

Mark Scheme for January 2013

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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

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Annotations

Annotation	Meaning
	AO1/Point 1 (Q7-8)
	Point 2 (Q7-8) or Case but no name or wrong name (Q1-6)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	AO2+
	Alternative reasoning in Q7-8
	Case (Q1-6)
	Case - name only
	Expansion of developed point (replace WDP)
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	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 comment (where provided)

- *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 below, 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.

For answers marked by levels of response:

- a. **To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- b. **To determine the mark within the level**, consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

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.

You must also check any additional items eg A, A1 etc. This will demonstrate that every page of a script has been checked.

Question	Answer	Marks	Guidance													
1*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain what is meant by an exclusion clause, candidates may make reference to UCTA Section 13 to explain that UCTA covers terms which have the effect of being an exclusion clause even if they are not strictly so.</p> <p>Explain the regulation of exclusion clauses at common law:</p> <ul style="list-style-type: none"> • Strict rules on incorporation, <i>Olley v Marlborough Court Hotel</i>, <i>Thornton v Shoe Lane Parking</i> • Oral representations may invalidate the effect of an exclusion clause, <i>Curtis v Chemical Cleaning and Dyeing</i> • The contra proferentem rule works against the person seeking to rely on the term, <i>Andrews v Singer</i> • Terms which seek to exclude liability for fundamental breach must be very clear, <i>Suisse Atlantique</i>, <i>Photo Production v Securicor</i>. <p>Explain the statutory limits to exclusion clauses:</p> <ul style="list-style-type: none"> • Explain the sections in the Unfair Contract Terms Act 1977 (UCTA) that make a contract term void, Sections 2(1), 6(1), 6(2), 7(2) • Explain the sections in UCTA that make a contract term subject to the requirement of reasonableness, Sections 2(2), 3, 6(3), 7(3), 8 • Explain the tests used by the court to determine the reasonableness of any particular term; make relevant reference to UCTA Section 11, make reference to the rules developed by the court including the availability of insurance, knowledge, inducements, relevant bargaining strength. Make reference to cases such as <i>Smith v Bush</i>, <i>George Mitchell v Finney Lock Seeds</i>. • Explain the protection given to consumers in the Unfair Terms on Consumer Contract Regulations 1999. <p>Credit any other relevant points. Credit any other relevant cases.</p>	25	<table border="1" data-bbox="1422 215 2069 430"> <thead> <tr> <th data-bbox="1422 215 1747 255">AO1 Levels</th> <th data-bbox="1747 215 2069 255">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1422 255 1747 295">5</td> <td data-bbox="1747 255 2069 295">21–25</td> </tr> <tr> <td data-bbox="1422 295 1747 335">4</td> <td data-bbox="1747 295 2069 335">16–20</td> </tr> <tr> <td data-bbox="1422 335 1747 375">3</td> <td data-bbox="1747 335 2069 375">11–15</td> </tr> <tr> <td data-bbox="1422 375 1747 414">2</td> <td data-bbox="1747 375 2069 414">6–10</td> </tr> <tr> <td data-bbox="1422 414 1747 430">1</td> <td data-bbox="1747 414 2069 430">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 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>		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 justifications for the common law controls:</p> <ul style="list-style-type: none"> • To ensure that the terms are properly incorporated and that any particularly harsh terms are specifically brought to the other side’s attention, to discourage underhand dealings and encourage openness • To encourage clarity of contract drafting by ensuring that any unclear terms are interpreted against the interests of the party seeking to rely on them • That the common law controls do not limit the freedom of the parties to make their own contract as long as the terms are made sufficiently explicit. <p>Discuss the justifications for the statutory controls:</p> <ul style="list-style-type: none"> • To prevent traders from limiting the effect of consumer protection laws by using their superior bargaining power to exclude the Sale of Goods regulations • To prevent traders from excluding the requirement that they have good title to the things they sell, justified because they have greater means to check title than the consumers who deal with them • To promote safe trading by excluding or limiting a party’s ability to exclude liability for performing a contract negligently • To limit the ability of a party to exclude liability for non performance of different performance of a contract when they are dealing on one party’s standard terms, in order to give protection to smaller