



GCE

Law

Unit **G155**: Law of Contract

Advanced GCE

Mark Scheme for June 2018

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.

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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.

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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 *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 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.

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 include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <ul style="list-style-type: none">• Explain that mistake renders a contract void, which means that there never was a binding contract• Explain that where the parties make the same mistake as each other, known as common mistake, the contract will be void if the mistake is fundamental in nature and due to exceptional circumstances: <i>Couturier v Hastie</i>, <i>Bell v Lever Brothers</i>, <i>Leaf v International Galleries</i>• Explain that there are very few cases where the courts have made such contracts void• Explain that there is a possibility of such contracts being voidable in equity although not void at common law, but that the Court of Appeal seems to have shut down that line of argument: <i>Solle v Butcher</i>, <i>Great Peace Shipping v Tsavlis</i>• Explain that where the parties are at cross purposes the contract may be made void if the mistake has become a term of the contract: <i>Raffles v Wichelhaus</i>, <i>Tamplin v James</i>, <i>Smith v Hughes</i>, <i>Scriven v Hindley</i>• Explain that in unilateral mistake one party, often referred to as a rogue, knowingly misleads the other about an aspect of the contract. Usually this is either the rogue's identity or their attributes• Explain that the contract will be void for mistake if the rogue passed themselves off as someone else and the contract was not face to face: <i>Cundy v Lindsay</i> and <i>Shogun Finance v Hudson</i>• Explain that the contract will not be void for mistake if the mistake is merely one of status or attributes: <i>Kings</i>	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>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited</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
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			<p><i>Norton Metal v Edridge Merrett</i></p> <ul style="list-style-type: none">• Explain that the contract will not normally be void if the seller and rogue were face to face: <i>Phillips v Brooks</i>, <i>Lewis v Averay</i>• Explain that there is one face to face case where the contract was made void for mistake: <i>Ingrams v Little</i>, but this has not been followed in subsequent cases• Explain that a contract can also be made void for unilateral mistake where only one party was mistaken as long as the party who gained was aware that the mistake had been made: <i>Hartog v Shields</i> and <i>Centrovincial Estates v Merchant Investors</i>• Explain that a document can be made void for unilateral mistake, referred to as non est factum, where it was fundamentally different to what the party thought they were signing and there were reasonable grounds to have signed the document: <i>Saunders v Anglia Building Society</i> and <i>Foster v Mackinnon</i> <p>Credit any other relevant point(s)</p>														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Discuss whether the court has enforced contracts which lead to harsh outcomes:</p> <ul style="list-style-type: none">• Discuss the cases in common mistake where the courts have declined to avoid a contract where a party could have obtained the same result for a cheaper price: <i>Bell v Lever Brothers</i>• Consider whether the outcome of this case is harsh, in that case the directors were able to keep substantial pay-outs that they were not entitled to• Discuss whether the decision in <i>Great Peace Shipping v Tsavlis Salvage</i> was right to say that equity should	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>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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>not rescind a contract that is not void at common law</p> <ul style="list-style-type: none"> • Discuss the cases in mutual mistake (cross purposes mistake) where the courts have declined to avoid a contract because one party has not investigated the facts well enough • Discuss the cases in unilateral mistake where a contract has not been made void because not enough effort was made to ascertain the true identity of the other contracting party • Discuss the views put forward in <i>Associated Japanese Bank v Credit Du Nord</i> “in my judgement a party cannot be allowed to rely on a common mistake where the mistake consists of a belief which is entertained by him without reasonable grounds for such belief” • Discuss whether the competing interests of the parties who have been the victims of a rogue in unilateral cases are fairly dealt with by the courts, and whether the decision in <i>Hudson v Shogun Finance</i> is justified • Discuss whether the rules in non est factum are too narrow and lead to an injustice for an innocent party as in <i>Saunders v Anglia Building Society</i> <p>Discuss whether the rules lead to certainty in contract law:</p> <ul style="list-style-type: none"> • Discuss the principle of caveat emptor, that the courts generally leave it to the parties to make their own bargain which they will not interfere with • Discuss whether misrepresentation is a more appropriate way to deal with contracts where one side has not gained the benefit they should legitimately expect from a contract • Discuss whether the narrow rules on unilateral mistake lead to certainty for parties who purchase goods innocently from rogues 		<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>

