

**GCE**

**Law**

Unit **G155**: Law of Contract

Advanced GCE

**Mark Scheme for June 2017**

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

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



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

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

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

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

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

Annotation	Meaning
	AO2+
	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	Sort of

## Subject-specific marking instructions

**Before** you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria \*<sub>1</sub> (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column\*<sub>2</sub>
- question specific guidance given in 'Guidance' column\*<sub>3</sub>
- the 'practice' scripts\*<sub>4</sub> provided in Scoris and accompanying commentaries

- \*<sub>1</sub> The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- \*<sub>2</sub> The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.
- \*<sub>3</sub> Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.
- \*<sub>4</sub> The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

**may still** achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

## SECTION A

Question	Indicative Content	Mark	Guidance												
1*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p><b>Explain what is meant by a false statement</b></p> <ul style="list-style-type: none"> <li>• That a false statement may be made by words or conduct, <i>Spice Girls v Aprilia</i></li> <li>• That opinion will not be a false statement unless it made in a professional capacity <i>Bisset v Wilkinson, Esso v Marsdon</i></li> <li>• That a statement of future intention will not be a false statement however a statement of intent which is untrue when it is made is a false statement, <i>Edgington v Fitzmaurice, Kleinwort Benson v Malaysia Mining</i></li> <li>• That silence is not normally a false statement of fact unless the case concerns changes in circumstances since an original statement <i>With v O’Flanagan</i>; or is concerned with insurance contracts <i>IMG v Simmonds, Consumer Insurance (Disclosure and Representations) Act 2012</i>; or where it amounts to a misleading practice, <i>Consumer Rights Act 2015</i></li> </ul> <p><b>Explain the different kinds of misrepresentation</b></p> <ul style="list-style-type: none"> <li>• Explain fraudulent misrepresentation, where a party has made a statement which they know to be untrue or are reckless about its truth <i>Derry v Peek, Thomas Witter v TBP</i></li> <li>• Explain statutory misrepresentation under S.2(1) of the Misrepresentation Act 1967, where a party did not have reasonable grounds for making the statement <i>Howard Marine v Ogden</i>, explain how section 2(1) requires the maker of the statement to show reasonable grounds rather than the complainant</li> </ul>	25	<table border="1" data-bbox="1279 347 1682 560"> <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><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Answers are unlikely to achieve levels 4 or 5 without a detailed discussion of the different kinds of misrepresentation</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>proving that they were unreasonable</p> <ul style="list-style-type: none"> <li>• Explain negligent misstatement where the party making the statement was giving advice in a professional capacity <i>Hedley Byrne v Heller</i>.</li> <li>• Explain innocent misrepresentation with reference to the Misrepresentation Act, where the party did have reasonable grounds to have made the statement</li> </ul> <p><b>Explain the remedies that a party can claim for each kind of misrepresentation</b></p> <ul style="list-style-type: none"> <li>• Explain the general remedy of rescission that applies to all kinds of misrepresentation and that the remedy can be lost through lapse of time, affirmation, impossibility or third party rights in the goods</li> <li>• Explain that for all kinds of misrepresentation an indemnity can be awarded alongside rescission, citing cases such as <i>Whittington v Seale Hayne</i></li> <li>• Explain the measure of damages for fraudulent misrepresentation, that all losses can be claimed regardless of foreseeability <i>Smith New Court v Scrimgeour Vickers</i></li> <li>• Explain the measure of damages for statutory misrepresentation, that they are calculated the same way as for fraud except that there must be a link between the false statement and the loss suffered, <i>Royscot Trust v Rogerson, Smith New Court v Scrimgeour Vickers</i></li> <li>• Explain the measure of damages for negligent misstatement, that the kind of loss must have been foreseeable, <i>The Wagon Mound</i></li> <li>• Explain that damages cannot be claimed for innocent misrepresentation unless a judge awards them in lieu of rescission under S.2(2) of the Misrepresentation Act</li> <li>• Credit reference to the Consumer Rights Act 2015 remedies</li> </ul>		

