

## **Mark Scheme for June 2013**

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OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

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## Annotations

Annotation	Meaning
	AO2+
	Point 2 (Q7-8)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	Sort of / Accurate facts but wrong case name or no name (Q1-Q6)

## Subject-specific marking instructions

**Before** you commence **marking each question** you must ensure that you are familiar with the following:

the requirements of the specification

these instructions

the exam questions (found in the exam paper which will have been emailed to you along with this document)

levels of assessment criteria \*1 (found in the 'Levels of Assessment' grid at the back of this document)

question specific indicative content given in the 'Answer' column\*2

question specific guidance given in 'Guidance' column\*3

the 'practice' scripts\*4 provided in Scoris and accompanying commentaries

\*1 The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.

\*2 The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.

\*3 Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.

\*4 The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

**may still** achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

### Awarding Assessment Objectives 1 and 2

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest\*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided in point 10 of the above marking instructions, with the key point being that you start at the **middle\*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, should receive no marks.

**\* Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.**

### Awarding Assessment Objective 3

AO3 marks are awarded based on the marks achieved for either AO1, AO2 or in some cases, the total of AO1 and AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

#### Rubric

##### **What to do for the questions the candidate has not answered?**

The rubric for G153 instructs candidates to answer **three** questions; one from Section A, one from Section B and one from Section C. For the questions the candidate has not answered you should record NR (no response) in the mark column on the right-hand side of the screen. Do **not** record a 0.

##### **What to do for the candidate who has not complied with the rubric either by answering more than three questions or by answering more or less Section A, B or C questions than is permitted?**

*This is a very rare occurrence.*

Mark all questions the candidate has answered. Scoris will work out what the overall highest mark the candidate can achieve whilst conforming to the rubric. It will **not** 'violate' the rubric

### **Blank pages and missed answers**

Sometimes candidates will skip a few pages in their answer booklet and then continue their answer. To be sure you have not missed any candidate response when you come to mark the last question in the script you must check every page of the script and annotate any blank pages with an annotation.

This will demonstrate that every page of a script has been checked.



You must also check any additional pages eg A, A1 etc, which the candidate has chosen to use. Before you begin marking, use the Linking Tool to 'link' any additional page(s) to the relevant question(s) and mark the response as normal.