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			Credit any other relevant point(s) Credit any appropriate conclusion														
			Assessment Objective 3 - Communication and presentation 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 include:</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 the terms which are implied under the Consumer Rights Act 2015:</p> <ul style="list-style-type: none">• S.9 that goods will be of satisfactory quality• S.10 that goods will be fit for any common purpose or purpose that is made known by the buyer• S.11 that goods will comply with any description given of them.• S.17 that the seller of goods has title to them	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>Level 5 – being able to cite at least 7 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</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</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</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</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
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			<ul style="list-style-type: none">• S.50 Consumer Rights Act, makes pre-contractual statements an implied term of the contract• Explain that these terms are implied into a contract regardless of the wishes of the parties or their knowledge of the terms <p>Credit explanation of exclusions that apply to consumer rights under the Act:</p> <ul style="list-style-type: none">• That the consumer’s attention was drawn to defects before the sale, for example in early versions of digital content• Where the consumer examined the content before the sale and the examination should have revealed the defect• Where a trial version of software was available for use before the sale and a reasonable examination ought to have brought to light the unsatisfactory aspect <p>Credit reference that this Act consolidates earlier legislation such as the Sale of Goods Act 1979</p> <p>Credit any relevant terms implied by other statutes. Credit any other relevant case(s) Credit any other relevant points</p>														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Consider whether the common law implied terms are a justified interference:</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, <i>Liverpool City Council v Irwin</i>• Discuss the reason at common law being that terms are implied in many commercial cases because both parties should be expecting the term to be implied,	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: Level 5 – a discussion which makes good use of cases to</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>therefore this may not be seen as interfering with freedom to contract</p> <ul style="list-style-type: none"> • Discuss whether terms may be implied by the courts as a means to standardise certain contracts and give recognition to usual trade practise, <i>Hutton v Warren</i> • Discuss whether this is a policy argument and does amount to interference with the parties freedom to contract on their own terms • 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 • 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>Consider whether the statutory implied terms are a justified interference:</p> <ul style="list-style-type: none"> • Discuss whether consumers are in need of extra protection as they are in a weaker bargaining position than traders • Discuss that in contrast to common law implied terms, the law is clearly willing to improve contracts and make them fairer • Discuss 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 		<p>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>

