



GCE

Law

Unit **G155**: Law of Contract

Advanced GCE

Mark Scheme for June 2014

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.

© OCR 2014

These are the annotations, (including abbreviations), including those used in scoris, which are used when marking

Annotation	Meaning
BP	Blank Page – this annotation must be used on all blank pages within an answer booklet (structured or unstructured) and on each page of an additional object where there is no candidate response.
+	AO2+
2	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
3	Point 3 (Q7-8)
4	Point 4 (Q7-8)
5	Point 5 (Q7-8)
A2	AO2
AL	Alternative reasoning in Q7-8
C	Case (Q1-6) / reference to statutory provisions
E	Expansion of developed point (Q1-Q6)
NO	Case - name only
	Not relevant
REP	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

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 the following annotation:

BP

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		Indicative content	Mark	Guidance												
1*		<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> • Explain the difference between a bilateral offer and a unilateral offer <i>Carlill v Carbolic Smoke Ball Company</i> • Explain the general rules for acceptance of a bilateral offer, that it must be unconditional and communicated, <i>Hyde v Wrench, Felthouse v Bindley</i> • Explain the postal rule of acceptance, acceptance being effective on posting, <i>Adams v Lindsell</i> • Explain the exceptions to the postal rule, offer made by instant means, mistake made in posting, postal rule excluded, <i>Quenerduaine v Cole, Getreid v Contimar, Holwell Securities v Hughes</i> • Explain the rules of acceptance by instant means, that the acceptance takes effect on arrival subject to sound business practise, <i>Brinkibon v Stahag Stahl</i> • Explain the rules for online consumer contracts, <i>Consumer Protection (Distance Selling) Regulations</i>, make reference to the <i>Kodak</i> and <i>Argos</i> cases. • Explain the battle of the forms cases where cross offers are made and it is not clear on what terms the contract is made, <i>Gibson v Manchester, Trentham v Archital Luxfer, Butler Machine Tool v Excel O Corp</i> • Discuss the rules for revocation of an offer, <i>Byrne v Van Tienhoven</i> • Discuss the rules for auctions, <i>Harris v Nickerson, Warlow v Harrison</i> • Discuss the rules for tenders, <i>Spencer v Harding, Harvela v Royal Trust of Canada, Blackpool and Fylde Aero Club v Blackpool</i> 	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>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate. Responses are unable to achieve Level 5 without addressing offer, acceptance and revocation.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 1 – some accurate statements of fact but there may</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
AO1 Levels	AO1 Marks															
5	21-25															
4	16-20															
3	11-15															
2	6-10															
1	1-5															

Question		Indicative content	Mark	Guidance													
		Credit any other relevant point. Credit any other relevant cases.		not be any reference to relevant cases or cases may be confused													
		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> Discuss the postal rule and exceptions and whether it is clear at what point a binding contract has been made, for example whether it is clear when the postal rule has been excluded by implication (<i>Holwell Securities v Hughes</i>) Discuss the rules for cross offers when it is not clear whose offer forms the basis for the final contract (see the battle of the forms cases) Discuss whether the rules for instant communications make it clear when an offer will have been accepted and allow people to work out which has come first, an acceptance or a revocation Discuss the rules for online contracts and the regulations which give the cooling off period for online purchases – these give a lot more certainty for consumers as they place such contracts on a clear statutory footing Discuss the rules for auctions and whether it is clear at which point a binding contract is formed, for example the difference between an auction with and without reserve and whether the difference would be apparent to a buyer Discuss whether the rules for tenders are clear, in particular where referential tenders are made or where the tender is overlooked <p>Reach any sensible conclusion Credit any other relevant comment.</p>	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>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases. Candidates are unlikely to achieve level 4 without comments which focus on changes in society.</p> <p>Level 3 – 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>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case</p> <p>Level 1 – an awareness of the area of law identified by the question</p> <p>There are many areas which may be considered in answering this question and therefore, responses are not confined to the issues identified here, nor are they expected</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4	
AO2 Levels	AO2 Marks																
5	17–20																
4	13–16																
3	9–12																
2	5–8																
1	1–4																

