

Mark Scheme for June 2012

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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.

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

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Annotations

Annotation	Meaning
R	repetition
?	irrelevant (use for more than a couple of lines of text otherwise use the following)
S/O	sort of
✓	knowledge (AO1)
Def	definition (AO1)
C1 etc	to indicate cases (AO1)
(C1) etc	To indicate partially accurate/relevant cases (AO1)
n/o	to indicate use of a case but in name only
Stat	Reference to statute
^	omission
2	to indicate a bald AO2 comment
2+	to indicate developed AO2 comment / discussion
2++	to indicate a well-developed AO2 comment / discussion
Q	Link to the question

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 the '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 that this to be the case you should discuss the candidates answer 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 (in some units 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, will 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.

Question		Answer	Marks	Guidance	
1*		<p>Possible answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Show an awareness of consideration as a requirement of a valid contract. Cite cases to illustrate consideration.</p> <p>The following are examples of cases that may be cited but any area of consideration may be discussed in order to answer this question:</p> <ul style="list-style-type: none"> • That consideration needs to be sufficient – <i>Chappell v Nestle</i>, <i>Thomas v Thomas</i> • That performance of an existing contractual duty to the promisor does not amount to consideration unless performance goes beyond that obligation or a practical benefit is obtained – <i>Stilk v Myrick</i>, <i>Hartley v Ponsonby</i>, <i>Williams v Roffey</i> • That performance of a public duty does not normally amount to good consideration – <i>Glassbrook v Glamorgan</i>, <i>Collins v Godefroy</i>, <i>Ward v Byham</i> • 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> • That past consideration is not normally good consideration – <i>Roscorla v Thomas</i>, <i>Lampleigh v Braithwaite</i> • That part payment of a debt is not good consideration, subject to exceptions, <i>D&C Builders v Rees</i>, <i>Central London Property Trust v High Trees House</i> 	25	AO1 Levels	AO1 marks
				5	21-25
				4	16-20
				3	11-15
				2	6-10
				1	1-5
		<p>Responses may draw on any area within the topic of consideration to support an argument relevant to the title.</p> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</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>			