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			<p>and the parties are in a position to know the implied terms that will be in the contract</p> <ul style="list-style-type: none">• Discuss whether S.50 Consumer Rights Act strengthens consumer rights as any statement is now clearly a term of the contract without having to argue that the term was particularly important, or was made by someone with superior subject knowledge, as was previously the case. Credit reference to cases such as <i>Bannerman v White</i>• Discuss whether the consolidating nature of the Consumer Rights Act makes the law clearer as the consumer rights were previously found in a number of statutes which made them harder to understand• Credit any observation that consumer protection law is still not entirely found in this statute as other legislation such as the Distance Selling Regulations are in force <p>Credit any other relevant point(s) Credit any appropriate conclusion</p>														
			<p>Assessment Objective 3 - Communication and presentation</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 include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Explain the rules of performance of a contract:</p> <ul style="list-style-type: none">• That payment cannot be claimed unless performance is completed: <i>Cutter v Powell</i>• That performance must be exact: <i>Re Moore and Landauer</i>• That a series of breaches over a period of time which have the effect of depriving the other side of substantially the whole benefit of the contract will prevent a claim for payment: <i>Rice v Great Yarmouth</i> <p>Explain relevant exceptions to the rule:</p> <ul style="list-style-type: none">• That a contract may be severable (or divisible) into different obligations, each of which may be seen as a different obligation: <i>Ritchie v Atkinson</i>, <i>Regent Aisestadt v Francesco</i>• That the contract may have been substantially performed;<ul style="list-style-type: none">○ If the contract has been substantially performed a claim may be made for the contract price minus an amount for fixing whatever work needs to be done, <i>Hoening v Isaacs</i>, <i>Williams v Roffey</i>○ But this will not be the case if the amount that remains to be done removes all the benefit from the contract or causes further damage: <i>Bolton v Mahadeva</i>• Explain the rules on tender of performance; that where a party has offered to perform a contract within the time specified for performance this will discharge their	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>Level 5 – being able to cite at least 7 relevant cases accurately and clearly to support their argument</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited</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
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			<p>contractual obligations and allow them to claim the contract price from the other side, even if performance was declined: <i>Startup v Macdonald</i></p> <ul style="list-style-type: none">Explain the rules for time of performance;<ul style="list-style-type: none">that where no time is set for performance it must be completed within a reasonable time,that a reasonable time may be specified within the contract: <i>Union Eagle v Golden Achievement</i>that the parties are entitled to set a specific date for performance which becomes a condition of the contract: <i>Rickards v Oppenheim</i>That, in the absence of a specific date being set, the test is the same as for innominate terms, the late performance will be repudiatory if the other side is deprived of substantially the whole benefit of the contract: <i>Astea v Time</i>Explain the rule of vicarious performance: Davies v Collins, <i>Stewart v Reavell's Garage</i> <p>Credit any other relevant case(s) Credit any other relevant point(s)</p>														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <ul style="list-style-type: none">Discuss the reason for the whole contracts rule – that it acts as a powerful incentive to perform a deal that has been struckDiscuss whether this rule can lead to a significant injustice if one party is unjustly enriched by the other's partial performance with no need to make any paymentDiscuss why the strict rule of performance of a contract can lead to injustice, for example that in <i>Cutter v</i>	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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>Powell there was no fault in dying and yet the widow of the sailor was not able to receive any payment at all</p> <p>Discuss whether the exceptions to the rule undermine certainty:</p> <ul style="list-style-type: none"> • Discuss that the parties can choose to make a contract severable by inserting stage payments, and this allows them to retain control of the obligations • Discuss whether it is clear whether a contract will be severable if it is not explicit in the terms • Discuss whether the rule of severability depends on the mere chance of how the contract was constructed and therefore may not provide a satisfactory or consistent exception? • Discuss whether the departures from the normal rule of goods being as described in <i>Reardon Smith v Hansen Tangen</i> is based on achieving fairness in an individual case at the expense of certainty • Discuss whether the rule of substantial performance is fair on the party who is expecting full performance, as they will have to pay for performance on only a part of the obligation • Discuss whether the application of the rule on substantial performance leads to certainty as it will be for the judge to determine what exactly amounts to substantial performance • Discuss the rule of substantial performance, that it adds an element of common sense to the rule of performance and allows the court to decide where a claim for payment would be justified • Identify that the rule of voluntary acceptance does allow for certainty because it is up to the parties involved whether they accept part performance • Come to an overall conclusion as to whether the exceptions, taken together with the rule, lead to 		<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>