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	<ul style="list-style-type: none"> <li>• Credit any other relevant case(s).</li> <li>• Credit any other relevant point(s).</li> </ul>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Discuss whether the level of fault in making the false statement justifies the damages available</b></p> <ul style="list-style-type: none"> <li>• Discuss whether the high level of fault in fraudulent misrepresentation, involving actual dishonesty, justifies the damages that are unlimited and do not have to be foreseeable</li> <li>• Discuss whether the ruling in <i>Smith New Court</i> is justified, that a party was liable for losses that they were not directly to blame for and that they could not possibly have foreseen</li> <li>• Discuss whether recklessness, the lowest level of fault that can be attributed to fraudulent misrepresentation, justifies unlimited damages, and the extent to which recklessness is distinct from 'not having reasonable grounds' in statutory misrepresentation</li> <li>• Discuss whether the ruling in <i>Royscot Trust v Rogerson</i>, that the damages of statutory misrepresentation should be measured in the same way as for fraudulent misrepresentation, was justified in the light of the later decision in <i>Smith New Court</i>, and whether it is moderated by the requirement that for statutory misrepresentation the losses are 'closely linked' to the false statement</li> <li>• Discuss whether the high standards of care required of the representor, as illustrated in the case <i>Howard Marine</i>, justify the generous measure of damages awarded for statutory misrepresentation</li> <li>• Discuss whether the Consumer Insurance (Disclosure</li> </ul>	20	<table border="1" data-bbox="1279 387 1682 600"> <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><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>and Representations) Act 2012 has improved fairness in relation to insurance contracts, where a consumer might have been unaware that they were required to disclose facts which had not been requested</p> <ul style="list-style-type: none"> <li>• Discuss whether the Consumer Rights Act 2015 has improved fairness in relation to consumer contracts by giving more protection against misleading practices</li> </ul> <p><b>Discuss other remedies</b></p> <ul style="list-style-type: none"> <li>• Discuss whether the lack of damages available for innocent misrepresentation can lead to injustice, particularly where there is a bar to rescission.</li> </ul>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th data-bbox="1279 660 1565 692">AO1 + AO2 Marks</th> <th data-bbox="1565 660 1749 692">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 692 1565 724">37–45</td> <td data-bbox="1565 692 1749 724">5</td> </tr> <tr> <td data-bbox="1279 724 1565 756">28–36</td> <td data-bbox="1565 724 1749 756">4</td> </tr> <tr> <td data-bbox="1279 756 1565 788">19–27</td> <td data-bbox="1565 756 1749 788">3</td> </tr> <tr> <td data-bbox="1279 788 1565 820">10–18</td> <td data-bbox="1565 788 1749 820">2</td> </tr> <tr> <td data-bbox="1279 820 1565 852">1–9</td> <td data-bbox="1565 820 1749 852">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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2*	<p>Potential answers may:  <b>Assessment Objective 1 - Knowledge and understanding</b></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 v Maxim Nordenfeld</i></p> <p><b>Explain the general prohibition on terms to restrain trade and the grounds to allow a restraint,</b></p> <p>That they should not prevent a person from making a living in the only area of business they know <i>British Reinforced Concrete v Schleff</i></p> <p>That they serve to prevent competition which undermines the economic efficiency of the country <i>Esso v Harper's Garage</i></p> <p>That there may be a legitimate interest to protect in an employment situation such as specialist knowledge or client details, <i>Nordenfeld, Forster v Suggett, Hanover Insurance v Schapiro</i></p> <p>That there must be a legitimate interest to protect such as business investment, <i>Alec Lobb v Total Oil, Panayiotou v Sony</i></p> <p><b>Explain that the restraint must be seen as reasonable in order to be enforceable</b></p> <p>That the restraint must be reasonable in respect of time, <i>Home Counties Dairies v Skilton, Fitch v Dewes</i> and that the insertion of break clauses may make a term more reasonable <i>Esso v Harper's Garage, Alec Lobb v Total Oil</i></p> <p>That the restraint must be reasonable in respect of distance, <i>Fitch v Dewes, Mason v Provident Clothing</i></p>	25	<table border="1" data-bbox="1279 316 1682 528"> <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><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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	<p>That the restraint must be reasonable in terms of what is included, <i>Mont v Mills</i>, <i>Home Counties Dairies v Skilton</i></p> <p>That any restraint must be generally reasonable between the parties and that this may take into account the element of negotiation and advice that was received, <i>Proactive Sport Management v Rooney</i></p> <p>Explain that the restraint must be reasonable in the interests of the parties and in the interests of the public, <i>Schroeder v Macaulay</i></p> <p><b>Explain the effect of a term being found to be unreasonably in restraint of trade;</b></p> <p>That 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 the courts may in some circumstances interpret a term narrowly in order to make it reasonable, <i>Home Counties Dairies v Skilton</i>, <i>Lyne Pirkis v Jones</i></p> <p>Explain that there is no general implied term in restraint of competition make reference to cases such as <i>Faccenda Chicken v Fowler</i></p> <ul style="list-style-type: none"> <li>• Credit any other relevant case(s).</li> <li>• Credit any other relevant point(s).</li> </ul>		