## SECTION A

Question		Answer	Marks	Guidance												
1*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain the rules of privity:</p> <ul style="list-style-type: none"> <li>that a contract can only be enforced by and against the parties to the contract, <i>Tweddle v Atkinson, Dunlop v Selfridge, Price v Easton</i></li> <li>Candidates may explain that the rule comes from the need for the parties to have given consideration to the agreement in order to enforce it.</li> </ul> <p>Explain statutory exceptions:</p> <ul style="list-style-type: none"> <li>Contract (Rights of Third Parties) Act 1999; allowing a party who was intended to benefit from a contract, or who has been conferred a benefit, which they were not a party to, to enforce the contract in their own right</li> <li>Cite cases where the act has been used, for example in <i>Nisshin Shipping Co Ltd v Cleaves</i> where it was used to enforce an agents fee in a ship charter</li> <li>That a defence which would have been available against one of the main contracting parties will also be available against a third party</li> <li>That the contracting parties may not vary or rescind the contract rights without consent of the third party</li> <li>Credit to be given for explaining other statutory exceptions such as the Married Women's Property Act and the Road Traffic Act.</li> </ul> <p>Explain the exceptions developed by the courts in order to avoid the application of the rule:</p> <ul style="list-style-type: none"> <li>Collateral contracts; where a new contract was imposed by the court between a person making a representation and the person who acted on that representation, <i>Shanklin Pier v Detel Products</i></li> <li>Restrictive covenants; where a seller places a restriction on the use of land which binds subsequent purchasers, <i>Tulk v Moxhay</i>. Credit will be given for mentioning attempts to broaden this doctrine to cover things such as ships, <i>Strathcona Steamship v Dominion Coal, Taddy v Sterious</i></li> <li>The trust device, where a trust can be implied in order to give rights to a presumed beneficiary of the contract, <i>Les Affreteur Reunis v Walford</i></li> <li>Credit can also be given for any other discussion of ways that the rule of agency may be avoided at common law: assignment, agency, suing under the law of negligence</li> <li>Explain special cases, <i>Jackson v Horizon Holidays, Linden Gardens v</i></li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following Levels without:</p> <p><b>Level 5</b> – being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 4 relevant cases to support their argument with accurate names and some factual description and make reference to the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<p><i>Lenesta Sludge</i></p> <ul style="list-style-type: none"> <li>• Credit any other relevant point(s).</li> <li>• Credit any other relevant case(s).</li> </ul> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss problems that existed before the 1999 Act:</p> <ul style="list-style-type: none"> <li>• There was no general right for a third party to enforce a contract and so they had to rely on fitting into one of the exceptions that had been developed by Parliament or the courts</li> <li>• The exceptions had developed to cover specific situations rather than a general principle of enforceability by a third party intended to benefit from the contract</li> <li>• The availability of exceptions to the rule depended on the judge being willing to be creative with common law exceptions such as trust devices and collateral contracts</li> <li>• However some exceptions were predictable such as agency and assignment</li> <li>• The development of exceptions by the common law has retrospective effect.</li> </ul> <p>Discuss the extent to which the 1999 Act has removed these problems:</p> <ul style="list-style-type: none"> <li>• Statutory exceptions are prospective and therefore receive greater publicity before coming into force</li> <li>• The general rights given under the act are easier to understand and apply than a series of common law exceptions</li> <li>• There is still potential for uncertainty however in identifying the third parties who are intended to benefit from a contract</li> <li>• Also it may not always be clear when a contract purports to give an enforceable right to a third party</li> <li>• That the act does not do away with the doctrine of privity and only deals with certain situations which arise, for example it may not apply when goods are purchased to be given as a present</li> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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2*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain the ways in which a contract may be frustrated:</p> <ul style="list-style-type: none"> <li>• Impossibility of performance, <i>Nichol and Knight v Ashton Eldridge</i>, but not mere difficulty or extra expense</li> <li>• Radical change of circumstances, <i>Krell v Henry</i></li> <li>• Illegality of performance, <i>Fibrosa v Fairbarn Lawson, Denny Mott and Dickinson v James Fraser</i></li> <li>• Supervening event, <i>Metropolitan Water Board v Dick Kerr</i></li> </ul> <p>Explain the circumstances where the courts will decide that frustration will not apply.</p> <ul style="list-style-type: none"> <li>• Where performance would be possible but more difficult or expensive than originally anticipated, <i>Tsakiroglou v Noblee Thorl</i></li> <li>• Where the change of circumstances is not sufficiently radical, <i>Herne Bay v Hutton, Davis Contractors v Fareham</i></li> <li>• Where the potentially frustrating event was anticipated by the parties, <i>Amalgamated Investment v John Walker</i></li> <li>• Where the impossibility of performance was due to the fault of one of the parties or due to their choice to use other means to perform a contract, <i>The Super Servant 2, Maritime National v Ocean Trawlers</i></li> </ul> <p>Explain the provisions of the Law Reform (Frustrated Contracts) Act 1943:</p> <ul style="list-style-type: none"> <li>• Section 1(2) where money paid in advance of the frustrating event may be reclaimed minus just expenses</li> <li>• Section 1(3) where a party has to account for any unjust enrichment they would have gained because of the frustrating event.</li> <li>• Credit any other relevant point(s).</li> <li>• Credit any other relevant case(s).</li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th><th>AO1 Marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>21–25</td></tr> <tr> <td>4</td><td>16–20</td></tr> <tr> <td>3</td><td>11–15</td></tr> <tr> <td>2</td><td>6–10</td></tr> <tr> <td>1</td><td>1–5</td></tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss whether the basis for finding a contract to be frustrated is just:</p> <ul style="list-style-type: none"> <li>That the rules on self-induced frustration may be just in principle but lead to harsh outcomes as in <i>Super Servant</i> case</li> <li>Discuss the reason for not finding frustration in the change of circumstance cases such as <i>Davis Contractors v Fareham</i>; that the parties take a risk in taking on the particular obligations that may or not may not turn out to be profitable.