Question			Indicative Content	Mark	Guidance												
			<p>certainty for the parties</p> <p>Credit any other relevant point(s)</p> <p>Credit any appropriate conclusion</p>														
			<p>Assessment Objective 3 - Communication and presentation</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 may include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <ul style="list-style-type: none">• Explain that consideration is required from each party in order to make a binding contract• Explain that performance of an existing contractual duty does not amount to consideration unless performance goes beyond that obligation or a practical benefit is obtained: <i>Stilk v Myrick</i>, <i>Harley v Ponsonby</i>• Explain that good consideration will be shown for a subsequent promise if continuing the work allows the promisor to avoid a specific detriment: <i>Williams v Roffey</i>• Explain that performance of obligations owed to a third party can be good consideration to a promise from a different party: <i>Shadwell v Shadwell</i>, <i>Pao On v Lau Yiu Long</i>• Explain that performance of a public duty does not normally amount to good consideration: <i>Collins v Godefroy</i>• Explain that exceeding a public duty does amount to good consideration for a promise of payment: <i>Glasbrook v Glamorgan</i>, <i>Ward v Byham</i>• Explain that past consideration is not normally good consideration: <i>Roscorla v Thomas</i>, <i>Re McArdle</i>• Explain that there are exceptions to the rule in past consideration when the promise was always expected or the promisee acted at the promisor's request: <i>Lampleigh v Braithwaite</i>• Explain that where a party has acted in reliance on a promise, the promisor may be estopped from going	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>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited</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
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Question			Indicative Content	Mark	Guidance												
			<p>back on their promise: <i>Central London Property trust v High Tress House</i></p> <ul style="list-style-type: none">Explain that promissory estoppel will not apply where it has the effect of enforcing a new obligation: <i>Coombe v Coombe</i> <p>Credit any other relevant case(s) Credit any other relevant point(s)</p>														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Sinder and Abbie</p> <ul style="list-style-type: none">Identify that Sinder has a binding obligation to build a bridge for Abbie and that it has provided no obvious consideration for the extra promiseConsider whether building the bridge has now become more difficult so as to amount to a new obligation, following <i>Hartley v Ponsonby</i>Consider whether Abbie avoids a specific detriment by offering to pay Sinder extra to carry on with the workConsider whether there is any duress on the part of Sinder which could invalidate any extra promise madeDraw any relevant conclusion on whether Sinder has shown consideration <ul style="list-style-type: none">Credit a discussion of whether Abbie will be estopped from denying the promise of extra moneyConclude that estoppel will not apply in this situation as it would be using estoppel as a new cause of action <p>Sinder and Jess</p> <ul style="list-style-type: none">Identify that Jess is a third party to the main contract to build the bridge	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>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
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			<ul style="list-style-type: none">Discuss that consideration from a third party is generally seen as good considerationIdentify that by the time Jess promises money to Sinder they have already got an obligation to build the bridge, hence their consideration to Jess is pastDiscuss whether any of the exceptions to the rule in past consideration apply, here they probably don't because Sinder are not acting at Jess's request and payment from Jess was never expectedDraw any reasonable conclusion on the facts <p>Sinder and Dave</p> <ul style="list-style-type: none">Identify that as Dave works for the local authority he is performing a public dutyIdentify that performing a public duty is not good considerationDiscuss whether the exception to the rule applies, is Dave going beyond his usual public duty by carrying out all the inspections on MondaysDraw any reasonable conclusion on the facts <p>Credit any other relevant point(s)</p>		<p>If only 1 area of the scenario is analysed correctly candidates are limited to level 3 marks.</p> <p>If only 2 areas of the scenario are analysed correctly candidates are limited to level 4 marks.</p>												
			<p>Assessment Objective 3 - Communication and presentation</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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5*	<p>Potential answers may include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Potential answers may:</p> <ul style="list-style-type: none">• Explain the consequences of economic duress on a contract, that it becomes voidable• Explain that economic duress is pressure which goes beyond the usual rough and tumble of business dealings: <i>Interfoto v Stiletto Visual Programmes</i>• 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, 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 v Kafco, 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, The Atlantic Baron, DSND Subsea v Petroleum Geo-Services</i>• Explain that the right to end a contract for duress may be lost through lapse of time: <i>The Atlantic Baron</i> <p>Credit any other relevant case(s) Credit any other relevant point(s)</p>	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>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited</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
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Question	Indicative Content	Mark	Guidance												
	<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Cattys and Harry</p> <ul style="list-style-type: none">Identify that there is a binding contract between Cattys and Harry and that Harry does not have the right to pass on the increased cost of productionDiscuss whether Harry has made an illegitimate threat to Cattys. He appears to have said that he needs to pass on the increase but this could be seen as a request to renegotiate which would be legitimateDiscuss whether Cattys is a position where they have no realistic alternative. They wish to preserve their reputation which might not be seen as a position of no economic choiceCome to any reasonable conclusion on the facts <p>Cattys and Kwikgo</p> <ul style="list-style-type: none">Discuss whether Kwikgo threatening not to renew contracts in the future is sufficient to amount to an illegitimate threat.Discuss that the threat need not be unlawful but must be more than the rough and tumble of normal business dealingsConclude that a threat not to renew a contract is unlikely to amount to economic duress <p>Cattys and Driva</p> <ul style="list-style-type: none">Discuss whether Driva threatening to breach the contract amounts to an illegitimate threat. This seems likely to be the caseDiscuss whether the threat will leave Cattys in a position of no realistic alternative. It seems it will as Cattys contract with Kwikgo is valuable and so Cattys may not be able to risk breaching this	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>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
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			<ul style="list-style-type: none">• Draw any reasonable conclusion on the facts• Credit any other relevant point(s)														
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6*			<p>Potential answers may include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Explain principles of incorporating terms into the contract:</p> <ul style="list-style-type: none">• Explain that terms must be available before the offer is accepted: <i>Thornton v Shoe Lane Parking</i>• Explain that the terms in a signed document are likely to be incorporated into a contract as long as the document is of a contractual nature: <i>L'Estrange v Graucob</i>, <i>Grogan v Robin Meredith</i>• Explain that terms may be incorporated into a contract by course of dealings, but that this is less likely to work in a consumer contract: <i>Kendall v William Lillico</i>, <i>Hollier v Rambler Motors</i>• Explain that unusual or harsh terms must be prominent in the contract in order to be incorporated: <i>Thornton v Shoe Lane Parking</i>, <i>Interfoto v Stiletto Visual</i>	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>Level 5 – being able to cite at least 7 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</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</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><i>Productions</i></p> <p>Explain principles of interpretation of exclusion clauses:</p> <ul style="list-style-type: none"> • Explain that an exclusion clause will only be effective if it directly addresses the loss suffered <i>Photo Production v Securicor</i> • Explain that if there is any uncertainty about an exclusion clause in a consumer contract it will be interpreted in a way that is most favourable to the consumer, <i>S.69 Consumer Rights Act</i> <p>Explain regulation of exclusion clauses under the Consumer Rights Act 2015:</p> <ul style="list-style-type: none"> • Explain that the Consumer Rights Act consolidates previous exclusion clause regulation which was present in Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contract Regulations 1999* • S.61, the legislation covers all consumer contracts and notices • S.62 any term must be fair. A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer • S.64 the requirement of fairness does not apply to the price, as long as the price is transparent in the contract • S.65 A trader cannot by a term of a consumer contract or by a consumer notice exclude or restrict liability for death or personal injury resulting from negligence • Schedule 2 contains a list of terms which may be regarded as unfair, including (example 11) a term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract 		<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</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</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>