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		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Responses may develop arguments along different lines:</p> <ul style="list-style-type: none"> • That there appears to be a conflict between the lines of reasoning in different cases, for example that extra obligations were seen as good consideration in <i>Hartley v Ponsonby</i> but not in <i>Stilk v Myrick</i>. • That the obligations that were accepted as good consideration in a particular case seem a bit thin or trivial as in <i>Williams v Roffey</i> or <i>Ward v Byham</i>. • That Lord Denning's assertion in <i>Williams v Williams</i>, that as a general proposition performing an existing duty is good consideration as long as it doesn't conflict with the wider public interest, has not been accepted in such a wide form in later cases. • That there appear to be good reasons for the judges to have enforced a contract and so they had to invent consideration in order to be able to do so as in <i>Williams v Roffey</i> or <i>Shanklin Pier v Detel Products</i> • That there may be conflicting cases dealing with the question of what amounts to sufficiency, comparing <i>Ward v Byham</i> with <i>White v Bluett</i>. • That the courts may favour an institutional party to a contract over a private individual as in <i>Glassbrook v Glamorgan</i>. <p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	20	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 mark</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – an awareness of the area of law identified by the question</p> <table border="1"> <thead> <tr> <th>AO1 + AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO2 Level	AO2 mark	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4	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>Possible answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the nature of a term in restraint of trade, a term by which one party agrees to limit or restrict his ability to carry on his trade, business or profession, <i>Nordenfeld</i></p> <p>Explain the general prohibition on terms to restrain trade, <i>British Reinforced Concrete v Schleff</i></p> <p>Explain the criteria for allowing such terms:</p> <ul style="list-style-type: none"> • Reasonable interest to protect such as business investment, <i>Nordenfeld</i>, or specialist knowledge <i>Forster v Suggett</i>, or client details <i>Hanover Insurance v Schapiro</i> • That the scope is reasonable in respect of time, <i>Home Counties Dairies v Skilton</i> • That the scope is reasonable in respect of distance, <i>Fitch v Dewes</i> • That the scope is reasonable in terms of what is included, <i>Mont v Mills</i> <p>The restraint must be reasonable in the interests of the parties and in the interests of the public</p> <p>Explain the effect of a term being found to be unreasonably in restraint of trade; it will be unenforceable although in some cases it may be blue-pencilled to have an offending part removed, <i>Goldsoll v Goldman</i>.</p> <p>Explain that there is no general implied term in restraint of competition <i>Facenda Chicken</i></p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 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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		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss the reasons for not allowing terms in restraint of trade in general; that it can be unfair to the individual who is denied a chance to earn a living, and that it denies society access to that individual's skills and services.</p> <p>Discuss the reasons for allowing terms in restraint of trade where there is a legitimate business interest to protect.</p> <ul style="list-style-type: none"> • That the buyer of a business will have given consideration for the right not to have the seller set up in immediate competition. • That an employer has the right to protect their client base and secret processes from ex-employees who gained the information through their employment, but that this does not cover general skills and training received. • That one party may have invested money in developing a commercial enterprise, such as the contract between a musician and their recording company. • That a solus agreement may be justified because of the investment in the business made by the other party, such as contracts between a petrol company and garage. <p>Discuss the courts approach of proportionality, where a term has been renegotiated in favour of the restricted party the courts are more likely to uphold it, <i>Panayiotou v Sony Music International</i></p> <p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – an awareness of the area of law identified by the question</p>	AO2 Levels	AO2 marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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3*		<p>Possible answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> Explain the consequences of the court finding an actionable mistake, that it makes the contract void Explain the different categories of mistake at common law, using cases to illustrate each <p>Where the parties make the same mistake as each other (known as common mistake or mutual mistake)</p> <ul style="list-style-type: none"> Cases where the parties make the same mistake, where generally the mistake should be fundamental in nature and due to exceptional circumstances <i>Couturier v Hastie, Bell v Lever Brothers, Leaf v International Galleries, Great Peace Shipping v Tsavliris Salvage.</i> Cases where the parties are at cross-purposes; <i>Tamplin v James, Raffles v Wichelhaus</i> <p>Where one party has made a mistake which the other party is aware of (known as unilateral mistake, cross purposes mistake or mistake negativing consent)</p> <ul style="list-style-type: none"> <i>Hartog v Shields, Cundy v Lindsay, Phillips v Brooks, Smith v Hughes</i> <p>Where a contract is not void at common law but a remedy may be provided in equity</p> <ul style="list-style-type: none"> Explain the situations where a contract will not be void at common law but may be remedied in equity – rectification of the contract terms <i>Craddock v Hunt</i>, refusal of specific performance <i>Webster v Cecil</i>, rescission <i>Solle v Butcher</i> (Responses may explain that rescission is now doubtful after <i>Great Peace Shipping</i>). 	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</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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		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss whether the circumstances where a contract will be made void are narrow:</p> <ul style="list-style-type: none"> • Discuss whether the courts take a harsh line on mistake, preferring not to avoid a contract unless the criteria are clearly satisfied so as to avoid causing uncertainty. • 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. • Discuss whether the decision in <i>Great Peace Shipping</i> was right to say that equity should not rescind a contract that is not void at common law. • 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. <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. 	20	<p>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – an awareness of the area of law identified by the question</p>												