</li> </ul> <p>Discuss whether the basis for finding a contract to be frustrated is predictable:</p> <ul style="list-style-type: none"> <li>That the essence of frustration is lack of foresight and so there will always be an element of uncertainty</li> <li>That parties can allocate risks in advance with force majeure terms</li> <li>The rules on impossibility are clearly delineated and allow the parties to know what risks to insure for</li> <li>That the rules on illegality are clear however foresight of the risks is likely to be unpredictable in times of war</li> <li>That there may be uncertainty in terms of radical change of circumstances – that the judgement in <i>Krell</i> seems to be focussed on fairness between the parties and there may in fact be little real difference in cases such as <i>Krell v Henry and Herne Bay v Hutton</i></li> </ul> <p>Discuss the extent to which the statutory provisions are just and predictable:</p> <ul style="list-style-type: none"> <li>That section 1(2) allows money paid in advance to be reclaimed because there has been a failure of consideration, but the expenses claimable by the other side may only be claimed if there actually has been some form of advance payment. Also the application of section 1(2) is discretionary and there is no guarantee that a party will recover all their losses under this section</li> <li>That section 1(3) does not give any recompense for work done before the frustrating event, only the benefit gained by the other side after the frustration. This can leave a party out of pocket if they have done considerable work but the other side has gained little real benefit</li> <li>Discuss whether the rules are clear enough that a sensible party can insure against losses that would not be recoverable.</li> <li>Credit any other relevant point(s).</li> </ul>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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3*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain the requirements of an actionable case in misrepresentation:</p> <ul style="list-style-type: none"> <li>That there has been a false statement of fact, made to the other side, which induced them into the contract</li> <li>That is meant by a false statement of fact; that it must be current fact <i>Edgington v Fitzmaurice</i> and that it must not be mere opinion <i>Bissett v Wilkinson</i></li> <li>That non-disclosure of a potentially material fact will not amount to a misrepresentation in most cases, <i>Fletcher v Krell, With v O'Flanagan</i></li> <li>That it must have induced the other party into the contract and that if a party carries out their own investigation this will not be seen as an inducement <i>Attwood v Small</i></li> <li>That it is not necessary that a reasonable person would be induced into the contract, that the test is subjective <i>Museprime v Adhill</i>.</li> </ul> <p>Explain the different kinds of misrepresentation and the remedies that can be obtained for each:</p> <ul style="list-style-type: none"> <li>Fraudulent misrepresentation where all consequential losses can be claimed, <i>Derry v Peak, Smith New Court v Scrimgeour Vickers</i></li> <li>Negligent misstatement where a duty of care is owed in relation to professional advice and foreseeable damages can be claimed, <i>Hedley Burn v Heller</i></li> <li>Statutory misrepresentation where the false statement of fact was not made on reasonable grounds and damages can be claimed subject to proximity between the statement and the loss, section 2(1) Misrepresentation Act 1967, <i>Howard Marine v Ogden, Royscot Trust v Rogerson</i></li> <li>Innocent misrepresentation where there were reasonable grounds for having made the statement, no damages may be claimed</li> <li>That for all kinds of misrepresentation rescission may be claimed, subject to certain bars, and that a judge has the discretion to leave a contract in place but award damages in place of rescission, section 2(2) Misrepresentation Act.</li> <li>Credit any other relevant point(s).</li> <li>Credit any other relevant case(s).</li> </ul>	25	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>AO1 Levels</th><th>AO1 Marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>21–25</td></tr> <tr> <td>4</td><td>16–20</td></tr> <tr> <td>3</td><td>11–15</td></tr> <tr> <td>2</td><td>6–10</td></tr> <tr> <td>1</td><td>1–5</td></tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss whether the grounds for claiming misrepresentation may lead to justice:</p> <ul style="list-style-type: none"> <li>That a statement which looks like a false statement of fact may in fact be seen as mere opinion and not actionable</li> <li>That there are only a few occasions where silence about a material fact will amount to a misrepresentation</li> <li>That a statement of future intent, as opposed to current intent, may look like a statement of fact but will not be actionable</li> <li>That a statement which is not relied on or believed by the other party will not be seen as inducing them into the contract and will not lead to a successful claim of misrepresentation.</li> </ul> <p>Discuss whether the classifications of the different kinds of misrepresentation, and the remedies available, may lead to justice:</p> <ul style="list-style-type: none"> <li>That fraudulent misrepresentation is very hard to prove, although if it can be proved the measure of damages can be very high</li> <li>That it will be very difficult to resist a claim for damages once a false statement is shown as most will fall into the category of statutory misrepresentation, so this does not present much of an obstacle</li> <li>That, even for an innocent misrepresentation, a judge has the discretion to award damages in lieu of rescission, which again can make it easier for a victim of a misrepresentation to claim damages</li> <li>That there are several ways in which the remedy of rescission can be lost, and if the defendant is able to show an innocent false statement this may prevent a satisfactory remedy being awarded. For example the victim may lose the right to rescind by affirming the contract if they are unaware of the rules barring rescission.</li> <li>Credit any other relevant point(s).</li> <li>Reach a sensible conclusion.</li> </ul>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – An awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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## SECTION B

