond, attorney's fees can only be awarded when they are provided for by a statute or the contract. Here, there is no evidence of either, so requesting attorney's fees is inconsistent with the law*). The attorney confirmed that the contracts do not include a clause allowing for recovery of attorney's fees in the event of a breach. The provided opinion, *Wexler Properties LLC v. Raymond Construction*, states that attorney's fees are only available in a breach of contract claim when requested pursuant to a statute or pursuant to the terms of the agreement. Neither means exists here. This answer correctly identifies the paragraph with this inconsistency and correctly explains the inconsistency.

Benchmark Response #8 (Score: 1)

Answer

There is no contractual or statutory basis for asking for attorney's fees. (1 point)

Annotation

This answer receives one point because it fails to identify by paragraph number an inconsistency with the facts, the law, or the client's known objectives, interests, and constraints, but it does correctly explain an inconsistency.

It receives **Point 2** (*there is no contractual or statutory basis for asking for attorney's fees*). The attorney confirmed that the contracts do not include a clause allowing for recovery of attorney's fees in the event of a breach. The provided opinion, *Wexler Properties LLC v. Raymond Construction*, states that attorney's fees are only available in a breach of contract claim when requested pursuant to a statute or pursuant to the terms of the agreement. Neither means exists here. This answer correctly explains the inconsistency.