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		<p>Discuss whether the rules lead to unfairness:</p> <ul style="list-style-type: none"> • Discuss whether there are grounds to say that someone who has entered a bad deal on the basis of a misunderstanding, for example in <i>Bell</i>, should be relieved of the consequences of the contract. • 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 <i>non est factum</i> are too narrow and can lead to injustice for an innocent party as in <i>Saunders</i> <p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 marks	AO3 mark	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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4*		<p>Possible answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain principles of incorporating terms into the contract, that they must be available before the offer is accepted, <i>Thornton v Shoe Lane Parking, Olley v Marlborough Court Hotel</i></p> <p>Explain principles of interpretation of exclusion clauses and contra proferentem, that they must be clear and unambiguous and in the case of uncertainty will be interpreted against the interests of the person seeking to rely on them, <i>Dorset v Southern Felt Roofing; Photo Production v Securicor, Shell v P&O Tankers</i></p> <p>Discuss regulation under Unfair Contract Terms Act 1977: Section 2(1) terms excluding liability for death or injury through negligence are void</p> <p>Section 2(2) terms excluding liability for negligence causing other kinds of loss being subject to the requirement of reasonableness</p> <p>Section 3(1) terms excluding liability for breach of contract in a consumer contract being subject to the requirement of reasonableness</p> <p>Explain the principles used by the court to determine reasonableness; UCTA Section 11, availability of insurance, knowledge of the term, bargaining power, <i>Smith v Bush, Green v Cade Brothers Farm</i></p> <p>Explain the Unfair Terms in Consumer Contract Regulations 1999, some terms being made unenforceable if they contravene the general principles of the regulations or are included in the Schedule to the regulations</p> <p>Credit any explanation of the basis on which a contract may be frustrated</p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th><th>AO1 marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>21-25</td></tr> <tr> <td>4</td><td>16-20</td></tr> <tr> <td>3</td><td>11-15</td></tr> <tr> <td>2</td><td>6-10</td></tr> <tr> <td>1</td><td>1-5</td></tr> </tbody> </table>	AO1 Levels	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5	<p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 5 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 4 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> <p>Credit should be given for discussion of the implied term that services are carried out with reasonable care and skill, Supply of Goods and Services Act 1982, but this is not required for full marks</p>
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		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Bradley and the loss of profit</p> <p>Identify that this contract includes an exclusion clause</p> <p>Discuss whether the clause is properly incorporated into the contract between Bradley and Equipfix, this may include discussion on:</p> <ul style="list-style-type: none"> • Where offer and acceptance took place • The effect of signing the note • Previous dealings between the parties • The prominence of the term <p>Discuss whether the term can be interpreted to cover the desired exclusion, probably so in this case as it is clear and unambiguous.</p> <p>Discuss whether the term is subject to statutory regulation – in this case it comes under section 2(2) UCTA 1977 and is subject to the requirement of reasonableness</p> <p>Discuss whether the term is likely to be seen as reasonable, this is likely to include:</p> <ul style="list-style-type: none"> • The term not being negotiated • Any inducements to agree to the term • Which party should have insurance against loss <p>Reach any sensible conclusion</p> <p>Bradley and the twisted ankle</p> <p>Discuss that this term is void due to section 2(1) UCTA 1977.</p> <p>Conclude that the term cannot prevent Bradley suing Equipfix for his injuries</p> <p>Cookit and the loss of profit</p> <p>Identify that this contract includes an exclusion clause</p> <p>Discuss whether the term excluding liability is properly incorporated.</p> <p>Discuss whether the term is clear in covering the potential liability for lost profits of the café – “won’t be responsible for delays beyond his control” is possibly too vague as delays could occur for many reasons and the courts could decide that this term is too wide</p> <p>Discuss whether the term is regulated under statute – this could come under UCTA 1977 section 3(1) as Bradley is excluding liability for his own non-performance.</p>	20	<p>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – an awareness of the area of law identified by the question</p> <p>Answers which are limited to incorporation of terms are unlikely to achieve more than level 2.</p>												