Question		Indicative content	Mark	Guidance	
				to cover all the issues identified here. Responses are unlikely to achieve Level 5 without addressing offer, acceptance and revocation.	
		Assessment Objective 3 – Communication and presentation Present logical and clear arguments and communicate material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation	5	AO1+AO2 marks	AO3 mark
				37–45	5
				28–36	4
				19–27	3
				10–18	2
				1–9	1

Question	Indicative content	Mark	Guidance												
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the situations when terms will be implied at common law:</p> <ul style="list-style-type: none"> That terms are implied as a means of understanding the deal that the parties themselves have made, <i>Attorney General of Belize v Belize Telecom</i> Implied in order to give effect to what the parties must have intended (business efficacy), <i>The Moorcock</i>. Implied by customary usage, <i>Hutton v Warren</i> Implied because the parties must have had that term in mind when making the contract (the officious bystander test), <i>Spring v National Stevedores and Dockers Society; Liverpool City Council v Irwin</i> But not implied where one of the parties would never have agreed to the term, <i>Shell v Lostock Garages</i> Implied because it would be expected in the normal course of business dealings, <i>British Crane Hire v Ipswich Plant Hire</i> Explain guidance in <i>Equitable Life v Hyman</i>, that a term may be implied regardless of the actual intention of the parties, and that the test for implying a term is one of strict necessity. <p>Explain when terms will be implied under the Sale of Goods Act as amended by Sale and Supply of Goods Act:</p> <ul style="list-style-type: none"> Section 12 that the seller of goods has title to them. Section 13 that goods will comply with any description given of them. Section 14(2) that goods will be of satisfactory quality. Section 14(3) that goods will be fit for any common purpose or purpose that is made known by the buyer. <p>Explain that these terms are implied into a contract regardless of the wishes of the parties or their knowledge</p>	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>Level 5 – being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate. Responses are unable to achieve Level 5 without addressing both common law and statutory implied terms</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate. Responses are unlikely to achieve Level 4 without addressing both common law and statutory implied terms</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
AO1 Levels	AO1 Marks														
5	21-25														
4	16-20														
3	11-15														
2	6-10														
1	1-5														

Comment [j1]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<p>of the terms. Credit any relevant cases on Sale of Goods Act provisions. Credit description and cases on express terms only if part of a relevant AO2 comment. Credit any relevant terms implied by other statutes. Credit any other relevant point. Credit any other relevant cases.</p>		<p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> Discuss the reasons for implying terms at common law; being to make sense of the contract and not to make it more fair Discuss the common reason at common law being that terms are implied in many commercial cases because both parties should be expecting the term to be implied Discuss whether terms may be implied by the courts as a means to standardise certain contracts and give recognition to usual trade practise Discuss the general reason for the reluctance to improve contracts through implied terms at common law; that this interferes with the bargain that has been struck by the parties, and can cause uncertainty if the deal that has been made is interfered with Discuss whether implying terms into a contract amounts to the courts making the contract for the parties Responses may make a comparison to the blue pencil rule in the restraint of trade topic, that the rule will not be used to improve a restraining term or make it fairer <p>Compare the reasons for terms being implied into contracts by statute:</p> <ul style="list-style-type: none"> That these terms give essential protection to 	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>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases. Responses are unable to achieve Level 5 without addressing both common law and statutory implied terms</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases</p> <p>Level 3 – 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>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Comment [j1]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<p>consumers who have an inequality of bargaining power with the shops who they make contracts with</p> <ul style="list-style-type: none"> Comment that in contrast to common law implied terms, the law is clearly willing to improve contracts and make them fairer Comment that these terms are implied as conditions of the contract in order to maximise the benefit to consumers, and that these terms cannot be excluded by an express term in the contract Discuss the fact that these terms are implied as positive obligations on sellers as opposed to the common law approach of giving effect to the true intentions of the parties Comment that there is no uncertainty if terms are implied by statute as statutes have prospective effect and the parties are in a position to know the implied terms that will be in the contract. <p>Reach any sensible conclusion Credit any other relevant comment.</p>		<p>Level 1 – an awareness of the area of law identified by the question</p>												
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</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 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1+AO2 marks	AO3 mark														
37–45	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