businesses who are forced to deal with larger business on the other’s standard terms of business by means of economic bargaining power • To allow a trade organisation or government department to intervene on behalf of consumers and challenge unfair terms when a consumer may be less likely to bring a challenge due to the minimal value of an individual claim or the high cost of mounting a challenge. <p>Discuss whether the regulation of exclusion clause does in fact limit the parties’ freedom of contract:</p> <ul style="list-style-type: none"> • The terms which are made subject to reasonableness under 	20	<table border="1" data-bbox="1422 244 2069 459"> <thead> <tr> <th data-bbox="1422 244 1747 284">AO2 Levels</th> <th data-bbox="1747 244 2069 284">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1422 284 1747 319">5</td> <td data-bbox="1747 284 2069 319">17–20</td> </tr> <tr> <td data-bbox="1422 319 1747 354">4</td> <td data-bbox="1747 319 2069 354">13–16</td> </tr> <tr> <td data-bbox="1422 354 1747 389">3</td> <td data-bbox="1747 354 2069 389">9–12</td> </tr> <tr> <td data-bbox="1422 389 1747 424">2</td> <td data-bbox="1747 389 2069 424">5–8</td> </tr> <tr> <td data-bbox="1422 424 1747 459">1</td> <td data-bbox="1747 424 2069 459">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – A discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – An awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			<p>UCTA are likely to be seen as reasonable if the parties are dealing at arm's length</p> <ul style="list-style-type: none"> • That in business contracts, as opposed to consumer contracts, the regulation is more likely to make a term subject to the requirement of reasonableness than completely void • That the rules which limit a party's ability to exclude liability for negligence will not apply when a term is explicit in its intent. <p>Reach a sensible conclusion.</p>															
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2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> Define conditions, using cases such as <i>Poussard v Spiers</i>. Explain the consequences of breach of a condition, allowing the innocent party to repudiate the contract and claim damages in all cases. Define innominate terms, using cases such as <i>Hong Kong Fir Shipping v Kawasaki Kisen Kaisha</i> Explain the consequences of breach of an innominate term, allowing the innocent party to repudiate the contract and claim damages if they are deprived of substantially the whole benefit of the contract. Use cases such as <i>Hansa Nord</i> to illustrate a non-repudiatory breach of an innominate term <p>Explain the situations where the court will still use conditions today:</p> <ul style="list-style-type: none"> using the <i>Sale of Goods Act</i> to illustrate statutory implied conditions, candidates could cite any relevant case dealing with the implied terms to illustrate them, for example <i>Grant v Australian Knitting Mills</i>, comparing technical breaches which do not come within the implied terms <i>Reardon Smith v Hansen Tangen</i> using <i>Bunge v Tradax</i> to illustrate identification as a condition due to customary trade usage using <i>Lombard v Butterworth</i> and <i>Schuler Wickman</i> to illustrate definition of the term by the parties themselves define warranties using cases such as <i>Bettini v Guy</i>. Explain the consequences of breach of a warranty, allowing the innocent party to claim damages but not to repudiate the contract explain the way in which the court approaches the identification of any particular term, using the criteria laid out in <i>Kawasaki</i>. <p>Credit any other relevant points. Credit any other relevant cases.</p>	25	<table border="1" data-bbox="1422 215 2069 430"> <thead> <tr> <th data-bbox="1422 215 1747 255">AO1 Levels</th> <th data-bbox="1747 215 2069 255">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1422 255 1747 295">5</td> <td data-bbox="1747 255 2069 295">21–25</td> </tr> <tr> <td data-bbox="1422 295 1747 335">4</td> <td data-bbox="1747 295 2069 335">16–20</td> </tr> <tr> <td data-bbox="1422 335 1747 375">3</td> <td data-bbox="1747 335 2069 375">11–15</td> </tr> <tr> <td data-bbox="1422 375 1747 414">2</td> <td data-bbox="1747 375 2069 414">6–10</td> </tr> <tr> <td data-bbox="1422 414 1747 430">1</td> <td data-bbox="1747 414 2069 430">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 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>		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 use of conditions:</p> <ul style="list-style-type: none"> • They prevent the court from looking at the consequences as a whole for both parties and make an assessment about the consequences of the breach in relation to the whole contract obligation, thus preventing termination for a trivial or technical breach • They don't allow a common sense approach, eg looking at the consequences for the parties rather than a close analysis of technical legal drafting. • They may not lead to as much certainty as the parties would hope if the court disregards the parties own definitions within the contract (<i>Schuler v Wickman</i>) • They allow the parties to maintain control and predictability in a contract by determining in advance what will happen in certain eventualities • They allow consistency in some industries such as shipping by specifying that certain terms will always be seen as conditions and breach will automatically entitle the other party to repudiate • They make it easier for consumers to enforce their statutory rights by making them conditions • Consumers are not put in the position of having to argue that they are deprived of substantially the whole benefit of a contract, merely to show that a contract has been broken. <p>Reach a sensible conclusion.