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		<p>Discuss whether the term is reasonable:</p> <ul style="list-style-type: none"> • The term was not negotiated between Bradley and Cookit and it may not have been brought to their attention • It is likely that either side will, or should have, insurance against this kind of loss <p>It is probably reasonable that Cookit will not be able to sue Bradley for loss of profit.</p> <p>Credit any relevant discussion about possible frustration of the contract between Bradley and Cookit.</p> <p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 marks	AO3 mark	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1	
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5*		<p>Possible answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain that undue influence is an equitable doctrine</p> <p>Explain the rules on both actual and presumed undue influence, citing cases such as <i>BCCI v Aboody, Williams v Bayley</i></p> <p>Explain the cases involving undue influence and third parties, citing cases such as <i>Royal Bank Scotland v Etridge, Barclays Bank v O'Brien</i></p> <p>Explain the criteria that must be applied when examining whether a bank is under constructive notice of undue influence:</p> <ul style="list-style-type: none"> • That the bank is placed on enquiry where the relationship between the borrower and surety is non-commercial • That this will apply where the relationship is married or unmarried • That this may apply in other situations such as parent and child, <i>Lancashire Loans v Black</i> • That the bank will not be put on notice if the loan is for the parties joint benefit • That the bank will not be put on notice where one partner agrees to use assets other than the family home as surety <p>Explain the standards that are required in order to avoid the bank being placed on constructive notice:</p> <ul style="list-style-type: none"> • The bank needs to reassure itself that both parties have freely agreed to the property being used as security • Advice should be given by a solicitor although this could be the same solicitor as used by the other partner or the bank • Advice should go beyond merely pointing out the consequences of not paying and should discuss the level of risk and the partner's ability to pay the loan. 	25	AO1 Levels	AO1 marks
				5	21-25
				4	16-20
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				1	1-5
<p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 4 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 3 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 2 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>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Grange Bank and Lucy</p> <ul style="list-style-type: none"> Identify that this is a case of potential constructive notice Discuss whether the bank has been put on constructive notice of potential undue influence by Lucy; this is probably the case because the loan was to be used for her business rather than a joint use Discuss whether the bank has done enough to avoid constructive notice; probably not as the bank's solicitor only seems to have told Lucy's husband that there was a risk if the loan was not repaid, they do not seem to have gone into enough detail about his ability to pay Conclude that Grange Bank are unlikely to be able to repossess the house <p>Grange Bank and Rachel</p> <ul style="list-style-type: none"> Identify that this is also a case of potential constructive notice Discuss that the principle of constructive notice will potentially apply in the case of a parent and child where the bank is aware that there is a relationship of trust and reliance Discuss whether the bank will be put on notice in these circumstances; probably there would be as there is no obvious benefit to Rachel and a high degree of risk Conclude that the bank will not be able to repossess Rachel's house to recover their money <p>Grange Bank and Bruce</p> <ul style="list-style-type: none"> Identify that this is a case of actual undue influence because Bruce's behaviour towards his wife occurred in the presence of the bank and so they are aware of it 	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – 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 this is enough in itself to make the loan voidable and that it is not necessary to investigate the nature of the loan • Conclude that the bank will not be able to repossess the house to recover their money <p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>AO1 + AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 marks	AO3 mark	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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6*		<p>Possible answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the rules of performance of a contract, that payment cannot be claimed for unless performance is both complete and exact, <i>Re Moore and Landauer, Cutter v Powell</i></p> <p>Explain the rules for time of performance, that a contract must be performed within a reasonable time unless time is made of the essence or goes to the root of the contract, <i>Union Eagle v Golden Achievement, United Scientific Holdings v Burnley</i></p> <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>Taylor v Webb</i> • That the contract may have been substantially performed, and so a claim may be made for the contract price minus an amount for fixing whatever work needs to be done, <i>Hoenig v Isaacs, 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 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>Explain the law on anticipatory breach</p> <p>That at any time before performance is due, if one party makes it clear that they are unable or unwilling to perform the contract the other party may terminate the contract without having to wait for the expected time of performance, <i>Hochster v De La Tour</i></p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</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 4 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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		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify that in each case Glowz has not fully performed their contractual obligations by the specified deadline and so should not be able to claim payment under the contract</p> <p>Responses should discuss possible exceptions that may apply in each case:</p> <p>The outdoor lighting</p> <ul style="list-style-type: none"> • Discuss whether the time limit is essential to the performance of the contract; in this case it would be because a reason for completion was given and much of the benefit would be lost if the job was not done by 3rd, thus it would be seen as a repudiatory breach • Discuss that if the job could have been completed by the end of the day on 2nd July Erin could be liable to Glowz for having prevented performance • Discuss that if the work could not have been complete within the final day Erin would have been entitled to terminate the contract for anticipatory breach and claim damages from Glowz • Reach any sensible conclusion <p>The five bedrooms</p> <ul style="list-style-type: none"> • Discuss whether this could be seen as a severable contract and thus a price claimed for each of the rooms that is complete • Discuss the factors that could lead to it being seen as a severable contract, that the benefit of each is not reliant on the others being completed, if a price was given for each this would also be a factor although this is not given in the question • Come to any sensible conclusion <p>The security lighting</p> <ul style="list-style-type: none"> • Discuss whether this can be seen as having been substantially performed, in which case Glowz could claim the price minus an allowance for having the work completed by someone else • Discuss whether the amount of work that remained to be done could be seen as a trivial amount, or a non repudiatory breach 	20	<p>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – an awareness of the area of law identified by the question</p>												

