



**GCE**

**Law**

Unit **G156**: Law of Contract Special Study

Advanced GCE

**Mark Scheme for June 2018**

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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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## Annotations

Annotation	Meaning of annotation
C	Critical Point (Q1/Q3), Developed Case (Q2)
L1 etc	Analytical/Applied Point 1 etc (Q1/Q3), L5 = Synopticism in Q2
LNK	Linked Case (Q1), Link to Source (Q2)
K	Bald Case (Q1), Conclusion (Q3)
A2	AO2 point (Q2)
✓	AO1 point not linked to an authority
CON	Conclusion (Q2&3)
!	Irrelevant
R	Repetition
✗	Incorrect

Answer		Mark	Guidance											
<p><b>Q1</b> <b>Assessment Objective 2 - Analysis, Evaluation and Application</b></p> <p>Potential answers <b>MAY</b>:</p> <p>Explain the critical point (<b>CP</b>) of the case: the Court of Appeal allowed Mr Balfour's appeal and found that Mrs Balfour had no right to enforce the agreement between her and her estranged husband who had returned to Ceylon and stopped paying her monthly allowance. In doing so, the court invented a new requirement of a binding contract: intention to create legal relations.</p> <p>Link this case with another relevant case (<b>LC</b>) for development such as: <i>Jones v Padavatton</i>, <i>Buckpitt v Oates</i>, <i>Merritt v Merritt</i>, <i>Snelling v Snelling</i>, <i>Julian v Furby</i>, <i>Parker v Clark</i>, <i>Darke v Strout</i>, <i>Simpkins v Pays</i>, <i>Wilson v Burnett</i>, <i>Peck v Lateu</i>, <i>Coward v MIB</i>, <i>Albert v MIB</i>, <i>Pettit v Pettit</i></p> <p>Discuss the case analytically (<b>AP</b>), for example making points such as:</p> <p><b>A1.</b> Two of the LJJ found that there would definitely have been a contract were it not for the lack of this new requirement. The outcome of this case was therefore arguably very harsh upon Mrs Balfour</p> <p><b>A2.</b> The new rule seems to be a misnomer as it was not based upon the actual intention of the parties.</p> <p><b>A3.</b> The rule was justified on policy grounds – the Court of Appeal thought that the courts could not cope if the floodgates were opened to domestic cases.</p> <p><b>A4.</b> The rule was further justified on the grounds that family life was private and the law should not interfere. This has been criticised by some on the grounds that it disempowered those in already weak positions (wives).</p>	12	<table border="1"> <thead> <tr> <th>Level</th> <th>AO2</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11-12</td> </tr> <tr> <td>4</td> <td>9-10</td> </tr> <tr> <td>3</td> <td>7-8</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table> <p><b>Marks should be awarded as follows:</b></p> <ul style="list-style-type: none"> <li>• Max 3 marks for the Critical Points (<b>CP</b>)</li> <li>• Max 6 points for Analytical Points (<b>AP</b>)</li> <li>• Max 3 points for a relevant Linked Cases (<b>LNK</b>)</li> </ul> <p><b>CP</b> – Linked to the material point/ratio – 1 mark is available for the facts of the case but these are not essential to get full marks. An accurate source and line reference is adequate for the facts of the case to receive the one mark.</p> <p><b>AP</b> – These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks.</p>	Level	AO2	5	11-12	4	9-10	3	7-8	2	4-6	1	1-3
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Answer		Mark	Guidance												
	<p><b>A5.</b> The decision has stood the test of time despite significant social changes, largely due to the floodgates argument remaining pertinent and the courts' willingness to utilise exceptions to the basic presumption.</p> <p><b>A6.</b> Any other relevant point.</p>		<b>LNK</b> – Marks can be achieved as follows, for example: 1 mark for the name of the case, 1 mark for some development and 1 mark for a link to the question.												