</p>	20	<table border="1" data-bbox="1424 217 2067 424"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – A discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – An awareness of the area of law identified by the question.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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3*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> • Explain that undue influence is an equitable doctrine • Explain the rules on Class 1 (actual undue influence) undue influence, citing cases such as <i>BCCI v Aboody</i>, <i>Williams v Bayley</i> • Explain the situations where a presumption of undue influence will arise, citing cases such as <i>Allcard v Skinner</i> for the traditional relations where it is recognised Class 2A (presumed undue influence), and <i>Lloyds Bank v Bundy</i> where a presumption can arise on the facts of the relationship Class 2B (relationship of trust and confidence) • Explain the requirement of ‘a transaction that requires explanation’, formerly known as a manifest disadvantage, citing cases such as <i>CIBC v Pitt</i>, <i>BCCI v Aboody</i>, <i>Nat West Bank v Morgan</i>, <i>Cheese v Thomas</i> • Explain the cases involving undue influence and third parties, citing cases such as <i>Royal Bank Scotland v Etridge</i>, <i>Barclays Bank v O’Brien</i> • Explain the rules for when a party will be placed on enquiry – where a wife or certain other parties stand surety for their husband’s debts • Explain how a third party can avoid constructive notice – that the advice should go beyond the mere nature of the surety and include looking at the seriousness of the risk. <p>Credit any other relevant points. Credit any other relevant cases.</p>	25	<table border="1" data-bbox="1422 215 2069 430"> <thead> <tr> <th data-bbox="1422 215 1747 255">AO1 Levels</th> <th data-bbox="1747 215 2069 255">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1422 255 1747 295">5</td> <td data-bbox="1747 255 2069 295">21–25</td> </tr> <tr> <td data-bbox="1422 295 1747 335">4</td> <td data-bbox="1747 295 2069 335">16–20</td> </tr> <tr> <td data-bbox="1422 335 1747 375">3</td> <td data-bbox="1747 335 2069 375">11–15</td> </tr> <tr> <td data-bbox="1422 375 1747 414">2</td> <td data-bbox="1747 375 2069 414">6–10</td> </tr> <tr> <td data-bbox="1422 414 1747 430">1</td> <td data-bbox="1747 414 2069 430">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 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 scope for judicial discretion in actual undue influence:</p> <ul style="list-style-type: none"> • That the court has never defined exactly what is meant by undue influence • The decided cases have covered a wide variety of situations • Discuss whether this is real judicial discretion or whether the cases all fit into the mould of clear evidence of improper pressure. <p>Discuss the lack of judicial discretion in class 2A relationships, contrasted with the scope for finding a developed relationship in class 2B undue influence.</p> <p>Discuss the wide scope for judicial discretion in identifying a contract which requires further explanation:</p> <ul style="list-style-type: none"> • That this need not be wholly disadvantageous • That an element of risk is not likely to be sufficient to terminate a contract. <p>Explain the development of the constructive notice cases:</p> <ul style="list-style-type: none"> • That this has reflected a desire from judges in individual cases to do justice between the parties • That the decision in the <i>Etridge</i> case has narrowed down this discretion and established firmer guidelines which add certainty for contracting parties and third parties. <p>Reach a sensible conclusion.