



**GCE**

**Law**

Unit **G155**: Law of Contract

Advanced GCE

**Mark Scheme for June 2016**

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

Annotation	Meaning
	AO2+
	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
	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

## 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 \*<sub>1</sub> (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column\*<sub>2</sub>
- question specific guidance given in 'Guidance' column\*<sub>3</sub>
- the 'practice' scripts\*<sub>4</sub> provided in Scoris and accompanying commentaries

- \*<sub>1</sub> The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- \*<sub>2</sub> 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.
- \*<sub>3</sub> 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.
- \*<sub>4</sub> 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 G155 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 as below.

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 <b>may:</b> <b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain that the question of legal intent is decided by a presumption which may be rebutted by evidence to the contrary.</p> <p><b>Domestic contracts</b></p> <ul style="list-style-type: none"><li>Explain that contracts made between friends or family members have a presumption that there is no intention to create legal relations, <i>Jones v Padavatton</i>, <i>Balfour v Balfour</i> and <i>Buckpitt v Oats</i></li><li>Explain that the domestic presumption can be rebutted in certain circumstances;<ul style="list-style-type: none"><li>where the parties are not acting on the basis of love and affection, <i>Merritt v Merritt</i></li><li>where there is a commercial basis to the contract, <i>Albert v Motor Insurer's Bureau</i>, <i>Snelling v Snelling</i></li><li>where there has been reliance on the contract <i>Parker v Clarke</i></li><li>in certain gambling agreements where the parties agree to split winnings equally, <i>Simpkins v Pays</i></li><li>in relation to pre-nuptial agreements which the courts are increasingly willing to uphold, <i>Granatino v Radmacher</i></li></ul></li></ul> <p><b>Commercial contracts</b></p> <ul style="list-style-type: none"><li>Explain that in commercial cases there is a presumption that the parties intend to be legally bound, <i>Esso v Commissioners for Customs &amp; Excise</i></li><li>Explain that the commercial presumption can be rebutted if clear words are used to show no legal</li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute. For a Level 5 response candidates are likely to discuss both the presumption and rebuttal in both domestic and commercial cases.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of 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>intent, <i>Rose and Frank v Crompton</i> and <i>Jones v Vernon Pools</i></p> <ul style="list-style-type: none"><li>• Explain that the wording must be very clear and unambiguous to rebut the presumption, <i>Edwards v Skyways</i></li><li>• Explain that the presumption for legal intent will not override the requirement for necessary legal formalities, for example those required for a debt guarantee, <i>Kleinwort Benson v Malaysia Mining</i></li><li>• Explain that some contracts are made 'subject to contract' and that the parties never intend them to be binding at that stage, <i>Confetti Records v Warner Music</i></li></ul> <ul style="list-style-type: none"><li>• Credit any other relevant case(s).</li><li>• Credit any other relevant point(s).</li></ul>														
			<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Discuss whether the guidelines for and against legal intent in <b>domestic</b> contracts are vague:</p> <ul style="list-style-type: none"><li>• Discuss the presumption as explained in <i>Balfour v Balfour</i>, that this lays down very clear guidelines in contracts between spouses</li><li>• Discuss whether the situations where the domestic presumption can be rebutted are vague<ul style="list-style-type: none"><li>○ That the concept of reliance, as seen in <i>Tanner v Tanner</i>, seems to conflict with <i>Jones v Padavatton</i> where no presumption was found in similar circumstances</li><li>○ That the objective approach as explained in <i>Albert v MIB</i>, where the actual intention of the parties doesn't matter, aims to give a greater degree of certainty</li><li>○ That the question of legal intent in gambling</li></ul></li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>contracts, between those who undertake to share winnings, varies in outcome between cases</p> <ul style="list-style-type: none"> <li>○ That the courts have been willing to find consideration in domestic situations which leads also to a finding of domestic intention, as in <i>Ward v Byham</i></li> <li>○ That the courts have been willing to recognise pre-nuptial contracts and so the question of legal intent is an evolving issue according to the court's view on public policy, and that changes in the law always lead to an element of uncertainty</li> <li>○ That it can be difficult to gauge the point at which an oral agreement becomes a binding contract, <i>Sadler v Reynolds</i></li> </ul> <p>Discuss whether the guidelines for and against legal intent in <b>commercial</b> contracts are vague:</p> <ul style="list-style-type: none"> <li>● Discuss that the presumption in commercial cases leads to certainty, and that this is required in the commercial world for parties to be able to rely on the deals that they have made</li> <li>● Discuss whether the situations where the commercial presumption can be rebutted are vague <ul style="list-style-type: none"> <li>○ Discuss whether the courts have been consistent in the way that they have given the words used by the parties their full meaning, in <i>Schuler v Wickman</i> and <i>Alpenstow v Regalian</i> the courts didn't follow the words used</li> <li>○ Discuss whether the courts have been influenced in their interpretation by a general concept of fairness, as in a redundancy agreement in <i>Edwards v Skyways</i></li> <li>○ Discuss situations where the courts have found legal intent for policy reasons, such as to improve consumer rights, <i>Carlill v CSBC</i></li> </ul> </li> </ul>		<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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			<ul style="list-style-type: none"><li>○ Discuss situations where the court has taken a very technical approach to areas of law such as misrepresentation and not found a legally binding agreement, as <i>Kleinwort Benson v Malaysia Mining</i></li><li>○ Discuss the ability of the court to find exceptions in order to avoid applying the presumption (as in pupil barristers' contracts, <i>Edmonds v Lawson</i>)</li></ul>														
			<b>Assessment Objective 3 - Communication and presentation</b>  Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><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></table>	AO1 + AO2 Marks	AO3 Mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