Comment [j1]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
3*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> Explain that undue influence is an equitable doctrine and that the courts will help a party if another has taken advantage of a relationship. Explain that undue influence makes a contract voidable Explain the rules on Class 1 (actual) undue influence, where there is actual evidence of improper conduct taking place <i>BCCI v Aboody</i>, <i>Williams v Bayley</i> Explain the situations where a presumption of undue influence will arise based on recognised relationships, sometimes called Class 2A, such as doctors, lawyers and spiritual advisors, <i>Allcard v Skinner</i> Explain the situations where undue influence will arise based on a relationship which has developed over time and where one party has come to trust the other, sometimes called class 2B, <i>Lloyds Bank v Bundy</i>, <i>Watson v Huber</i> Explain the requirement of 'a transaction that requires explanation', formerly known as a manifest disadvantage, <i>Allcard v Skinner</i>, <i>Nat West Bank v Morgan</i>. In <i>Turkey v Awadh</i> this was expressed as 'a transaction which cannot be explained by the ordinary motives by which people are accustomed to act'. Explain that this is not a requirement in a case of actual undue influence, <i>CIBC v Pitt</i> Explain the cases involving undue influence and third parties, where a bank may be placed on constructive notice of the likelihood of undue influence taking place <i>Royal Bank Scotland v Etridge</i>, <i>Barclays Bank v O'Brien</i> Explain that presumed undue influence and 	25	<table border="1" data-bbox="1100 333 1594 516"> <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>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate. Responses will be unlikely to achieve level 5 without discussion of both certainty and justice.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 1 – 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
AO1 Levels	AO1 Marks														
5	21-25														
4	16-20														
3	11-15														
2	6-10														
1	1-5														

Comment [j2]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question		Indicative content	Mark	Guidance													
		<p>constructive notice can be avoided by ensuring that adequate legal advice has been given to the more vulnerable party, <i>RBS v Ettridge</i></p> <ul style="list-style-type: none"> Explain the remedy of restitution, and that the court has wide discretion to do justice between the parties, <i>Cheese v Thomas</i> <p>Credit any other relevant point.</p> <p>Credit any other relevant cases.</p>															
		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> Consider whether it is satisfactory that there is no definition of actual undue influence and that within the framework laid down in this topic it is up to the court to examine each case on its merits – consider whether this leads to adequate certainty in the law and whether this is a reasonable price to pay for the courts having a general discretion to look at the merits of a case. Consider whether the traditional list of relationships that can lead to a case of class 2A presumed undue influence is still relevant and whether justice would be better served by looking at each case on its individual merits Consider whether the cases in which a claim of undue influence has been based on a proven relationship of trust existing between the parties have led to satisfactory outcomes, such as between the bank and client in <i>Lloyds Bank v Bundy</i> Consider whether the further requirement in class 2 cases, that there should be a contract which requires further explanation, can have the effect of limiting the right of a party to claim undue influence and whether this limitation is justified Consider whether Lord Denning's view, that there 	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>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases</p> <p>Level 3 – 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>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case</p> <p>Level 1 – 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	
AO2 Levels	AO2 Marks																
5	17–20																
4	13–16																
3	9–12																
2	5–8																
1	1–4																

Comment [j1]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<p>should be a general right to avoid a contract that has been based on an inequality of bargaining power, as expressed in <i>Lloyds Bank v Bundy</i>, should be adopted by the courts</p> <ul style="list-style-type: none"> Consider whether a co-owner of property, such as a spouse, is now adequately protected after the judgement in <i>Etridge</i>. Consider whether the requirement of advice is sufficient to protect someone from the reality of an overbearing relationship Consider whether banks should allow someone to enter a contract that is so obviously disadvantageous that no sensible person would do so <p>Reach any sensible conclusion Credit any other relevant comment.</p>														
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</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 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1+AO2 marks	AO3 mark														
37–45	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