Question		Answer	Marks	Guidance												
		<ul style="list-style-type: none"> • Discuss that as the lighting system does not work as intended this is unlikely to be seen as substantial performance • Come to any sensible conclusion <p>Conclude that Glowz cannot claim payment for the work on the security lighting</p> <p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and clear arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 marks	AO3 mark	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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7	(a)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that as friends, it will be presumed that there is no intention to create legal relations between Dan and Rick</p> <p>P2 Reason that the presumption can be rebutted if there is evidence of reliance on the contract by both Dan and Rick</p> <p>P3 Reason that if Dan and Rick are equally agreeing to give up half their winnings this is likely to be seen as reliance and equal detriment</p> <p>P4 Reason that the contract between them is likely to be seen as binding</p> <p>P5 Conclude that the statement is accurate</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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	(b)	<p>P1 Reason that a contract normally only binds the parties to it, here Dan and Rick</p> <p>P2 Reason that the Contract (Rights of third Parties) Act 1999 allows a party who is intended to benefit from the contract to enforce it directly if it purports to give them a benefit</p> <p>P3 Reason that the contract between Rick and Dan purports to give a benefit to Julian</p> <p>P4 Reason that Julian will be able to enforce the promise if Dan wins over a million pounds</p> <p>P5 Conclude that the statement is inaccurate</p>	5													
	(c)	<p>P1 Reason that contracts between friends will be presumed not to have legal effect</p> <p>P2 Reason that an absence of formality or certainty between Lucy and Jane means the presumption is likely to be upheld</p> <p>P3 Reason that there are no facts to indicate that the presumption is likely to be rebutted between Lucy and Jane</p> <p>P4 Reason that Jane is unlikely to be successful if she sues for the money</p> <p>P5 Conclude that the statement is inaccurate</p>	5													

Question		Answer	Marks	Guidance
(d)		<p>P1 Reason that contracts made with companies are presumed to have legal effect</p> <p>P2 Reason that the presumption can be rebutted if the lottery company can show evidence of no legal effect</p> <p>P3 Reason that the statement on the ticket will amount to clear words to show no legal effect is intended between the lottery company and those who buy tickets</p> <p>P4 Reason that the lottery company will be successfully able to defend an action if someone sues them to claim prize money</p> <p>P5 Conclude that the statement is accurate</p>	5	

Question		Answer	Marks	Guidance												
8	(a)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that a misrepresentation from Ruby would involve a false statement of fact</p> <p>P2 Reason that in general a failure to disclose facts relevant to a contract does not amount to a false statement by Ruby</p> <p>P3 Reason that this scenario does not cover any of the exceptions to the general rule</p> <p>P4 Reason that Ruby did not have a duty to disclose the accident to Ava</p> <p>P5 Conclude that the statement is inaccurate</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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	(b)	<p>P1 Reason that in general Ruby does not have to disclose all material facts to Ava</p> <p>P2 Reason that where a seller fails to inform a buyer that material facts have changed since representations were first made, this can amount to a misrepresentation</p> <p>P3 Reason that as Ava inspected the car on Monday, the accident would be seen as a change in the material facts before the contract was concluded</p> <p>P4 Reason that in this case Ruby was under a duty to tell Ava that the state of the car had changed</p> <p>P5 Conclude that the statement is accurate</p>	5													

Question		Answer	Marks	Guidance
(c)		<p>P1 Reason that an actionable misrepresentation from Ruby would allow a claim for rescission and that damages are available for fraudulent and statutory misrepresentation</p> <p>P2 Reason that in this case the misrepresentation in respect of Tuesday's accident was probably fraudulent as Ruby was well aware of the truth</p> <p>P3 Reason that the car was probably worth less as a result of Tuesday's accident</p> <p>P4 Reason that Ava would have a good claim for damages in respect of this misrepresentation</p> <p>P5 Conclude that the statement is inaccurate</p>	5	
(d)		<p>P1 Reason that insurance contracts are contracts of utmost good faith and that Ava's failure to disclose material facts would amount to a misrepresentation</p> <p>P2 Reason that penalty points are a material fact that should have been disclosed to the insurance company as they affect risk</p> <p>P3 Reason that they should have been disclosed by Ava even if the insurance contract did not ask whether she had penalty points on her licence</p> <p>P4 Reason that Ava should have disclosed her points to the company</p> <p>P5 Conclude that the statement is inaccurate</p>	5	

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

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