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2*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <ul style="list-style-type: none"><li>Define innominate terms, terms which cannot be identified as conditions, <i>Kawasaki Kisen Keisha v Hong Kong Fir Shipping</i></li><li>Explain the position before the introduction of innominate terms, that there were only conditions and warranties, <i>Poissard v Spiers, Bettini v Guy</i></li><li>Credit discussion of a similar idea to innominate terms being discussed in the earlier case of <i>Aerial Advertising v Batchelor's Peas</i></li><li>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</li><li>Define conditions, terms which allow the party not in breach to terminate the contract and claim for damages, <i>Bentsen v Taylor</i></li><li>Explain the way in which the court approaches the identification of any particular term, using the criteria laid out in <i>Kawasaki</i></li><li>Explain the situations where the court will still use conditions today;<ul style="list-style-type: none"><li>- using the <i>Sale of Goods Act</i> to illustrate statutory implied conditions. Credit any relevant case law to illustrate the implied terms such as <i>Grant v Australian Knitting Mills</i>;</li><li>- using <i>Bunge v Tradax</i> to illustrate identification as a condition due to customary trade usage;</li><li>- using <i>The Mihalis Angelos</i> to illustrate terms being a</li></ul></li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>7</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of 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> <p>If a candidate cites specific section numbers of a statute, this will be credited as if they are cases, however referencing a statute without section numbers will not be credited in the same way.</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>condition where stipulated by binding precedent;</p> <ul style="list-style-type: none"><li>- 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)</li><li>- 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</li></ul> <ul style="list-style-type: none"><li>• Explain the consequences of breach of a warranty, allowing the innocent party to claim damages but not to terminate the contract</li></ul> <ul style="list-style-type: none"><li>• Credit any other relevant case(s).</li><li>• Credit any other relevant point(s).</li></ul>														
			<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Discuss whether the situation before the introduction of innominate terms led to injustice</p> <ul style="list-style-type: none"><li>• There were only 2 kinds of terms, conditions and warranties, and remedies for each kind of term was well established, and that there is justice in certainty</li><li>• That the certainty this gave could give rise to injustice if parties chose to repudiate for a breach of a condition which did not lead to serious consequences, <i>Arcos v Ronaasen</i></li><li>• That there was also an element of uncertainty as the identification of the kind of term which terms went to the root of the contract still left some discretion for the judge to decide, and that this uncertainty could itself be seen as an injustice</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			<p>Discuss whether the introduction of innominate terms has led to a more just situation</p> <ul style="list-style-type: none"><li>• That, where innominate terms apply, they prevent repudiation where the consequences have been less serious, thus introducing more fairness</li><li>• That justice has been recognised where the courts are more willing to recognise a condition if the parties have bargained at arm's length, as in <i>The Chikuma</i></li></ul> <p>Discuss whether the introduction of innominate terms has led to more uncertainty</p> <ul style="list-style-type: none"><li>• That there is certainty in the general framework for classification of contract terms due to the clear judgement in <i>Hong Kong</i></li><li>• That there is still some judicial discretion in the implementation of those guidelines and where the courts will recognise an innominate term, for example in <i>Hansa Nord</i> and <i>Schuler v Wickman</i></li><li>• That the test used to decide whether breach of an innominate term is repudiatory gives a great deal of discretion to the judge in deciding what is substantially the whole benefit of the contract</li></ul> <ul style="list-style-type: none"><li>• Credit any other relevant point(s).</li><li>• Reach a sensible conclusion.</li></ul>		<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>												
			<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, spelling and punctuation.</p>	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><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></table>	AO1 + AO2 Marks	AO3 Mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
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3*	<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 economic duress on a contract, that it becomes voidable.</li><li>• 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></li><li>• 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, CTN Cash and Carry v Gallagher</i> (Credit an observation that duress was not argued in <i>William v Roffey</i> where one party indicated that they were unable to continue with a contract)</li><li>• 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, Pao On v Lau Yiu Long</i>.</li><li>• 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, The Atlantic Baron, DSND Subsea</i>.</li><li>• Explain that the right to end a contract for duress may be lost through lapse of time, <i>Atlantic Baron</i></li><li>• Credit any other relevant case(s).</li><li>• Credit any other relevant point(s).</li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>6</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of 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 decisions on duress give clear guidelines to businesses</p> <ul style="list-style-type: none"><li>• That it is now clearly established that a threat to breach an existing contract can amount to economic duress, <i>Atlas Express</i></li><li>• That other threats such as an inducement to breach contract can also amount to duress, <i>Universal Tankships v ITWF</i> but that it may be unclear what the limits of this further category are</li><li>• That threats which are regarded as legitimate business pressure, even though they may be harsh and leave the other side with no realistic alternative, will not amount to duress, <i>Siboen and Sibotre</i></li><li>• That the difference between a threat to breach a contract as In <i>Atlas Express</i>, and a warning about an imminent breach as in <i>Williams v Roffey</i>, may be too fine a distinction to give clear guidelines on the law</li><li>• That there is still an element of judicial discretion open to judges where they recognise that a party has had no choice but to comply with the threat</li><li>• That the requirement to complain at the time a threat is made is very clear, even though it may be commercially unrealistic for a less powerful party to a contract</li><li>• That the requirement to take immediate action and not wait to see what happens is a clear guide for the way businesses should act, and ensures that the other party is aware that they are not happy to go along with the amended contract as proposed</li><li>• That there may be merit in the approach of unconscionability as put forward by Lord Denning in <i>Lloyds Bank v Bundy</i>, in giving the courts a more</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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>general power to declare a contract to be unenforceable, but that this would give a lot less certainty for the parties and make it difficult to know how to react in many commercial situations</p> <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, spelling and punctuation.</p>	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><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></table>	AO1 + AO2 Marks	AO3 Mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
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## SECTION B