Comment [j1]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

SECTION B

Question	Indicative content	Mark	Guidance												
4*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> Define repudiatory breach, one which entitles the other party to end the contract Explain the consequences of breach of a condition, allowing the innocent party to terminate the contract and claim damages in all cases Explain the situations where the court will still use conditions today; <ul style="list-style-type: none"> using the <i>Sale of Goods Act</i> to illustrate statutory implied conditions; using <i>Bunge v Tradax</i> to illustrate identification as a condition due to customary trade usage; using <i>Lombard v Butterworth</i> to illustrate definition of the term by the parties themselves (though note <i>Schuler v Wickman</i> where the courts ignored the parties' own definition of a term as a condition) using <i>Couchman v Hill</i> and <i>Barber v NWS Bank</i> to illustrate the courts using conditions where the term is fundamental to the contract and where every breach is likely to be serious Define innominate terms, using cases such as <i>Hong Kong Fir Shipping v Kawasaki Kisen Kaisha</i> Explain the consequences of breach of an innominate term, allowing the innocent party to terminate the contract and claim damages if they are deprived of substantially the whole benefit of the contract. Use cases such as <i>Hansa Nord</i> to illustrate a non-repudiatory breach of an innominate term Explain the consequences of breach of a warranty, 	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>Level 5 – being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate. Candidates are unlikely to achieve level 4 without a clear description with citation of innominate terms</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
AO1 Levels	AO1 Marks														
5	21-25														
4	16-20														
3	11-15														
2	6-10														
1	1-5														

Comment [j3]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<p>allowing the innocent party to claim damages but not to terminate the contract</p> <ul style="list-style-type: none"> Explain the way in which the court approaches the identification of any particular term, using the criteria laid out in <i>Kawasaki</i> <p>Credit any relevant explanation of the law on frustrated contracts.</p> <p>Credit any other relevant point.</p> <p>Credit any other relevant cases.</p>		<p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>The damaged cloth</p> <ul style="list-style-type: none"> Identify that this is a breach of the term that the cloth must be undamaged Identify that there are no reasons to see this as a condition and so the term will be seen as innominate Discuss whether 50% damage can be seen as substantially the whole benefit of the contract Come to a reasoned conclusion on the facts Responses may also identify that this can be seen as a breach of the implied term that goods are delivered in satisfactory condition. This term is a condition and breach of it is likely to be repudiatory. <p>The late payment</p> <ul style="list-style-type: none"> Identify that this is a breach of the express contract term that payment should be made within 2 weeks of delivery Identify that this contract term is not expressed to be a condition, or of the essence, and so is likely to be seen as an innominate term Identify that breach of this term by Bill does not deprive Jan of substantially the whole benefit of the 	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>Level 5 – Identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation and reaching a cogent, logical and well informed conclusion. Candidates are unlikely to achieve level 5 without addressing all 3 terms in the question.</p> <p>Level 4 – Identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion. Candidates are unlikely to achieve level 4 without applying innominate terms.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation and reaching a conclusion</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Comment [j3]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<p>contract and damages will be sufficient remedy in the form of interest for late payment</p> <ul style="list-style-type: none"> Conclude that this breach does not give grounds for Jan to repudiate the contract. <p>No-one to unload the cloth</p> <ul style="list-style-type: none"> Identify that this is a breach of the express contract term that Bill will provide people to unload the van Identify that this term is stated to be a condition in the contract between Bill and Jan Conclude that any breach of this term will be repudiatory and that Jan will have the right to end the contract and claim damages Responses may discuss whether labelling the term as a condition was intended by the parties to be a used in its technical sense, as in <i>Schuler v Wickman</i>. Credit will be given for a discussion which suggests that in the context of this contract the parties may not have intended that any failure to provide people to unload the van will result in Jan having the right to terminate the contract. <p>Credit any relevant application of the law on frustrated contracts.</p> <p>Credit any other relevant comment.</p>		<p>Level 2 – Identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – Identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>												
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</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 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1+AO2 marks	AO3 mark														
37–45	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

Comment [j3]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
5*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> Explain the consequences of economic duress on a contract, that it becomes voidable Explain that in order to claim economic duress there must be an unlawful threat, that this can be to breach a contract <i>Atlas Express v Kafco</i>, or to commit a tort <i>Universal Tankships v ITWF</i> Explain that ordinary commercial pressure will not amount to an unlawful threat or to duress. This could be a threat not to renew a contract or to let a company go bankrupt; <i>The Siboen and Sibotre</i>, <i>CTN Cash and Carry v Gallagher</i>, or merely an indication that a party is unable to continue with a contract <i>William v Roffey</i> Explain that the threat must have vitiated the consent of the other party and left them with no realistic alternative but to comply with the threat <i>Atlas Express</i>, <i>Pao On v Lau Yiu Long</i> Explain that the party seeking to claim duress must have protested at the time and must not hesitate in taking legal action to avoid the contract <i>Pao On</i>, <i>The Atlantic Baron</i>, <i>DSND Subsea</i> Explain that the right to end a contract for duress may be lost through lapse of time, <i>Atlantic Baron</i> Credit any other relevant point. Credit any other relevant cases. 	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>Level 5 – being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 1 – 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
AO1 Levels	AO1 Marks														
5	21-25														
4	16-20														
3	11-15														
2	6-10														
1	1-5														