</p>	20	<table border="1" data-bbox="1424 244 2069 459"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – A discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – An awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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4*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the ways in which a contract may be frustrated:</p> <ul style="list-style-type: none"> • Impossibility of performance, <i>Nichol and Knight v Ashton Eldridge</i>, but not mere difficulty or extra expense • Radical change of circumstances, <i>Krell v Henry</i> • Illegality of performance, <i>Fibrosa v Fairbairn Lawson</i>. <p>Explain the circumstances where the courts will decide that frustration will not apply:</p> <ul style="list-style-type: none"> • Where performance would be possible but more difficult or expensive than originally anticipated, <i>Tsakiroglou v Noblee Thorl</i> • Where the change of circumstances is not sufficiently radical, <i>Herne Bay v Hutton</i>, <i>Davis Contractors v Fareham</i> • Where the potentially frustrating event was anticipated by the parties, <i>Amalgamated Investment v John Walker</i> • Where the impossibility of performance was due to the fault of one of the parties or due to their choice to use other means to perform a contract, <i>The Super Servant 2</i> • That a lease is akin to purchasing property and that the court will be reluctant in most cases to frustrate such a contract, <i>National Carriers v Panalpina</i>. <p>Explain the provisions of the Law Reform (Frustrated Contracts) Act 1943</p> <ul style="list-style-type: none"> • Section 1(2) where money paid in advance of the frustrating event may be reclaimed minus just expenses • Section 1(3) where a party has to account for any valuable benefit they would have gained because of the frustrating event. <p>Credit any other relevant points. Credit any other relevant cases.</p>	25	<table border="1" data-bbox="1422 215 2069 430"> <thead> <tr> <th data-bbox="1422 215 1747 255">AO1 Levels</th> <th data-bbox="1747 215 2069 255">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1422 255 1747 295">5</td> <td data-bbox="1747 255 2069 295">21–25</td> </tr> <tr> <td data-bbox="1422 295 1747 335">4</td> <td data-bbox="1747 295 2069 335">16–20</td> </tr> <tr> <td data-bbox="1422 335 1747 375">3</td> <td data-bbox="1747 335 2069 375">11–15</td> </tr> <tr> <td data-bbox="1422 375 1747 414">2</td> <td data-bbox="1747 375 2069 414">6–10</td> </tr> <tr> <td data-bbox="1422 414 1747 430">1</td> <td data-bbox="1747 414 2069 430">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 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>		AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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Question	Answer	Marks	Guidance													
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of Red Crow and Landlords Limited</p> <ul style="list-style-type: none"> • Identify that it will be impossible to use the shop for much of the period of the lease and so the contract is likely to be frustrated • Candidates may identify that in most cases the courts will not frustrate a lease – this is not required for full marks • Come to any sensible conclusion about whether the lease has become frustrated • Credit any discussion regarding the effect of the law Reform (Frustrated Contracts) Act 1943 – that in this case the money has been paid in advance and so under S. 1(2) there may be claim for repayment minus reasonable expenses to be deducted by Landlords Limited. <p>In the case of Red Crow and Commershops</p> <ul style="list-style-type: none"> • Identify that the cancellation of the exhibition may be seen as a radical change of circumstances • Discuss the extent to which the point of the contract has been removed – the shop is still usable however the price paid is likely to have been much higher with the exhibition in mind • Come to any reasonable conclusion about whether the contract has been frustrated • Discuss the consequences if the contract has been frustrated – that Commershops will be required to repay the rent minus just expenses which they can retain. <p>In the case of Red Crow and Splatz</p> <ul style="list-style-type: none"> • Identify that the contract between Red Crow and Splatz may be seen as illegal if it is to advertise an illegal service • Alternatively discuss whether the contract could be seen as void due to a radical change of circumstances as it is to advertise a service which can no longer be offered by law • Conclude that the contract between Red Crow and Splatz has probably been frustrated and Splatz are no longer required to pay rent for the advertising space. <p>Reach a sensible conclusion.</p>	20	<table border="1" data-bbox="1424 209 2067 424" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">AO2 Levels</th> <th style="width: 50%;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17–20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13–16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9–12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5–8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – A discussion of the reasons for the decision in Some cases and include comment on at least 1 cited case.</p> <p>Level 1 – An awareness of the area of law identified by the question.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.		37–45	5
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Question	Answer	Marks	Guidance												