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	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Discuss whether the reasons for allowing a restraint are uncertain:</b></p> <ul style="list-style-type: none"> <li>• Where a party has knowledge of specialist or secret information about a company – this is an objective test and should not lead to uncertainty however some of the cases suggest there is a fine line between secret processes and generic skills – <i>Herbert Morris v Saxelby</i></li> <li>• Where one party has knowledge of a client base – this should also be clearly indicated by the nature of the employment and customer relations</li> <li>• That the courts appear to be motivated by what is fair to an employee when that employee only knows one line of business, and that an emphasis on fairness in a particular case inevitable leads to less certainty</li> <li>• Where a business vendor is prevented from setting up in competition with the buyer – the courts are required to make a judgement about the time and distance which will protect the buyer in such circumstances and this involves an element of judgement</li> <li>• Where a solus agreement is enforced the term must be reasonable and any breaks are more likely to make it reasonable, this requires the courts to make a judgement about what is reasonable in relation to the sum of money involved</li> <li>• Where an entertainer is signed to a record label the secret nature of compromise agreements means that the exact nature of restraints is unlikely to be open to public scrutiny or open competition and so precedents will be difficult to follow</li> </ul>	20	<table border="1" data-bbox="1279 245 1682 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><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p><b>Discuss whether the restrictions in terms of time, distance and scope are certain</b></p> <ul style="list-style-type: none"> <li>• That the courts are able to balance one aspect against another, for example a longer period of time against a shorter distance, and that this may lead to guesswork amongst those drafting terms as to what is likely to be seen as reasonable</li> <li>• That there are no standard distances which are seen as reasonable and that it depends on the nature of the business and what is fair to the parties involved</li> <li>• Discuss whether these variables are essential in order to make the terms fair to both parties as the nature of each party is different and a lack of flexibility would be unworkable</li> </ul> <p><b>Discuss whether the rules on blue pencilling and interpretation lead to uncertainty</b></p> <ul style="list-style-type: none"> <li>• Discuss the limitations of blue pencilling – that the restraining party has to make sure the term is justifiable in the first place because the courts will not edit or change it to make it reasonable if not, and that this promotes certainty between the parties</li> <li>• Discuss that the courts have sometimes interpreted a term narrowly in order to restrict an unreasonable effect and that this can be seen as uncertain, both in terms of when they will do this and the way in which the interpretation will take effect</li> </ul> <p>Come to a reasoned conclusion in response to the question.</p> <ul style="list-style-type: none"> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul>		