Comment [j4]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Movers and Stitches</p> <ul style="list-style-type: none"> Discuss whether Movers have made an illegitimate threat. When they demanded an extra 25% this could be seen as an implied threat to breach the contract however this was not clearly the case. Discuss whether the threat put Stitches into a position where they had no real choice but to comply. Stitches say they have no choice but to comply and are also a newly formed company who may be hit hard if they have to make alternative arrangements at short notice Discuss other factors which indicate possible duress, in this case Stitches indicate from an early point that they are not happy to pay extra money to Movers. Discuss whether Stitches taking 2 months to decide that they are unable to continue with the higher payments would amount to a lapse of time Distinguish this case from <i>Williams v Roffey</i> because Williams was clearly a one man trader with no financial reserves, Movers appears to be a larger concern with possibly more flexibility as they are known to have at least 2 clients Come to a reasoned conclusion on the facts, likely to be that there was no economic duress unless the court decides there was an implied threat. <p>Movers and Dents</p> <ul style="list-style-type: none"> Discuss whether Movers have made an illegitimate threat. In this case it looks like they haven't because the threat was not to renew the contract once it has expired, this is likely to be seen as a legitimate business threat and not one which can form the basis of a claim in duress 	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>Level 5 – Identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation and reaching a cogent, logical and well informed conclusion. Candidates are unlikely to achieve level 5 without addressing all the issues in the question.</p> <p>Level 4 – Identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation and reaching a conclusion</p> <p>Level 2 – Identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – Identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p> <p><i>Need to insert guidance as to what level can be achieved if not all issues covered</i></p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Comment [j3]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<ul style="list-style-type: none"> Discuss whether the threat put Dents into a position where they had no choice but to agree. Even if the threat was illegitimate it does not look like it had a vitiating effect on the Dents in forcing them to pay extra. As they have been in business for 50 years they are likely to make more informed business decisions. Discuss other factors relevant to duress – Dents did not protest and when they made the increased payments which would make it more difficult for them to claim duress. Also they waited 6 months before protesting which might count as a lapse of time. Come to a reasoned conclusion on the facts, likely to be that there was no duress. <p>Credit any other relevant comment.</p>														
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</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 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1+AO2 marks	AO3 mark														
37–45	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

Comment [j3]: DocProd – can you insert a row on every page for 'Question', 'Indicative content', etc...

Question	Indicative content	Mark	Guidance												
6*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the effect of frustration on a contract, that it becomes void.</p> <p>Explain the ways in which a contract may be frustrated:</p> <ul style="list-style-type: none"> • Impossibility of performance, <i>Nichol and Knight v Ashton Eldridge</i>, but not mere difficulty or extra expense, <i>Tsakiroglou v Noblee Thorl</i> • Radical change of circumstances, where performance of the contract would amount to something very different to what was originally anticipated, <i>Krell v Henry, Herne Bay v Hutton</i> • Illegality of performance, <i>Fibrosa v Fairbarn Lawson</i>. <p>Explain the circumstances where the courts will decide that frustration will not apply.</p> <ul style="list-style-type: none"> • Where performance would be possible but more difficult or expensive than originally anticipated, <i>Tsakiroglou</i>. • Where the change of circumstances is not sufficiently radical, <i>Herne Bay v Hutton, Davis Contractors v Fareham</i>. • Where the potentially frustrating event was anticipated by the parties, as frustration is where something has happened which was not contemplated by the parties <i>Amalgamated Investment v John Walker</i>. • 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</i>. • Where the parties have included , a force majeure term, express provision for what will happen in such an 	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>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate</p> <p>Level 1 – 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
AO1 Levels	AO1 Marks														
5	21-25														
4	16-20														
3	11-15														
2	6-10														
1	1-5														