5*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> • Explain the requirements of an actionable case in misrepresentation: that there has been a false statement of fact, made to the other side, which induced them into the contract • Define what is meant by a false statement of fact or law: that it must be current fact <i>Edgington v Fitzmaurice</i> and that it must not be mere opinion <i>Bissett v Wilkinson</i> • Explain that non disclosure of a potentially material fact will not amount to a misrepresentation in most cases, <i>Fletcher v Krell</i>, but it can be if facts change after a particular statement has been made <i>With v O’Flanagan</i>, or in contracts where disclosure is required such as insurance <i>IMG v Simmonds</i> • Explain that the false statement must have induced the other party into the contract and that if a party carries out their own investigation the false statement will not be seen as an inducement <i>Attwood v Small</i>, similarly if the party has another reason for entering the contract <i>JEB Fasteners v Marks Bloom</i> • Explain that it is not necessary that a reasonable person would be induced into the contract, that the test is subjective <i>Museprime v Adhill</i>. <p>Explain the different kinds of misrepresentation in outline:</p> <ul style="list-style-type: none"> • Fraudulent misrepresentation if the statement was dishonest <i>Derry v Peak</i> • Negligent misstatement where a duty of care is owed in relation to professional advice <i>Hedley Byrne v Heller</i> • Statutory misrepresentation where the false statement of fact was made without reasonable grounds, Misrepresentation Act (1967) Section 2(1), <i>Howard Marine v Ogden</i> • Innocent misrepresentation where there were reasonable grounds for having made the statement • Explain that for all kinds of misrepresentation rescission may be claimed, subject to certain bars, and that a judge has the discretion to leave a contract in place but award damages in place of rescission, Section 2(2) <i>Misrepresentation Act</i>. <p>Credit any other relevant points. Credit any other relevant cases.</p>	25	<table border="1" data-bbox="1422 255 2072 470"> <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>In the case of Lydia and Mishra</p> <ul style="list-style-type: none"> • Discuss whether the statement about developing games for mobile phones can be seen as a statement of fact • Conclude that if Mishra knew that she was not going to develop this sort of technology the statement would be seen as a fraudulent misrepresentation. Alternatively conclude that if Mishra did intend to develop her company that way at the time of making the statement, and has since changed her mind, there has not been a misrepresentation • Discuss the remedies available for a fraudulent misrepresentation – that Lydia would be able to claim damages and rescission. <p>In the case of Lydia and Nicky</p> <ul style="list-style-type: none"> • Discuss whether Nicky made a false statement to Lydia: • At the time the statement was made it was believed by Nicky but by the time of the contract she knew it was untrue and so was under a duty to update Lydia • Discuss whether the statement induced Lydia into the contract or whether she was more motivated by her belief that land in the area was a good investment anyway • Come to any reasonable conclusion, including the remedies that would be available to Lydia if it is felt that there has been an actionable misrepresentation <p>In the case of Lydia and Oona</p> <ul style="list-style-type: none"> • Discuss whether Oona made a false statement to Lydia: Oona’s statement could be said to be an opinion and so not a statement of fact as Oona does not appear to be a professional who would owe Lydia a duty of care • Conclude that Oona did not make a misrepresentation to Lydia. • Reach a sensible conclusion, including the remedies that would be available to Lydia if it is felt that there has been an actionable misrepresentation. <p>Reach a sensible conclusion.</p>	20	<table border="1" data-bbox="1422 252 2072 467"> <thead> <tr> <th data-bbox="1422 252 1747 292">AO2 Levels</th> <th data-bbox="1747 252 2072 292">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1422 292 1747 323">5</td> <td data-bbox="1747 292 2072 323">17–20</td> </tr> <tr> <td data-bbox="1422 323 1747 355">4</td> <td data-bbox="1747 323 2072 355">13–16</td> </tr> <tr> <td data-bbox="1422 355 1747 387">3</td> <td data-bbox="1747 355 2072 387">9–12</td> </tr> <tr> <td data-bbox="1422 387 1747 419">2</td> <td data-bbox="1747 387 2072 419">5–8</td> </tr> <tr> <td data-bbox="1422 419 1747 467">1</td> <td data-bbox="1747 419 2072 467">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – A discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – An awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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6*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the consequences of economic duress on a contract, that it becomes voidable. Explain when the courts will decide that there has been unlawful duress:</p> <ul style="list-style-type: none"> • That in order to claim economic duress there must be an unlawful threat • That the unlawful threat can be to breach a contract <i>Atlas Express v Kafco</i> • That the unlawful threat can be to commit a tort <i>Universal Tankships v ITWF</i> • That ordinary commercial pressure will not amount to an unlawful threat or to duress <i>The Siboen and Sibotre, CTN Cash and Carry v Gallagher</i> • That the threat must have vitiated the consent of the other side and left them with no realistic alternative <i>Atlas Express, Pao On v Lau Yiu Long</i> • That the party seeking to claim duress must have protested at the time • That they must not hesitate in taking legal action to avoid the contract <i>Pao On v Lau Yiu Long, The Atlantic Baron</i>. <p>Credit any other relevant points. Credit any other relevant cases.