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4*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>Explain the consequences of the court finding an actionable mistake, that it makes the contract void</li> <li>Describe the different categories of mistake at common law, using cases to illustrate each.</li> </ul> <p>Cases where the parties are at cross-purposes;</p> <p>a. <i>Tamplin v James</i>, <i>Raffles v Wichelhaus</i>, <i>Sciven v Hindley</i>, <i>Smith v Hughes</i></p> <p>Where one party has made a mistake which the other party is aware of (known as unilateral mistake, cross purposes mistake or mistake negating consent):</p> <ul style="list-style-type: none"> <li><i>Hartog v Shields</i>, <i>Centrovincial Estates v Merchant Investors</i>, <i>Phillips v Brooks</i>, <i>Ingrams v Little</i>, <i>Lewis v Avery</i>, <i>Shogun Finance v Hudson</i></li> <li>Explain that the contract will not be void if the mistaken facts do not become a term of the contract <i>Statoil v Louis Dreyfus Energy</i>.</li> </ul> <p>Where one party has signed a contract and they claim to be unaware of the contents due to a misrepresentation</p> <ul style="list-style-type: none"> <li><i>Saunders v Anglia Building Society</i>, <i>Foster v Mackinnon</i></li> </ul> <p>Where a contract is not void at common law but a remedy may be provided in equity:</p> <ul style="list-style-type: none"> <li>Rectification of the contract terms <i>Craddock v Hunt</i>, refusal of specific performance <i>Webster v Cecil</i>, rescission <i>Solle v Butcher</i> (candidates may explain that rescission is now doubtful after <i>Great Peace Shipping</i>).</li> <li>Credit any other relevant point(s).</li> <li>Credit any other relevant case(s).</li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th><th>AO1 Marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>21–25</td></tr> <tr> <td>4</td><td>16–20</td></tr> <tr> <td>3</td><td>11–15</td></tr> <tr> <td>2</td><td>6–10</td></tr> <tr> <td>1</td><td>1–5</td></tr> </tbody> </table>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify the relevant areas of mistake in each area.</p> <p>In the case of <b>Derek and Rusts</b></p> <ul style="list-style-type: none"> <li>Explain that Derek can only get the ring back from Rusts if the customer who bought the ring from Derek was unable to pass good title to Rusts</li> <li>Identify that the contract with the customer will not be void for mistake as the contract was made face to face and in such contracts the seller intends to deal with the person in front of them, regardless of how they describe themselves</li> <li>Identify that even if the contract is not void it will be voidable for misrepresentation as the customer represented that the cheque was valid when it was clearly stolen</li> <li>Identify that the contract was valid until Derek took action to avoid the contract and he probably did this when he contacted the police to enquire about the identity of the buyer</li> <li>Identify that if the ring had not been sold to Rusts at the time of the avoidance by Derek the seller would not have had good title to pass to Rusts</li> <li>Conclude that if Derek's actions were good enough to amount to avoidance, and if he avoided the contract before the sale to Rusts, Derek should be able to recover the ring.</li> </ul> <p>In the case of <b>Derek and Yolanda</b></p> <ul style="list-style-type: none"> <li>Explain that the contract may be void for mistake if Yolanda is aware that Derek is making a mistake as to the terms of the contract, in this case the age of the vase</li> <li>Identify that Yolanda is clearly aware of Derek's mistake as to the age and is herself aware of the true situation</li> <li>Conclude that the contract may be void for unilateral mistake and Derek is entitled to recover the vase</li> <li>Credit any discussion that suggests the price is merely a representation and not a term and as such the contract would not be void for mistake</li> <li>Credit any discussion regarding whether the contract may be voidable in equity.</li> </ul> <p>In the case of <b>Derek and Zaki</b></p> <ul style="list-style-type: none"> <li>Explain that the contract with Zaki may be void for non est factum if it is</li> </ul>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – An awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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		<p>different to what Zaki represented and there is a reasonable explanation for Derek having signed it in error</p> <ul style="list-style-type: none"> <li>Identify that even if there was a misunderstanding about the price the document is not very different to what Derek thought he was signing, a contract for computer programming services</li> <li>Identify that there is no good reason for Derek to have signed the document without reading it</li> <li>Discuss whether the contract could be made void under mutual mistake if it was substantially different to the contract Derek thought he was making and there was good reason to have made the mistake</li> <li>Credit any other relevant point(s).</li> <li>Reach a sensible conclusion.</li> </ul>														
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify that this scenario raises questions of intention to create legal relations between Agnes and the others.</p> <p><b>In the case of Agnes, Belinda and the lottery money</b></p> <ul style="list-style-type: none"> <li>Identify that as they are friends the presumption of no legal effect will apply</li> <li>Explain that in this case there is a situation of reciprocity between the two in relation to the gambling, that they agree to be equally bound by the agreement</li> <li>Discuss whether this appears to be more than a merely casual agreement as the two shake hands on it</li> <li>Conclude that there is a binding agreement and that Agnes is liable to compensate Belinda for the trip to the theatre.</li> </ul> <p><b>In the case of Agnes, Belinda and the greeting cards</b></p> <ul style="list-style-type: none"> <li>Identify that the presumption of no legal intent between them can be rebutted if they make an agreement of a business nature</li> <li>Discuss whether the greeting card business seems to be business in nature and whether this would have the effect of rebutting the presumption of no legal effect</li> <li>Discuss whether the wording in the emails prevent any rebuttal of the presumption of no legal intent</li> <li>Form any reasonable conclusion on the facts.</li> </ul> <p><b>In the case of Agnes and Danny</b></p> <ul style="list-style-type: none"> <li>Identify that as they are husband and wife there will be a presumption of no legal effect between the two of them</li> <li>Discuss whether the nature of the agreement could rebut the presumption, unlikely in this case as the agreement is domestic in nature and neither side has relied on it in any commercial sense and it is not the kind of deal which would be commercial if it was not for their domestic status</li> <li>Conclude that there is no legal agreement between Agnes and Danny and she is not liable to him for the magazines.</li> <li>Credit any other relevant point(s).</li> <li>Reach a sensible conclusion.</li> </ul>	20	<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>												