Comment [j5]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance												
	<p>event, <i>Bangladesh Export Import v Sucden Kerry</i></p> <p>Explain the provisions of the Law Reform (Frustrated Contracts) Act 1943</p> <ul style="list-style-type: none"> Section 1(2) where money paid in advance of the frustrating event may be reclaimed minus justified expenses, <i>ICM v Gamerco</i> Section 1(3) where a party has to account for any unjust enrichment they would have gained because of the frustrating event, <i>BP v Hunt</i> <p>Credit any other relevant point.</p> <p>Credit any other relevant cases.</p>		<p>Need to insert guidance as to what level can be achieved if not all issues covered</p>												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Jasmine and Aurus</p> <ul style="list-style-type: none"> Discuss whether the contract has been frustrated, here the likely outcome is that it is frustrated due to impossibility of performance although an alternative argument is frustration due to illegality as it would have been unlawful to enter the closed road. Discuss whether there are any factors which would prevent frustration taking place in this scenario, there probably are none Discuss the financial consequences that would arise – here Jasmine would be entitled to her money back minus any just expenses which might arise from preparing for the concert, under s 1(2) of the 1943 Act Conclude that the contract has been frustrated and a financial claim may be made. <p>Megabad and Jumpies</p> <ul style="list-style-type: none"> Discuss whether the contract to provide the trampolines has been frustrated by the fire. In this case Megabad could still use the trampolines but there 	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>Level 5 – Identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation and reaching a cogent, logical and well informed conclusion. Candidates are unlikely to achieve level 5 without addressing all the issues in the question.</p> <p>Level 4 – Identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation and reaching a conclusion</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Comment [j5]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance
	<p>would be no point as the concert has been cancelled. Responses should consider whether this amounts to a radical change of circumstances and draw a reasoned conclusion</p> <ul style="list-style-type: none"> Discuss the financial consequences which arise in this situation – if the contract is not frustrated then Megabad will be liable to pay Jumpies the full contract price Discuss that if the contract has been frustrated then Jumpies can consider a claim under s 1(3) of the act however as no benefit accrued to Megabad before the frustrating event there is no unjust enrichment and Jumpies will not have a claim Reach a sensible conclusion based on the line of reasoning taken, likely to be that the contract has been frustrated. <p>Megabad and Aurus</p> <ul style="list-style-type: none"> Discuss whether the contract to hold the concert has been frustrated due to the fire. Although this looks like frustration due to impossibility the fact that Aurus gave themselves a choice of venue in the original contract means that this would amount to self-induced frustration and thus not frustration at all. This would mean that Aurus would be liable to Megabad in breach of contract Discuss the financial consequences between these 2 parties – as the contract is not frustrated Aurus would be liable to pay the full contract price to Megabad Reach a relevant conclusion, likely to be that the contract has not been frustrated. <p>Credit any other relevant comment.</p>		<p>Level 2 – Identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – Identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>

Comment [j5]: DocProd – can you insert a row on every page for 'Question', 'Indicative content', etc...

Question		Indicative content	Mark	Guidance													
		<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation</p>	5	<table border="1"><thead><tr><th>AO1+AO2 marks</th><th>AO3 mark</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 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1	
AO1+AO2 marks	AO3 mark																
37–45	5																
28–36	4																
19–27	3																
10–18	2																
1–9	1																

Comment [j6]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

SECTION C

Question		Indicative content	Mark	Guidance										
				AO2 Levels	AO2 Marks									
7	(a)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that Greg would need to show that Dawn made a false statement of fact</p> <p>P2 Reason that a statement of future intent is only a false statement of fact if it was untrue at the time it was made</p> <p>P3 Reason that Dawn may have been telling the truth when she made the statement</p> <p>P3 (a) Reason that Dawn was not telling the truth when she made the statement</p> <p>P4 Reason that Dawn has not made a false statement of fact</p> <p>P4 (a) Reason that Dawn has made a false statement of fact</p> <p>P5 Conclude that the statement is inaccurate.</p> <p>P5 (a) Conclude that the statement is inaccurate.</p>	5	<table border="1"> <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> </table>	5	5	4	4	3	3	2	2	1	1
5	5													
4	4													
3	3													
2	2													
1	1													
	(b)	<p>P1 Reason that Greg must show that he was induced into the contract by the false statement</p> <p>P2 Reason that a false statement must be at least partly relevant in inducing the other party to enter a contract</p> <p>P3 Reason that in this case Greg seems to have been influenced by the statements that Dawn made</p> <p>P3 (a) Reason that in this case Greg was not influenced by the statements that Dawn made</p> <p>P4 Reason that Greg will be able to claim a misrepresentation</p> <p>P4 (a) Reason that Greg will not be able to claim a misrepresentation</p> <p>P5 Conclude that the statement is inaccurate.</p>	5											