	<p><b>Assessment Objective 3 Communication and Presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</p>	4	<table border="1"> <thead> <tr> <th>AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>10-12</td> <td>4</td> </tr> <tr> <td>7-9</td> <td>3</td> </tr> <tr> <td>4-6</td> <td>2</td> </tr> <tr> <td>1-3</td> <td>1</td> </tr> </tbody> </table>	AO2 Marks	AO3 Mark	10-12	4	7-9	3	4-6	2	1-3	1		
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Q2	<p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Potential answers <b>MAY</b>:</p> <p>Explain the basic rules regarding ITCLR in contract law: ITCLR is a necessary condition for the formation of a contract (<i>Balfour v Balfour</i>) There is a presumption against ITCLR in family situations, eg:</p> <ul style="list-style-type: none"> <li>– Between husband and wife (<i>Balfour v Balfour</i>; <i>Pettit v Pettit</i>)</li> <li>– Between parent and child (<i>Jones v Padavatton</i>)</li> <li>• There is a presumption against ITCLR in social situations, eg: <ul style="list-style-type: none"> <li>– Entering into a club's competition (<i>Lens v Devonshire Social Club</i>)</li> <li>– Oral agreements between bingo players (<i>Wilson v Burnett</i>)</li> </ul> </li> <li>• These presumptions can be rebutted where there is objective evidence to the contrary, eg: <ul style="list-style-type: none"> <li>– where married couples or cohabiting couples are separating or separated (<i>Merritt v Merritt</i>; <i>Eves v Eves</i>; <i>Tanner v Tanner</i>; <i>Soulsbury v Soulsbury</i>)</li> <li>– where agreements have been recorded in writing (<i>Merritt v Merritt</i>; <i>Errington v Wood</i>)</li> <li>– where family members have made an agreement in a business context (<i>Snelling v Snelling</i>)</li> </ul> </li> </ul>	16	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14-16</td> </tr> <tr> <td>4</td> <td>11-13</td> </tr> <tr> <td>3</td> <td>8-10</td> </tr> <tr> <td>2</td> <td>5-7</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p><b>Level 5</b> Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include</p>	AO1 Levels	AO1 marks	5	14-16	4	11-13	3	8-10	2	5-7	1	1-4
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Answer		Mark	Guidance
	<ul style="list-style-type: none"> <li>– Gambling/competition cases where clear evidence can show an intention to divide the winnings (<i>Peck v Lateu</i>; <i>Simpkins v Pays</i>)</li> <li>– where reliance has been placed on the agreement (<i>Parker v Clark</i>; <i>Coward v MIB</i>; <i>Simpkins v Pays</i>)</li> </ul> <p>There is a presumption in favour of ITCLR regarding commercial agreements (<i>Esso Petroleum v CCE</i>; <i>J Evans &amp; Son v Andrea Merzario Ltd</i>; <i>McGowan v Radio Buxton</i>)</p> <ul style="list-style-type: none"> <li>• This presumption can be rebutted but requires very clear evidence in order to do so (<i>Edwards v Skyways</i>), eg: <ul style="list-style-type: none"> <li>– where 'honour clauses' have been used (<i>Rose and Frank v Crompton Bros</i>; <i>Jones v Vernons Pools</i>; <i>Appleson v Littlewoods</i>)</li> <li>– where 'letters of comfort' have been used (<i>Kleinwort Benson v Malaysian Mining Corporation</i>)</li> <li>– agreements 'subject to contract' (<i>Confetti Records v Warner Music UK</i>)</li> <li>– collective bargaining agreements (<i>Ford Motor Co v AUEFW</i>)</li> </ul> </li> <li>• Where an agreement is very vague, the courts may use that vagueness to infer that it was not intended to be binding (<i>Vaughan v Vaughan</i>)</li> </ul> <p>Credit any other relevant information</p>		<p>statutory/common law provisions, where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed*.</p> <p>Responses are likely to use material both from within the pre-release materials (LNK) and from beyond the pre-release materials which have a specific link to the area of law.</p> <p><b>Level 4</b> Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed*</p> <p><b>Level 3</b> Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include</p>