Question	Indicative Content	Mark	Guidance												
4*	<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <ul style="list-style-type: none"><li>• Explain that consideration must have some value but that it need not be equal on each side, illustrate with reference to case such as <i>Thomas v Thomas</i></li><li>• Explain that anything requested by the other side can be seen as consideration if it imposes an obligation to produce something such as used sweet wrappers, illustrate with cases such as <i>Chappell v Nestle</i></li><li>• Explain that consideration must have some real and tangible value, illustrate with cases such as <i>White v Bluett</i>, <i>Hamer v Sidway</i></li><li>• Explain that performing a duty owed to a third party is seen as good consideration for a new promise, illustrate with cases such as <i>Shadwell v Shadwell</i>, <i>Pao On v Lau Yiu Long</i></li><li>• Explain that performance of an existing contractual duty is not seen as having value unless the performance goes beyond the original duty or gains some practical benefit to the promisor, illustrate with reference to cases such as <i>Stilk v Myrick</i>, <i>Hartley v Ponsonby</i>, <i>Williams v Roffey</i></li><li>• Explain that something performed in the past is not seen as good consideration unless there was already an understanding that there would be payment, illustrate with reference to cases such as <i>Re McArdle</i>, <i>Stewart v Casey</i>, <i>Lampleigh v Braithwaite</i>, <i>Pao On v Lau Yiu Long</i></li><li>• Explain that part payment of a debt is not normally seen as good consideration but that there are exceptions to this rule, illustrate with reference to</li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute. For Level 5 the case citation should cover the breadth of issues raised by the question.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of 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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Question			Indicative Content	Mark	Guidance												
			<p>cases such as , <i>Pinnel's Case</i>, <i>Foakes v Beer</i>, <i>D&amp;C Builders v Rees</i>, <i>Hirachand Punamchand v Temple</i>, <i>Re Selectmove</i></p> <ul style="list-style-type: none"><li>• Explain that a party who promises to vary a contract may be estopped from going back on that promise if the promise has been relied on, <i>Central London Property Trust v High Trees House</i></li><li>• Explain that estoppel may not apply if the promise was obtained improperly, <i>D&amp;C Builders v Rees</i>, is being used as a cause of action, <i>Coombe v Coombe</i>, or was intended to be temporary, <i>High Trees</i></li><li>• Credit any other relevant case(s).</li><li>• Credit any other relevant point(s).</li></ul>														
			<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Gary and Sanjeeda</b></p> <ul style="list-style-type: none"><li>• Discuss whether Sanjeeda provided any value in exchange for the promise. She did this on top of her normal job but there is no indication that she went beyond her normal hours of work</li><li>• Discuss whether Gary gained any benefit or avoided any detriment by offering Sanjeeda the money, this is unlikely because he got Sanjeeda to make the cake without any promise of money</li><li>• Identify that Sanjeeda's consideration is past</li><li>• Discuss the exceptions to the rule of past consideration apply. In this case Sanjeeda would probably have expected a reward as there was a commercial context to her work at the hotel, and she only made the cake because she was asked to</li><li>• Come to any reasonable conclusion on the facts</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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</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><b>Gary and the Foxy Trotters</b></p> <ul style="list-style-type: none"> <li>Identify that the Foxy Trotters have only paid one sixth of the fees which were due and that part payment is not normally good consideration for the whole debt.</li> <li>Discuss whether any of the exceptions to part payment of a debt apply – here they don't as there were no other goods or services involved, the payment was not made in advance and was not from a third party.</li> <li>Discuss whether Gary is estopped by his promise from enforcing the rest of the rent. Here it looks like estoppel can apply as he makes his promise in relation to an existing contract and there appears to be reliance when the club pays the reduced rate suggested even though they have very little money.</li> <li>Discuss whether any of the limitations to estoppel apply – in this case the club seems to have clean hands, estoppel would be used a shield and there is no reason for the promise to be temporary.</li> <li>Come to any reasonable conclusion on the facts</li> </ul> <p><b>Gary and Lucy</b></p> <ul style="list-style-type: none"> <li>Identify that Lucy is promising to pay money for Gary to perform an existing contract that he has with Fred. Discuss that one obligation can be good consideration to 2 other people.</li> <li>Discuss whether the party being a success is tangible and real consideration.</li> <li>Come to any reasonable conclusion on the facts</li> <li>Credit any other relevant point(s)</li> </ul>		<p>some cases and include comment on at least 1 cited case.  <b>Level 1</b> – an awareness of the area of law identified by the question.</p> <p>The question raises 6 areas of consideration, which candidates should explore, in order to achieve Level 5 candidates should explore at least 5 of these, Level 4 requires at least 4 issues, Level 3 requires at least 3 issues, Level 2 requires at least 2 issues.</p>