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6*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain the approach taken to an offer in contract law</p> <ul style="list-style-type: none"> <li>• The an offer must contain a definite promise to be bound if accepted</li> <li>• That a bilateral offer is capable of being accepted by agreement</li> <li>• That a bilateral offer is not made when a party merely indicates a price at which they may be willing to contract (an invitation to treat) <i>Harvey v Facey</i></li> </ul> <p>Explain the rules for communication of an acceptance and the point at which the contract becomes binding:</p> <ul style="list-style-type: none"> <li>• That a posted letter of acceptance will take effect from the moment it is posted <i>Adams v Lindsell, Household Fire v Grant</i></li> <li>• That the postal rule will not apply if the offer was sent by instant means <i>Quenerduaine v Cole</i></li> <li>• That the postal rule can be expressly or impliedly excluded <i>Holwell Securities v Hughes</i></li> <li>• That an instant communication takes effect at the time and place it is received, subject to sound business practice <i>Entores v Miles far East Corporation, Brinkibon v Stahag Stahl, Thomas v BPE Solicitors</i>.</li> </ul> <p>Explain the rules of revocation of an offer:</p> <ul style="list-style-type: none"> <li>• That the revocation must be communicated before acceptance in order to be effective, <i>Byrne v Van Tienhoven</i>.</li> </ul> <p>Explain the rules for specifying the method required for acceptance:</p> <ul style="list-style-type: none"> <li>• That unless it is made clear that no other method will suffice, the acceptance must be sent in a way which is no less advantageous to the offeror, <i>Yates v Pulleyn, Manchester Diocesan Council v Commercial and general Investments Ltd.</i></li> <li>• Credit any other relevant point(s).</li> <li>• Credit any other relevant case(s).</li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th><th>AO1 Marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>21–25</td></tr> <tr> <td>4</td><td>16–20</td></tr> <tr> <td>3</td><td>11–15</td></tr> <tr> <td>2</td><td>6–10</td></tr> <tr> <td>1</td><td>1–5</td></tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify that the question raises issues of offer and acceptance and the postal rule</p> <p>In the case of <b>Manesh and Susan</b></p> <ul style="list-style-type: none"> <li>Identify that a bilateral offer was sent by Susan by email.</li> <li>Explain that this would have the effect of excluding the use of the postal rule</li> <li>Identify that a letter from Manesh would take effect when it arrives not when he sends it</li> <li>Conclude that as the letter never arrives there will not be an effective communication of acceptance, and so Manesh does not have a binding contract with Susan.</li> </ul> <p>In the case of <b>Manesh and Billy</b></p> <ul style="list-style-type: none"> <li>Identify that Billy sent a bilateral offer to Manesh</li> <li>Identify that as the acceptance was sent by Manesh by email it will take effect at the time and place at which it is received</li> <li>Discuss the rule in <i>Brinkibon</i> that the time of acceptance becoming effective is subject to sound business practice and an assessment of where the risks should lie</li> <li>Discuss whether Mahesh's email should take effect at the time it is received or the time at which it is reasonable for it to have been read, probably at the start of business hours the next day. Discuss whether it is reasonable to apply the rule in <i>Brinkibon</i> in a private deal scenario</li> <li>Discuss whether the attempted revocation by Billy at 8.00 am could be seen as an effective revocation which occurs before acceptance takes effect</li> <li>Come to any reasoned conclusion on the facts.</li> </ul> <p>In the case of <b>Manesh and Dean</b></p> <ul style="list-style-type: none"> <li>Identify that Dean has specified a particular method of communication he requires for acceptance.</li> <li>Discuss whether a text message could have the effect of disadvantaging Dean compared to a phone call</li> <li>Come to any reasoned conclusion on the facts</li> <li>Credit any discussion that when Dean emailed Manesh to ask whether he wanted the coin this may be seen as an invitation to treat as it was volunteering information about the coin rather than making a promise</li> </ul>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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		<ul style="list-style-type: none"> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul> <p><b>Assessment Objective 3 – Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1	
AO1 + AO2 Marks	AO3 Marks																
37-45	5																
28-36	4																
19-27	3																
10-18	2																
1-9	1																