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	<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th data-bbox="1279 244 1570 276">AO1 + AO2 Marks</th> <th data-bbox="1570 244 1749 276">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 276 1570 316">37–45</td> <td data-bbox="1570 276 1749 316">5</td> </tr> <tr> <td data-bbox="1279 316 1570 355">28–36</td> <td data-bbox="1570 316 1749 355">4</td> </tr> <tr> <td data-bbox="1279 355 1570 395">19–27</td> <td data-bbox="1570 355 1749 395">3</td> </tr> <tr> <td data-bbox="1279 395 1570 435">10–18</td> <td data-bbox="1570 395 1749 435">2</td> </tr> <tr> <td data-bbox="1279 435 1570 475">1–9</td> <td data-bbox="1570 435 1749 475">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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3*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain the effect of frustration on a contract, that it becomes void</p> <p><b>Explain the ways in which a contract may be frustrated:</b></p> <ul style="list-style-type: none"> <li>• Where performance has become impossible, <i>Nichol and Knight v Ashton Eldridge, Taylor v Caldwell</i></li> <li>• Where there has been a radical change of circumstances, where performance of the contract would amount to something very different to what was originally anticipated, <i>Krell v Henry</i></li> <li>• Where performance would be illegal, <i>Fibrosa v Fairbairn Lawson</i></li> <li>• Or the multi factorial approach, taking into account the parties' knowledge, expectations, assumptions and contemplation of risk <i>Edwinton Commercial v Tsaviliris Russ</i></li> </ul> <p><b>Explain the circumstances where the courts will decide that frustration will not apply.</b></p> <ul style="list-style-type: none"> <li>• Where performance would be possible but more difficult or expensive than originally anticipated, <i>Tsakiroglou v Noblee Thorl</i></li> <li>• Where the change of circumstances is not sufficiently radical, <i>Herne Bay v Hutton</i>,</li> <li>• Where the potentially frustrating event was or should have been anticipated by the parties, as frustration is where something has happened which was not contemplated by the parties <i>Amalgamated</i></li> </ul>	25	<table border="1" data-bbox="1279 316 1682 528"> <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><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Answers are unlikely to achieve levels 4 or 5 without explaining the law on the limits to frustration</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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	<p><i>Investment v John Walker, Davis Contractors v Fareham</i></p> <ul style="list-style-type: none"> <li>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, Maritime National v Ocean Trawlers</i></li> <li>Where the parties have included a force majeure term, express provision for what will happen in such an event, <i>Thames Valley Power Limited v Total Gas &amp; Power Limited, Channel Island Ferries v Sealink</i></li> </ul> <p><b>Explain the provisions of the Law Reform (Frustrated Contracts) Act 1943</b></p> <ul style="list-style-type: none"> <li>Section 1(2) where money paid/payable in advance of the frustrating event may be reclaimed/kept minus justified expenses, <i>ICM v Gamarco</i></li> <li>Section 1(3) where a party has to account for any unjust enrichment they would have gained because of the frustrating event, <i>BP v Hunt</i></li> <li>Credit any other relevant case(s).</li> <li>Credit any other relevant point(s).</li> </ul>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Consider limits on the doctrine of frustration</b></p> <ul style="list-style-type: none"> <li>Discuss whether the difference between impossible and merely more difficult means that it will be very rare to successfully argue that a contract has become impossible to perform. Consider that the parties making the shipping contract in <i>Tsakiroglou</i> would have both anticipated the use of the Suez canal but that it was still possible to perform the contract using other shipping routes</li> <li>Discuss whether the limits on the doctrine of radical</li> </ul>	20	<table border="1" data-bbox="1279 1002 1682 1214"> <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:  <b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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Question	Indicative Content	Mark	Guidance
	<p>change of circumstances, that performance which is merely more difficult or more expensive will not frustrate a contract and that the parties are expected to take the risks of rising costs into account when negotiating their deal in the first place, mean that this line of argument is all but impossible to argue</p> <ul style="list-style-type: none"> <li>• Discuss whether the widespread use of force majeure terms has taken the place of the courts deciding when a contract has become substantially different to that which was anticipated, and that this certainty is more desirable for the parties</li> <li>• Discuss the limiting effect of choice of performance, that the parties are often faced with the dilemma of keeping their options open for the future or giving themselves more chance to escape a deal which has become less favourable (<i>Super Servant 2</i>), and that this makes it even harder for a party to claim that a contract has become frustrated</li> <li>• Discuss the fact that a contract is unlikely to be frustrated if the parties had anticipated a level of risk in the first place and that frustration will not take the place of making an effective contract</li> <li>• Discuss the effect on recent market fluctuations and the world economic crisis which has left many companies in unprofitable contracts which have remained binding on them <i>Thames Valley Power Limited v Total Gas &amp; Power Limited</i></li> <li>• Credit a discussion of the limits of the Law Reform (Frustrated Contracts) Act 1943 which does not allow any compensation for work completed before frustration, only for the much narrower grounds of preventing unjust enrichment. Discuss whether these very narrow grounds make force majeure terms even more attractive and further limit the circumstances</li> </ul>		<p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>