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			<b>Assessment Objective 3 - Communication and presentation</b>  Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><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></table>	AO1 + AO2 Marks	AO3 Mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
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5*	<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Potential answers <b>may</b>:</p> <ul style="list-style-type: none"><li>• Explain the requirements of an actionable case in misrepresentation: that there has been a false statement of fact, made to the other side, which induced them into the contract</li><li>• Define what is meant by a false statement of fact or law: 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>• Explain that non disclosure of a potentially material fact will not amount to a misrepresentation in most cases, <i>Fletcher v Krell</i>, but it can be if facts change after a particular statement has been made <i>With v O’Flanagan</i>, or in contracts where disclosure is required such as insurance <i>IMG v Simmonds</i></li><li>• Explain that where silence amounts to an inadvertent misrepresentation in a consumer insurance contract, the Consumer Insurance (Disclosure and Representations) Act 2012 makes the contract valid but gives the insurance company financial remedies if they would have normally charged more for their services<ul style="list-style-type: none"><li>- Credit an answer which discusses the law prior to this legislation, that insurance contracts are ones of utmost good faith and that a person taking out insurance has an absolute duty to disclose all material facts to the insurer.</li></ul></li><li>• Explain that the false statement must have been material, that where the misrepresentation is fraudulent the false statement must have at least a partial factor</li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of 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> <p>If a candidate cites specific section numbers of a statute, this will be credited as if they are cases, however referencing a statute without section numbers will not be credited in the same way.</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>inducing the other party into the contract, and that for other kinds of misrepresentation the party would not have entered the contract 'but for' the statement being made, <i>RZB v Royal Bank of Scotland</i></p> <ul style="list-style-type: none"> <li>• Explain that if a party carries out their own investigation the false statement will not be seen as an inducement <i>Attwood v Small</i>, similarly if the party has another reason for entering the contract <i>JEB Fasteners v Marks Bloom</i> the contract will not be voidable</li> </ul> <p>Explain the different kinds of misrepresentation in outline:</p> <ul style="list-style-type: none"> <li>• Fraudulent misrepresentation if the statement was dishonest <i>Derry v Peak</i></li> <li>• Negligent misstatement where a duty of care is owed in relation to professional advice <i>Hedley Byrne v Heller</i></li> <li>• Statutory misrepresentation where the false statement of fact was made without reasonable grounds, Misrepresentation Act (1967) Section 2(1), <i>Howard Marine v Ogden</i></li> <li>• Innocent misrepresentation where there were reasonable grounds for having made the statement</li> <li>• Explain 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, <i>Section 2(2) Misrepresentation Act</i>.</li> </ul> <p>Discuss any other relevant points</p>		