Comment [j7]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question		Indicative content	Mark	Guidance
		P5 (a) Conclude that the statement is inaccurate		
	(c)	P1 Reason that the kind of misrepresentation that Paula made will depend on her level of knowledge when she made the false statement P2 Reason that a fraudulent misrepresentation is one which is made dishonestly, without belief in its truth or recklessly P3 Reason that Dawn has no reason to think that Paula is about to join the gym and that statement can be seen as reckless P4 Reason that this would amount to a fraudulent misrepresentation by Dawn P5 Conclude that the statement is accurate.	5	
	(d)	P1 Reason that if the statement about Paula is a fraudulent misrepresentation it can also be claimed to be a statutory misrepresentation as an alternative P2 Reason that a statutory misrepresentation is easier to claim because the burden of proof shifts to the maker of the statement to justify what they have said, and in most cases the damages available will be the same P3 Reason that in this case if Greg claims statutory misrepresentation Dawn would have to show reasonable grounds for making the statement about Paula P4 Reason that the remedies for both kinds of misrepresentation are much the same P5 Conclude that the statement is accurate.	5	

Comment [j7]: DocProd – can you insert a row on every page for 'Question', 'Indicative content', etc...

Question		Indicative content	Mark	Guidance	
				AO2 Levels	AO2 Marks
8	(a)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that Louise can't enforce a promise from Sanjit without giving consideration P2 Reason that performance of a duty imposed by law is not good consideration P3 Reason that there is a legal obligation on Louise not to break the speed limit P4 Reason that Louise does not give good consideration for the promise P5 Conclude that the statement is accurate.</p>	5	5 4 3 2 1	5 4 3 2 1
	(b)	<p>P1 Reason that it will not be good consideration if Louise merely performs her existing obligation to Sanjit P2 Reason that if Sanjit obtains some practical benefit from promising Louise extra money for taking on more work this will be seen as good consideration from her P3 Reason that Louise avoided Sanjit having to get extra staff in to cover Rula's work P4 Reason that Louise does give extra consideration for Sanjit's promise P5 Conclude that the statement is inaccurate.</p>	5		
	(c)	<p>P1 Reason that Louise has an existing obligation to Sanjit to complete the work that Rula is promising to reward her for P2 Reason that one obligation can be good consideration for two other people's promises P3 Reason that if Louise does some extra work this can be good consideration for both Sanjit and Rula P4 Reason that Louise does provide good consideration for Rula's promise P5 Conclude that the statement is inaccurate.</p>	5		

Comment [j8]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

Question	Indicative content	Mark	Guidance
(d)	<p>P1 Reason that Louise's consideration for Sanjit's promise is past consideration</p> <p>P2 Reason that past consideration is good consideration if a reward was in the minds of the parties and the promisee acted at the promisor's request</p> <p>P3 Reason that Louise did the extra work because Sanjit asked her to but she was not expecting an extra reward because she had already been promised a bonus</p> <p>P4 Reason that Louise does not give good consideration for the promise of the extra holiday</p> <p>P5 Conclude that the statement is accurate.</p>	5	

Comment [j9]: DocProd – can you insert a row on every page for 'Question', 'Indicative content, etc...

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 Responses 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 Responses 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 Responses 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 or identify all of the relevant points of law in issue. A high level of ability to develop arguments or 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 Responses 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 or identify most of the relevant points of law in issue. Ability to develop clear arguments or 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 Responses 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 or identify the main points of law in issue. Ability to develop arguments or 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 or identify some of the points of law in issue. A limited ability to produce arguments based on their material or 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.

OCR (Oxford Cambridge and RSA Examinations)

1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

Education and Learning

Telephone: 01223 553998
Facsimile: 01223 552627
Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office: 1 Hills Road, Cambridge, CB1 2EU
Registered Company Number: 3484466
OCR is an exempt Charity

OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553

© OCR 2014