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	<p>when a contract is likely to be frustrated</p> <ul style="list-style-type: none"> <li>• Credit any comparisons with the law on mistake which is equally restrictive in terms of when a contract will become void</li> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th data-bbox="1279 523 1570 561">AO1 + AO2 Marks</th> <th data-bbox="1570 523 1749 561">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 561 1570 600" style="text-align: center;">37–45</td> <td data-bbox="1570 561 1749 600" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1279 600 1570 638" style="text-align: center;">28–36</td> <td data-bbox="1570 600 1749 638" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1279 638 1570 676" style="text-align: center;">19–27</td> <td data-bbox="1570 638 1749 676" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1279 676 1570 715" style="text-align: center;">10–18</td> <td data-bbox="1570 676 1749 715" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1279 715 1570 753" style="text-align: center;">1–9</td> <td data-bbox="1570 715 1749 753" style="text-align: center;">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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## SECTION B

Question	Indicative Content	Mark	Guidance												
4*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p><b>Explain the presumptions that apply in domestic and commercial contracts</b></p> <ul style="list-style-type: none"> <li>• That contracts made between family members have a presumption that there is no intention to create legal relations, <i>Jones v Padavatton</i>, <i>Balfour v Balfour</i></li> <li>• That commercial contracts have an intention to create legal relations, <i>Esso v commissioners for Customs and Excise</i>, <i>Carlill v Carbolic Smoke Ball Company</i></li> </ul> <p><b>Explain how the presumptions can be rebutted in commercial cases</b></p> <ul style="list-style-type: none"> <li>• That the commercial presumption can be rebutted if clear words are used to show no legal intent, <i>Rose and Frank v Crompton</i>, <i>Jones v Vernon Pools</i></li> <li>• That the commercial presumption may be rebutted where the words used are not clear enough to amount to a specific promise <i>Kleinwort Benson v Malaysia Mining</i>, <i>Edmonds v Lawson</i></li> <li>• That a statement indicating no previous legal liability may be seen as merely explaining the offer which is now being made <i>Edwards v Skyways</i></li> </ul> <p><b>Explain how the presumptions can be rebutted in domestic cases</b></p> <ul style="list-style-type: none"> <li>• That there will be legal intent if the parties are no longer acting on the basis of love and affection, <i>Merritt v Merritt</i></li> <li>• That there will be legal intent if the parties have acted in reliance on the promise, <i>Tanner v Tanner</i>, <i>Parker v Clark</i>, <i>Simpkins v Pays</i></li> </ul>	25	<table border="1" data-bbox="1279 347 1682 560"> <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><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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	<ul style="list-style-type: none"> <li>• That there will be legal intent where there is a commercial basis to the contract, <i>Albert v Motor Insurer's Bureau</i>, <i>Snelling v Snelling</i></li> <li>• Credit any other relevant cases</li> </ul>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Sergei and Boozers</b></p> <ul style="list-style-type: none"> <li>• Identify that Sergei and Boozers are in a commercial relationship and so the presumption would be that they intend to form a legally binding agreement</li> <li>• Consider that the words 'make sure they get the best possible deal' wouldn't have the effect of directly excluding the presumption (<i>Rose and Frank v Crompton</i>)</li> <li>• Consider whether the words are too vague to amount to a binding promise (<i>Kleinwort Benson v Malaysia Mining</i>)</li> <li>• Come to any reasonable conclusion on the facts</li> </ul> <p><b>Sergei and Valerie</b></p> <ul style="list-style-type: none"> <li>• Identify that this is a family arrangement and so the initial presumption would be that there is no intention to be legally bound</li> <li>• Identify that the presumption would be rebutted where the circumstances are clearly commercial in nature</li> <li>• Consider that in this case Valerie is agreeing to sell shares and so the deal has serious consequences and is no longer domestic in nature</li> <li>• Consider whether the words used by Sergei, 'act of goodwill', exclude an intention to be bound (<i>Rose and Frank v Crompton</i>)</li> <li>• Come to any reasonable conclusion on the facts</li> </ul>	20	<table border="1" data-bbox="1279 456 1682 667"> <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><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p> <p>Answers are unlikely to achieve levels 4 or 5 without a developed answer which discusses possible distinguishing factors in the application of the relevant case law.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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Question	Indicative Content	Mark	Guidance												