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	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Alun and Budgers</b></p> <ul style="list-style-type: none"><li>• Discuss whether a false statement has been made, here this has been satisfied as the company has provided false accounts</li><li>• Identify that Budgers did not make any representations about the employee who is an expert</li><li>• Discuss whether the false accounts satisfied the ‘but for’ test in inducing Alun into the contract, it looks like they didn’t because Alun was buying Budgers for the services on one of their employees who was an expert</li><li>• Conclude that there is no actionable misrepresentation from Budgers and the contract remains valid.</li></ul> <p><b>Alun and Truckups</b></p> <ul style="list-style-type: none"><li>• Discuss whether Truckups have made a false statement to Alun, here it seems they did as they gave incorrect data about the capacity of the lorry</li><li>• Discuss whether the false statement induced him into the contract, it looks like it did as he was interested in the capacity for the jobs he needed to undertake</li><li>• Identify that this is a statutory misrepresentation as the company were not dishonest but did not take reasonable steps to find out the true capacity</li><li>• Discuss the remedy that Alun wants, here he probably wants rescission of the contract and also damages for the loss of time in completing the contract which took longer than expected</li><li>• Credit any discussion about bars to misrepresentation, eg affirmation and possible lapse of time</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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 discussion that if the carelessness in looking up the specification on the internet was bad enough to be seen as recklessness, the courts have the right to see this as fraudulent misrepresentation</li> </ul> <p>Candidates should not be credited for discussing the Consumer Protection from Unfair Trade Regulations 2008 (as amended) in this question as none of the parties are consumers.</p> <p><b>Moonshine and Alun</b></p> <ul style="list-style-type: none"> <li>• Identify that Alun's failure to give Moonshine information about using the home as an office amounts to a false statement of fact</li> <li>• Discuss whether Alun is a consumer for the purposes of the act               <ul style="list-style-type: none"> <li>○ If he isn't then his false statement is seen as a fraudulent misrepresentation and Moonshine will be entitled to avoid the contract and not pay Alun any money for the burglary</li> <li>○ If he is seen as a consumer then Moonshine will be entitled to reduce any pay out by the proportion that the insurance premium was reduced though non-disclosure</li> </ul> </li> <li>• Credit an answer based on the law before the 2012 Act, that there is a misrepresentation from Alun when he fails to disclose the business use of his home and that this will allow the insurance company to avoid the contract.</li> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul>		