</p>	25	<table border="1" data-bbox="1422 231 2069 443"> <thead> <tr> <th data-bbox="1422 231 1747 268">AO1 Levels</th> <th data-bbox="1747 231 2069 268">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1422 268 1747 304">5</td> <td data-bbox="1747 268 2069 304">21–25</td> </tr> <tr> <td data-bbox="1422 304 1747 341">4</td> <td data-bbox="1747 304 2069 341">16–20</td> </tr> <tr> <td data-bbox="1422 341 1747 378">3</td> <td data-bbox="1747 341 2069 378">11–15</td> </tr> <tr> <td data-bbox="1422 378 1747 414">2</td> <td data-bbox="1747 378 2069 414">6–10</td> </tr> <tr> <td data-bbox="1422 414 1747 443">1</td> <td data-bbox="1747 414 2069 443">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>In the case of Cando and Bulkbuy</p> <ul style="list-style-type: none"> • Discuss whether the threat was illegitimate – in this case it was a clear threat to breach a contract which would be seen as illegitimate • Consider whether it vitiated consent – in this case Cando appear to have been left with no choice but to agree to pay more or they would have endangered their contracts with their customers • Consider that they do not appear to have complained about the price increase and have not taken action until a month has passed • Consider whether this may prevent a successful claim of economic duress. <p>In the case of Cando and Victor’s Vans</p> <ul style="list-style-type: none"> • Consider that the threat in this scenario seems to be to not make contracts in the future, this is unlikely to be seen as an illegitimate threat • Consider whether there would be no grounds to end the contract for duress. <p>In the case of Cando and Alun</p> <ul style="list-style-type: none"> • Consider that Alun’s threat does not seem to be illegitimate; he does not have a restraint of trade clause in his contract which would prevent him from working for a competitor • Consider whether Alun’s threat left Cando with no real alternative but to agree – they have trained him up and could easily train another member of staff but have taken a business decision to pay him extra <p>Reach a sensible conclusion</p> <p>Candidates should be rewarded for examining what the position would be if Alun did have a restraint of trade clause in his contract. If this was the case then he could be restrained from leaving to join a competitor, duress would not apply because Cando would have an alternative course of action.</p>	20	<table border="1" data-bbox="1424 217 2069 432" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO2 Levels</th> <th style="text-align: center;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17–20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13–16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9–12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5–8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – A discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – An awareness of the area of law identified by the question.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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		Assessment Objective 2 – Analysis, evaluation and application P1 Reason that the advert Dan saw was offering a reward P2 Reason that in order to accept the reward Dan would have had to complete the certain conditions P3 Reason that the advert was written to look like a definite offer to the public P4 Reason that the advert is a unilateral offer and not an invitation to treat P5 Conclude that the statement is inaccurate															
	(b)	P1 Reason that the rewards in the advert were a unilateral advert in relation to the prize but an invitation to treat in relation to entering the show P2 Reason that when Dan posted the entry form for the show he was making a bilateral offer to enter the show P3 Reason that this offer could be accepted or rejected by the organisers P4 Reason that the entry fee was not an acceptance by Dan P5 Conclude that the statement is inaccurate	5														
	(c)	P1 Reason that a unilateral offer can't be revoked once conduct amounting to acceptance has begun. P2 Reason that in order to accept the offer Dan had to enter the competition on the day with the biggest onion P3 Reason that the organisers did not publicise any revocation before the entries were accepted P4 Reason that acceptance had begun and so it was too late to revoke the offer P5 If following P4, conclude that the statement is accurate or or P3a Reason that the prize was withdrawn before the entry could be placed P4a Reason that this was before acceptance and so was a valid	5														