	<p><b>Sergei and Ivan</b></p> <ul style="list-style-type: none"> <li>• Identify that this is a family arrangement and so the initial presumption would be that there is no intention to be legally bound</li> <li>• Identify that where one party has acted in reliance on a promise the presumption may be rebutted</li> <li>• Consider that Ivan has given up some overtime in order to complete the decorating and so has clearly acted in reliance and changed his financial position</li> <li>• Come to any reasonable conclusion on the facts</li> <li>• Credit any other relevant point(s)</li> </ul>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1" style="width: 100%;"> <thead> <tr> <th data-bbox="1279 730 1570 769">AO1 + AO2 Marks</th> <th data-bbox="1570 730 1749 769">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 769 1570 807" style="text-align: center;">37–45</td> <td data-bbox="1570 769 1749 807" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1279 807 1570 845" style="text-align: center;">28–36</td> <td data-bbox="1570 807 1749 845" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1279 845 1570 884" style="text-align: center;">19–27</td> <td data-bbox="1570 845 1749 884" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1279 884 1570 922" style="text-align: center;">10–18</td> <td data-bbox="1570 884 1749 922" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1279 922 1570 960" style="text-align: center;">1–9</td> <td data-bbox="1570 922 1749 960" style="text-align: center;">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>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Potential answers may:</p> <p><b>Explain the rules of privity;</b></p> <ul style="list-style-type: none"> <li>• That a contract can only be enforced by and against the parties to the contract, <i>Tweddle v Atkinson</i>, <i>Dunlop v Selfridge</i>, <i>Beswick v Beswick</i></li> <li>• Candidates may explain that the rule comes from the need for the parties to have given consideration to the agreement in order to enforce it.</li> </ul> <p><b>Explain statutory exceptions,</b></p> <ul style="list-style-type: none"> <li>• Contract (Rights of Third Parties) Act 1999; allowing a party who was intended to benefit from a contract, which they were not a party to, to enforce the contract in their own right. <i>Nisshin Shipping v Cleaves &amp; Co</i></li> <li>• Explain when the statute will apply, S.1(1) where the contract expressly states that the third party shall have such a right, or where a third party is expressly identified and the contract purports to confer a benefit on them, <i>Dolphin &amp; Maritime v Sveriges</i></li> <li>• Explain when the statute will not apply, S.1(2) where it appears that the parties did not intend the term to be enforceable by a third party, <i>Prudential Assurance v Ayres</i>. Also that the rights of a third party may be expressly excluded.</li> <li>• Discuss circumstances where the contracting parties will be unable revoke or vary the terms of the contract which benefit a third party, under S.2 where the third party has indicated assent to the term or the promisor is aware that the third party has relied on the term.</li> <li>• Explain defences available under the act, that S.3</li> </ul>	25	<table border="1" data-bbox="1279 312 1682 523"> <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><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Answers are unlikely to achieve levels 4 or 5 without an accurate explanation of the Contract (Rights of Third Parties) Act</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>allows a contracting party to have such defences against a third party as they would have had against a contracting party</p> <p><b>Explain exceptions developed by the courts:</b></p> <ul style="list-style-type: none"> <li>• Special cases, where a contracting party may sue on behalf of another who was intended to benefit from the contract in certain categories of case, <i>Jackson v Horizon Holidays</i>, <i>Woodar v Wimpey</i></li> <li>• Discuss the extent to which the special case principle has been developed to allow developers to recover losses on behalf of eventual users of property, <i>Darlington Borough council v Wiltshire Northern</i>, , <i>Linden Gardens v Lenesta Sludge</i>, <i>Alfred McAlpine Construction v Panatown</i></li> </ul> <p>Credit can also be given for any other discussion of ways that the rule of agency may be avoided at common law: collateral contracts, assignment, agency, suing under the law of negligence, the trust device <b>provided</b> that the candidate attempts to relate these to the facts of the problem question.</p> <p>Discuss any other relevant points</p>		