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			<p>* An answer to this question basis on the regulations existing before the Consumer Rights Act will receive AO2 credit insofar as the answer may be correct in substance but the AO1 mark will be limited to level 3 for not having up to date knowledge of the law</p> <ul style="list-style-type: none">• Credit any other relevant case(s)• Credit any other relevant point(s)														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Martha, Sporto and the reception</p> <ul style="list-style-type: none">• Identify that the exclusion clause must be incorporated to be valid. In this case the terms were agreed when the box was ticked on the internet• Discuss whether the term could be seen as harsh and whether it should have been made particularly prominent• Discuss whether the term is clear enough to cover Sporto's apparent negligence. It could be said that <i>any losses suffered</i> is too vague to cover theft of a bag• Identify that under S.62 the term excluding Sporto's liability for losses from their premises must be fair if it is to be enforceable• Discuss whether the term is contrary to the requirement of good faith. In this case Martha is a paying customer so there is no good reason to remove Sporto's liability for negligence• Come to any reasonable conclusion on the facts <p>Sporto and the yoga classes</p> <ul style="list-style-type: none">• Identify that this is a term which allows Sporto to change the terms of the contract unilaterally• Discuss whether this is a term which is likely to be	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>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> <p>If an answer is restricted to analysing issues of incorporation only, marks will be limited to level 2</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>reasonable under S.62</p> <ul style="list-style-type: none">Identify that this is a term which is on the grey list of terms likely to be seen as unreasonable in Schedule 2 to the Consumer Rights ActCome to any reasonable conclusion on the facts <p>Bill and Sporto</p> <ul style="list-style-type: none">Identify that this is a term which is void under S.65 Consumer Rights Act as it attempts to remove Sporto’s liability for death or personal injury arising from negligence <p>The following points may be credited but are not required in order to obtain full marks</p> <ul style="list-style-type: none">Credit any discussion of whether the term is properly incorporated – this is unlikely as it is on a term in the changing room after the contract has been madeCredit any discussion of whether it might be incorporated by course of dealings as Bill is probably a frequent user of the changing roomsCredit any discussion about whether the term is clear enough to cover loss through Sporto’s negligenceCome to any reasonable conclusion on the facts <ul style="list-style-type: none">Credit any other relevant point(s)														
			<p>Assessment Objective 3 - Communication and presentation</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 C