Question		Answer	Marks	Guidance
		<p>revocation</p> <p>P5a If following P4(a) conclude that the statement is inaccurate</p>		
	(d)	<p>P1 Reason that the offer of a reward for the longest carrot was a unilateral offer</p> <p>P2 Reason that acceptance of the offer was by Philip entering the longest carrot on the day in order to accept the offer</p> <p>P3 Reason that Philip could not have accepted an offer he was not aware of</p> <p>P4 Reason that Philip could not claim the prize</p> <p>P5 If following P4, conclude that the statement is accurate</p> <p>or</p> <p>P3a Reason that when Philip completes the required conduct he has done all that is required of him in order to accept the offer</p> <p>P4a Reason that Philip could claim the prize</p> <p>P5a If following P4(a) conclude that the statement is inaccurate</p>	5	

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Assessment Objective 2 – Analysis, evaluation and application																	
P1 Reason that one of the grounds for a legitimate interest to tie a performer to a company is to protect an investment																	
P2 Reason that in this case Zenon have probably invested in Patrick as a very young and un-established performer																	
P3 Reason that Patrick may have found it impossible to obtain a recording contract without such a term in place																	
P4 Reason that Zenon do have a legitimate interest in preventing Patrick from working for another company																	
P5 Conclude that the statement is accurate																	
(b)	P1 Reason that the overall package being offered by Zenon to Patrick must be reasonable in order to uphold the restraint of trade	5															
	P2 Reason that in this case there seem to be few benefits to Patrick and that he is not guaranteed any work at all but still cannot work for anyone else																
	P3 Reason that Zenon have total control over Patrick and that the package seems to be unfair to the performer																
	P4 Reason that the specific terms of Patrick's restraint are not reasonable																
	P5 Conclude that the statement is inaccurate																
(c)	P1 Reason that the deal between James and Zenon must be fair to James in order to be upheld	5															
	P2 Reason that in this case James is receiving a large amount of money from Zenon																
	P3 Reason that there is still an element of risk to Zenon in hoping that James will continue to be successful in his next 4 albums																
	P4 Reason that the specific terms of James' contract with Zenon are reasonable																
	P5 Conclude that the statement is accurate																

Question		Answer	Marks	Guidance
	(d)	P1 Reason that Sarah's job involves a large amount of contact with Zenon's musicians P2 Reason that Sarah would be able to use those contacts for the benefit of a competitor if she left Zenon P3 Reason that a six month restraint is likely to be reasonable to protect Zenon and is not unfair on Sarah P4 Reason that Zenon will be able to prevent Sarah from working for a competitor for six months P5 Conclude that the statement is accurate	5	

APPENDIX 1

Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by 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, 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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