## SECTION C

Question		Answer	Marks	Guidance													
7	(a)	<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>P1 Reason that Leman has a legitimate interest in preventing their employees from taking trade secrets to other companies</p> <p>P2 Reason that as an engineer Gemma will have access to company secrets</p> <p>P3 Reason that she also holds a senior position which makes it more reasonable to restrict her from moving to another company</p> <p>P4 Reason that Leman has a legitimate interest in restraining Gemma from working for a competitor</p> <p>P5 Conclude that the statement is accurate</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th><th>AO2 Marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>5</td></tr> <tr> <td>4</td><td>4</td></tr> <tr> <td>3</td><td>3</td></tr> <tr> <td>2</td><td>2</td></tr> <tr> <td>1</td><td>1</td></tr> </tbody> </table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1	
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5	5																
4	4																
3	3																
2	2																
1	1																
	(b)	<p>P1 Reason that the time and distance taken together must be seen as a reasonable restraint on Gemma</p> <p>P2 Reason that car racing is not a local activity and so customers may be willing to travel a long way for such specialist services</p> <p>P3 Reason that this must be balanced with the ability of Gemma to make a living doing what she knows how to do</p> <p>P4 Reason that in this case the restraint on Gemma may well be seen as too wide and too long</p> <p>P4a Reason that the restraint is reasonable to protect the interests of Leman <b>or</b></p> <p>P5 Conclude that the statement is inaccurate</p> <p>P5a Conclude that the statement is accurate</p>	5														