Answer		Mark	Guidance
			<p>adequate explanations and adequate definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed*.</p> <p><b>Level 2</b> Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without 2 relevant cases, neither of which are required to be developed.</p> <p><b>Level 1</b> Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p> <p>*Developed = case name + facts (minimal) or ratio (minimal)</p>

Answer	Assessment Objective 2 - Analysis, Evaluation and Application	Mark	Guidance												
	<p>Potential answers <b>MAY</b>:</p> <p>Discuss the extent to which the courts decide ITCLR cases mostly based on fairness rather than the intentions of the parties.</p> <ul style="list-style-type: none"> <li>• There are situations in which fairness does seem paramount, most notably in cases where there is considerable reliance like <i>Parker</i> for example <ul style="list-style-type: none"> <li>◦ Hedley takes a similar approach when he notes that the courts will usually find ITCLR in cases where the other party has already performed.</li> </ul> </li> <li>• There are other situations where fairness and the intentions of the parties would appear to overlap. This undermines the author's argument <ul style="list-style-type: none"> <li>◦ For example: <i>Merritt v Merritt</i> and the commercial rebuttal cases like <i>Rose and Frank</i> and <i>Kleinwort Benson</i>. These could all be seen as 'fair' decisions in part very much because they are reflecting the clear intentions of the parties.</li> <li>◦ It is arguable that it difficult to see how a case in which the outcome coincided with the express intent of the parties was anything other than fair.</li> </ul> </li> <li>• There are other situations in which neither the intentions of the parties nor fairness, commonly defined, appear to be driving the decision. <ul style="list-style-type: none"> <li>◦ The basic presumption set out in <i>Balfour</i> and extended in <i>Jones and Buckpitt</i> etc is clearly a policy-based position and is blind to intention or fairness in the general sense. The key justifications for <i>Balfour</i> are not obviously based around fairness: <ul style="list-style-type: none"> <li>▪ the courts do not want to open the floodgates to huge numbers of social or domestic cases. This is a logistical concern.</li> <li>▪ Atkin LJ argued that the family was a private sphere into which contract law should not interfere. This approach has been given support recently by no less than Lady Hale in <i>Radmacher</i>. It could be argued that this is a policy which is ultimately aimed at fairness as Lady Hale was concerned that reversing this approach would disadvantage weaker spouses.</li> </ul> </li> <li>◦ Similarly, the basic commercial presumption appears to be based on policy rather than fairness or the parties' intentions. The courts want to uphold a situation in which agreements in commercial situations can be relied upon to be binding. Is this driven by fairness (partly in an effort to protect consumers) or driven by the need to support the market economy, or both?</li> <li>◦ Many of the cases showing rebuttals of the presumption are seemingly based on</li> </ul> </li> </ul>	14	<table border="1" data-bbox="1626 244 2023 457"> <thead> <tr> <th data-bbox="1626 244 1837 271">AO2 Levels</th><th data-bbox="1837 244 2023 271">AO2 marks</th></tr> </thead> <tbody> <tr> <td data-bbox="1626 271 1837 303">5</td><td data-bbox="1837 271 2023 303">13-14</td></tr> <tr> <td data-bbox="1626 303 1837 335">4</td><td data-bbox="1837 303 2023 335">10-12</td></tr> <tr> <td data-bbox="1626 335 1837 366">3</td><td data-bbox="1837 335 2023 366">7-9</td></tr> <tr> <td data-bbox="1626 366 1837 398">2</td><td data-bbox="1837 366 2023 398">4-6</td></tr> <tr> <td data-bbox="1626 398 1837 430">1</td><td data-bbox="1837 398 2023 430">1-3</td></tr> </tbody> </table> <p><b>Level 5</b> Responses are unlikely to achieve level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion* with some synoptic content.</p> <p><b>Level 4</b> Responses are unlikely to achieve level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p><b>Level 3</b> Responses are unlikely to achieve level 3 without adequate analytical evaluation of the relevant areas of law and adequate focus on the quote.</p>	AO2 Levels	AO2 marks	5	13-14	4	10-12	3	7-9	2	4-6	1	1-3