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6*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <ul style="list-style-type: none"><li>Explain the effect of the court finding an actionable mistake; that the contract can be made void as if there never was a contract</li><li>Describe common mistake about the existence of the contract matter, where the parties are equally mistaken about the facts and the contract matter never existed or has ceased to exist, <i>Couturier v Hastie</i>, <i>Griffiths v Brymer</i></li><li>Describe decisions where the court has found that there was an implied decision that goods existed, and so the contract was not void for mistake but the seller was liable in breach, <i>McRae v Commonwealth Disposals Commission</i>, <i>Associated Japanese Banks v Credit Du Nord</i></li><li>Describe common mistake as to quality, where the contract matter has substantially different qualities or value than that anticipated by the parties, and that the contract will not be void if the parties get the thing they bargained for but with a different value, <i>Bell v Lever Brothers</i>, <i>Leaf v International Galleries</i>, <i>Great Peace Shipping v Tsavlis</i></li><li>Describe situations where a contract is not void at common law but a remedy may be provided in equity, rescission <i>Solle v Butcher</i> (candidates may explain that rescission is now doubtful after <i>Great Peace Shipping</i>).</li><li>Describe mutual mistake, also known as cross purpose mistake, where the parties are at cross purposes and each thinks something different to the other. The courts apply the objective test, that the contract will not be void if there is symmetry between what was offered</li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>7</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>4</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of 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> <p>No credit is given for discussion of law or citation of cases for unilateral mistake.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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Question			Indicative Content	Mark	Guidance
			<p>and what was accepted but that the contract may be void if a reasonable person would have been mistaken about the terms of the contract. Illustrate with cases Where the contract was void, such as <i>Raffles v Wichelhaus</i> and <i>Scriven v Hindley</i>, and compare to cases which were not void such as <i>Tamplin v James</i> and <i>Smith v Hughes</i>.</p> <ul style="list-style-type: none"> <li>• Credit any other relevant case(s).</li> <li>• Credit any other relevant point(s).</li> </ul>		

Question	Indicative Content	Mark	Guidance												
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Harvey and Ann</b></p> <ul style="list-style-type: none"><li>Identify that this is a case of common mistake, where the parties were equally mistaken as to the existence of the contract matter at the time was completed</li><li>Compare the facts here with <i>Couturier v Hastie</i>, that the contract may be void if the goods do not exist at the time of the contract. Comment that this case involves land and not goods but that similar principles may apply</li><li>Conclude that the contract would be void for common mistake</li><li>Credit any discussion that there may have been an implied contractual term that the land was to exist at the time of the contract, in which case the contract would not have been void for mistake but Harvey would have been in breach of contract</li></ul> <p><b>Harvey and Bertha</b></p> <ul style="list-style-type: none"><li>Identify that this is a case of mutual mistake, where Bertha was mistaken but Harvey was not aware of this</li><li>Discuss the objective test, whether it was reasonable for Bertha to be mistaken about the fishing rights</li><li>Conclude that this was not a reasonable mistake to make as the contract was clear on the terms which gave the fishing rights to Harvey and it was not reasonable to base a decision on the historical position when the contract terms were available</li></ul> <p><b>Harvey and Claudette</b></p> <ul style="list-style-type: none"><li>Identify that this is a common mistake as to quality, both Harvey and Claudette believe that the site is on the route to the new stadium</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question			Indicative Content	Mark	Guidance												
			<ul style="list-style-type: none"><li>• Discuss whether the mistake is fundamental, apply the test in <i>Bell v Lever Brothers</i> that the mistake was as to the existence of some quality which makes the thing without the quality essentially different from the thing it was believed to be. In this case whether the land without being on the route to the stadium was essentially different to land being on the road to a new stadium</li><li>• Conclude that the land is essentially the same and the contract will not be void</li><li>• Discuss whether the contract could be said to be void because of the non-existence of the football stadium</li><li>• Conclude that this will not be the case unless it was made explicit in the contract that the stadium was the basis for contracting</li><li>• Discuss whether there is potential for Claudette to claim that the contract may be rescinded in equity and replaced with one which has a more appropriate price</li><li>• Conclude that after <i>Great Peace Shipping v Tsavlis</i> <i>Salvage</i> this argument is unlikely to succeed</li><li>• Credit any other relevant point(s).</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, spelling and punctuation.</p>	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><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></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																
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1–9	1																