(c)	<p>P1 Reason that Leman can only restrain Hannah if they have a legitimate interest to protect in terms of customers or trade secrets</p> <p>P2 Reason that as head of IT Hannah is unlikely to have a great deal of contact with customers</p> <p>P2a Reason that as head of IT there is a risk that Hannah will have had contact with Leman's clients</p> <p>P3 Reason that unless the IT systems have been specially developed for Leman, Hannah's knowledge is likely to be of a general professional nature and not something that Leman can protect</p> <p>P4 Reason that Leman do not have a legitimate interest in restraining Hannah from working for another company</p> <p>P4a Reason that Leman do have a legitimate interest in restraining Hannah from working for another company</p> <p>P5 Conclude that the statement is inaccurate</p> <p>P5a Conclude that the statement is accurate</p>	5	
(d)	<p>P1 Reason that Leman can only blue pencil a part of Hannah's contract term if the remainder still makes sense</p> <p>P2 Reason that in this case it would be unreasonable to restrain Hannah from working in IT</p> <p>P3 Reason that there are other parts to the term which are reasonable – it would be legitimate to prevent her from contacting Leman's customers</p> <p>P4 Reason that in this case if the section on working in IT was blue pencilled the term still makes sense</p> <p>P5 Conclude that the statement is accurate</p>	5	

8	(a)	<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>P1 Reason that Amber must provide a promise for the future in order to give good consideration for Lucy's promise  P2 Reason that when Lucy makes the promise to pay, Amber's work had already been completed  P3 Reason that when Lucy asked Amber to work extra days there was an implied promise to pay  P4 Reason that Amber did provide good consideration for the promise to pay  P5 Conclude that the statement is inaccurate</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th><th>AO2 Marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>5</td></tr> <tr> <td>4</td><td>4</td></tr> <tr> <td>3</td><td>3</td></tr> <tr> <td>2</td><td>2</td></tr> <tr> <td>1</td><td>1</td></tr> </tbody> </table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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(b)		<p>P1 Reason that it is for Amber and Lucy to make their own deals  P2 Reason that Amber's consideration only needs to be sufficient and need not be adequate  P3 Reason that working the extra Saturdays was clearly more than she was obliged to do and therefore has value  P4 Reason that Amber's work will be good consideration for the extra money  P5 Conclude that the statement is inaccurate.</p>	5														
(c)		<p>P1 Reason that once Lucy is due to pay the rent only full payment will be good consideration to satisfy the debt  P2 Reason that when Lucy promises to pay part payment of the debt this is not good consideration unless it is accompanied by some other goods and services  P3 Reason that the value of the discount that Lucy gives Pearl does not matter as long as it is of some value  P4 Reason that Lucy does give good consideration when she pays half the rent and gives the discount  P5 Conclude that the statement is accurate.</p>	5														

G155

## Mark Scheme

June 2013

	<b>(d)</b>	<p>P1 Reason that estoppel will apply if Pearl has promised not to enforce a part of her contractual rights</p> <p>P2 Reason that Lucy has relied on Pearl's promise not to enforce half the rent</p> <p>P3 Reason that in this case Pearl's promise is not to enforce a part of a contract and so Lucy would be using estoppel as a shield.</p> <p>P4 Reason that Pearl would be estopped from going back on her promise to only enforce half the rent</p> <p>P5 Conclude that the statement is accurate.</p>	5	
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## APPENDIX 1

## Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism, showing good understanding of current debate and proposals for reform, <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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