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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	
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4	4																	
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2	2																	
1	1																	
	(a)		P1 Reason that there are a large amount of accountancy businesses in London P2 Reason that the restraint must be reasonable in the context of the kind of business sold P3 Reason that Amber can only be restrained in relation to the distance people will travel to an accountancy firm P4 Reason that 20 miles is not a reasonable distance for Amber to be restrained P5 Conclude that the statement is inaccurate	5														
	(b)		P1 Reason that Xena will have to show a legitimate interest in order to restrain Amber P2 Reason that a restraint must be limited in scope to the nature of the business sold P3 Reason that the bank is unlikely to be in a situation of competition with Xena’s accountancy firm P4 Reason that Amber cannot be restrained from working for a local bank P5 Conclude that the statement is inaccurate .	5														
	(c)		P1 Reason that the court will not re-write the term for the parties P2 Reason that a term can be blue pencilled as long as the rest of the term remains workable P2a Reason that a term can be blue pencilled as long as the rest of the term remains workable and the term retains its original character	5														

Question			Indicative Content	Mark	Guidance
			<p>P3 Reason that it would be possible to keep the requirement that Amber refrains from working with previous clients</p> <p>P3a Reason that there are several elements of the contract which would be seen as unreasonable and the courts would not make so many amendments as to change the character of the term</p> <p>P4 Reason that the term could be blue pencilled to remove 'other financial services'</p> <p>P4a Reason that the term could not be blue pencilled</p> <p>P5 Conclude that the statement is accurate.</p> <p>P5a Conclude that the statement is inaccurate</p>		
	(d)		<p>P1 Reason that Amber can only be restrained if there is a relevant term in the contract to sell the business</p> <p>P2 Reason that the courts will not insert a restraint term if the parties have not done so</p> <p>P3 Reason that there was no restraint term in the contract between Maddie and Amber</p> <p>P4 Reason that Maddie will not be able to prevent Amber opening the consultancy</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	

Question			Indicative Content	Mark	Guidance	
8			Assessment Objective 2 - Analysis, evaluation and application		AO2 Levels	AO2 Marks
					5	5
					4	4
					3	3
					2	2
					1	1
	(a)		<p>P1 Reason that the contract between Carla and Iwan is based on the existence of the concert</p> <p>P2 Reason that the contract will be frustrated if the basis on which it is made is radically changed / is commercially sterile</p> <p>P3 Reason that the main purpose of the contract is to sleep for the night and that it is not fundamentally linked to the concert</p> <p>P4 Reason that the contract will not be frustrated</p> <p>P5 Conclude that the statement is inaccurate.</p>	5		
	(b)		<p>P1 Reason that the contract is to arrange the lighting for a concert that can no longer go ahead</p> <p>P2 Reason that a contract can be frustrated when it is impossible or illegal to continue performance</p> <p>P3 Reason that once the venue has been declared unsafe it is not possible to continue with the contract</p> <p>P4 Reason that the contract has been frustrated</p> <p>P5 Conclude that the statement is accurate.</p>	5		
	(c)		<p>P1 Reason that when the contract is frustrated neither side should be unjustly enriched</p> <p>P2 Reason that where a contract has been frustrated any money paid in advance must be repaid minus just expenses (Law Reform (Frustrated Contracts) Act S.1(2))</p> <p>P3 Reason that in this case there are unlikely to be any expenses that were incurred specifically for the contract with Iwan</p> <p>P4 Reason that Iwan will be able to reclaim all his advance payment</p> <p>P5 Conclude that the statement is accurate.</p>	5		

Question		Indicative Content	Mark	Guidance
	(d)	<p>P1 Reason that a claim may be made to account for any benefit received (Law Reform (Frustrated Contracts) Act S.1(3))</p> <p>P2 Reason that this will be calculated as the benefit to Mercury after the cancelation</p> <p>P3 Reason that there is no benefit to Mercury as the contract is not able to go ahead</p> <p>P4 Reason that Zoltan will not be able to make any claim against Mercury</p> <p>P5 Conclude that the statement is inaccurate.</p> <p>Statutory reference not required for full marks.</p>	5	

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