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	<p>the context of the case like <i>Coward</i>, as discussed by Hedley in the source. Such cases do not seem to be driven by the intentions of the parties but nor are they necessarily driven by what is fair in that particular case – they are more concerned with creating a general policy position.</p> <ul style="list-style-type: none"> <li>The statement in the question is perhaps a little simplistic. Whilst it seems true to say that the intentions of the parties often figure only peripherally in these decisions, neither is 'fairness' in the case the central driving force. Bigger and deeper questions of policy (which may, to some extent, be defined in terms of fairness) appear to be more important.</li> </ul> <p>Reach any other sensible conclusion. Credit any relevant discussion point(s)</p>		<p><b>Level 2</b> Responses are unlikely to achieve level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p><b>Level 1</b> Responses are unlikely to achieve level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>* Conclusion – response has to provide a conclusion to the answer (NB conclusion does not need to appear at end).</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>	4	<table border="1" data-bbox="1619 1065 2082 1256"> <thead> <tr> <th data-bbox="1619 1065 1888 1097">AO1+AO2 marks</th><th data-bbox="1888 1065 2082 1097">AO3 Mark</th></tr> </thead> <tbody> <tr> <td data-bbox="1619 1097 1888 1129">24-30</td><td data-bbox="1888 1097 2082 1129">4</td></tr> <tr> <td data-bbox="1619 1129 1888 1160">17-23</td><td data-bbox="1888 1129 2082 1160">3</td></tr> <tr> <td data-bbox="1619 1160 1888 1192">9-16</td><td data-bbox="1888 1160 2082 1192">2</td></tr> <tr> <td data-bbox="1619 1192 1888 1224">1-8</td><td data-bbox="1888 1192 2082 1224">1</td></tr> <tr> <td data-bbox="1619 1224 1888 1256"></td><td data-bbox="1888 1224 2082 1256"></td></tr> </tbody> </table>	AO1+AO2 marks	AO3 Mark	24-30	4	17-23	3	9-16	2	1-8	1		
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3	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Law on intention to create legal relations as stated above and particular cases of relevance as indicated</p>	10	<table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1 Marks</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>7-8</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>5-6</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>3-4</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-2</td> <td>1-4</td> </tr> </tbody> </table> <p><b>Marks should be awarded (per scenario) as follows:</b></p> <table border="1"> <thead> <tr> <th>Marks Levels</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> </tr> <tr> <td>4</td> <td>7-8</td> </tr> <tr> <td>3</td> <td>5-6</td> </tr> <tr> <td>2</td> <td>3-4</td> </tr> <tr> <td>1</td> <td>1-2</td> </tr> </tbody> </table> <p><b>NB A maximum of 3 marks can be allocated for AO1 for each part question.</b></p> <ul style="list-style-type: none"> <li>• Max 3 marks for the critical point (CP)</li> <li>• Max 6 marks for applied points (AP)</li> <li>• Max 1 mark for a logical conclusion*/assessment of the most likely outcome in terms of liability (CON)</li> </ul> <p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a conclusion*</p> <p>Responses are unlikely to achieve level 5 if the conclusion* is incorrect <u>and</u> contradicted by the reason offered.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).</p>	Mark Levels	AO1 Marks	AO2 Marks	5	9-10	17-20	4	7-8	13-16	3	5-6	9-12	2	3-4	5-8	1	1-2	1-4	Marks Levels	(a), (b) or (c)	5	9-10	4	7-8	3	5-6	2	3-4	1	1-2
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## APPENDIX 1: Advanced GCE Law Levels of Assessment

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

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

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