## SECTION C

Question			Indicative Content	Mark	Guidance													
7			Assessment Objective 2 - Analysis, evaluation and application		<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1	
AO2 Levels	AO2 Marks																	
5	5																	
4	4																	
3	3																	
2	2																	
1	1																	
	(a)		<p>P1 Reason that Chippies has not accepted Letsgo’s offer.</p> <p>P2 Reason that when Chippies replied with their own different terms this was likely to be a counter offer</p> <p>P3 Reason that Letsgo may be seen to have accepted Chippies terms by allowing them to start performance</p> <p>P4 Reason that this will only work if the performance of both sides indicates specific agreement with Chippies terms, and there is nothing to indicate this in the facts given</p> <p>P5 Conclude that the statement is <b>inaccurate</b></p>	5	<p>A correct conclusion following incorrect reasoning, will not enable a candidate to achieve P5 on any question.</p>													
	(b)		<p>P1 Reason that although Tiles did not reply to Letsgo it may be possible for their performance to count as acceptance</p> <p>P2 Reason that where one side performs in line with specific details of the offer, and the other is aware of this, the performance may count as communication</p> <p>P3 Reason that in this case Tiles started their performance in line with the terms of the offer</p> <p>P4 Reason that this indicates Tiles did agree with Letsgo’s terms</p> <p>P5 Conclude that the statement is <b>accurate</b>.</p>	5														

Question		Indicative Content	Mark	Guidance
	(c)	<p>P1 Reason that Planks have replied to Letsgo with an instant form of communication</p> <p>P2 Reason that instant forms of communication take effect when and where they arrive, subject to sound business practice</p> <p>P3 Reason that as the email arrived out of office hours it is unlikely to be seen as effective communication at 7.00 pm</p> <p>P4 Reason that Planks did not made a binding contract with Letsgo at 7.00 pm</p> <p>P5 Conclude that the statement is <b>inaccurate</b>.</p>	5	
	(d)	<p>P1 Reason that Planks would have had to accept Letsgo's offer within a reasonable time</p> <p>P2 Reason that as both parties are in the building trade there is likely to be some urgency to get the work started</p> <p>P3 Reason that 6 months is unlikely to be seen as a reasonable time to keep an offer open</p> <p>P4 Reason that the offer would have lapsed before 6 months</p> <p>P5 Conclude that the statement is <b>inaccurate</b>.</p>	5	

Question			Indicative Content	Mark	Guidance													
8			Assessment Objective 2 - Analysis, evaluation and application		<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1	
AO2 Levels	AO2 Marks																	
5	5																	
4	4																	
3	3																	
2	2																	
1	1																	
	(a)		P1 Reason that for a contract to exist both Anil and Sunrewf must give consideration P2 Reason that consideration can be any benefit which accrues to the other side P3 Reason that when Anil instructs Hattie to use Sunrewf panels, this was a benefit to Sunrewf P4 Reason that Anil did therefore give consideration to Sunrewf P5 Conclude that the statement is <b>accurate</b> .	5	A correct conclusion following incorrect reasoning, will not enable a candidate to achieve P5 on any question.													
	(b)		P1 Reason that in general Hattie can only sue for loss that she has suffered. P2 Reason that a party can only sue for losses that a third party has suffered if there is a special case P3 Reason that the contract between Hattie and Sunrewf does not fall into special cases as it is not for a social event and is not one where one party would be expected to contract on behalf of themselves and other people P3B Reason that special cases can exist in commercial contracts where it is anticipated that a developer can sue for subsequent owners P4 Reason that Hattie cannot therefore sue for losses sustained to Anil’s roof P4B Reason that the contract does not make provision for Hattie to bring a case on behalf of other parties P5 Conclude that the statement is <b>inaccurate</b> .	5														



Question		Indicative Content	Mark	Guidance
	(c)	<p>P1 Reason that Fred is not a party to the contract, P2 Reason that the Contract (Rights of Third Parties) Act allows a party to enforce a contract if it purports to benefit them.</p> <p>P3 Reason that the contract purports to benefit Fred when it specifies that Hattie must fix his roof.</p> <p>P4 Reason that Fred can sue Hattie directly.</p> <p>P5 Conclude that the statement is <b>accurate</b>.</p>	5	
	(d)	<p>P1 Reason that the contracting parties may change or revoke a contract unless the third party has acted on it.</p> <p>P2 Reason that it will be too late to change a contract if a third party has assented to it or relied on it and the parties are aware of this.</p> <p>P3 Reason that Anil was aware that Fred had relied on the contract as he helped to chop down the tree.</p> <p>P4 Reason that it will now be too late to change the contract.</p> <p>P5 Conclude that the statement is <b>inaccurate</b>.</p>	5	

# 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 <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 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 <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 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 <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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