		<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Alex and Sparks</b></p> <ul style="list-style-type: none"> <li>Identify that Alex does not have a contract with Sparks, as Sparks are a subcontractor and only have an agreement with Owen, and so Alex does not have the right to sue them</li> <li>Discuss whether the contract between Sparks and Owen intends to confer a benefit on Alex as a third party which he could enforce under the Contract (Rights of Third Part) Act 1999</li> <li>Identify that contracts between builders and subcontracting parties do not usually intend to give a benefit to the property owner and that there is nothing indicated here to suggest the opposite</li> <li>Conclude that Alex will not be able to sue Sparks directly for any breaches of contract</li> </ul> <p>Credit the application of any other exception to the rule of privity such as agency or collateral contracts. More credit to be given if these are considered but dismissed.</p> <p><b>Brickz and Alex</b></p> <ul style="list-style-type: none"> <li>Identify that there is no privity of contract between Alex and Brickz</li> <li>Identify that Brickz are a third party who are intended to benefit from the contract between Alex and Owen under the Contract (Rights of Third Part) Act 1999</li> <li>Identify that any defences that Alex would have had against Owen under the construction contract will also be available against the third party Brickz</li> <li>Identify that there appear to be faults with the work which would allow Alex to withhold some of the payment if he was being sued by Owen and that this</li> </ul>	20	<table border="1" data-bbox="1279 236 1682 448"> <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><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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		<p>defence will also apply against Brickz</p> <ul style="list-style-type: none"> <li>• Conclude that Brickz will be able to sue for any amount that Owen could have sued for but that Alex may have a defence</li> </ul> <p><b>Alex and Owen on behalf of Sarah</b></p> <ul style="list-style-type: none"> <li>• Identify the general rule that a party is only able to sue for losses that they have suffered and not for another party</li> <li>• Identify that on this basis Alex would not be able to sue on behalf of Sarah's losses</li> <li>• Identify that there are special classes of contract where a party is able to sue on behalf of another person's losses</li> <li>• Identify that these special classes of contract have been extended to property contracts where it is always assumed that the contracting party is not intended to be the eventual user of the property, the 'narrow approach' to claiming contract damages on behalf of another party as discussed in <i>Linden Gardens v Lenesta Sludge</i></li> <li>• Conclude that Alex will be able to sue on behalf of Sarah</li> <li>• Credit any discussion of the application of <i>Panatown</i> if a right of action had been agreed in the original contract.</li> </ul> <p>Credit discussion of any other exceptions to the rule of privity, for example that the Contract (Rights of Third Part) Act 1999 would not apply because the contract clearly does not intend to confer a directly enforceable benefit on Sarah.</p> <ul style="list-style-type: none"> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul>		
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1–9	1															

Question	Indicative Content	Mark	Guidance												
6*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p><b>Explain the rules of performance of a contract</b></p> <ul style="list-style-type: none"> <li>• That payment cannot be claimed for unless performance is completed <i>Cutter v Powell</i></li> <li>• That performance must be exact, <i>Re Moore and Landauer</i></li> <li>• That a series of breaches over a period of time which have the effect of depriving the other side of substantially the whole benefit of the contract will prevent a claim for payment, <i>Rice v Great Yarmouth</i></li> </ul> <p><b>Explain relevant exceptions to the rule</b></p> <ul style="list-style-type: none"> <li>• That a contract may be severable (or divisible) into different obligations, each of which may be seen as a different obligation, <i>Ritchie Atkinson, Regent Aisestadt v Francesco</i></li> <li>• That the contract may have been substantially performed; <ul style="list-style-type: none"> <li>○ If the contract has been substantially performed a claim may be made for the contract price minus an amount for fixing whatever work needs to be done, <i>Hoening v Isaacs, Williams v</i></li> </ul> </li> </ul>	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><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Indicative Content	Mark	Guidance
	<p><i>Roffey</i></p> <ul style="list-style-type: none"> <li>○ But this will not be the case if the amount that remains to be done removes all the benefit from the contract or causes further damage <i>Bolton v Mahadeva</i>.</li> </ul> <ul style="list-style-type: none"> <li>● 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></li> <li>● Explain the rules for time of performance; <ul style="list-style-type: none"> <li>○ that where no time is set for performance it must be completed within a reasonable time,</li> <li>○ that a reasonable time may be specified within the contract <i>Union Eagle v Golden Achievement</i></li> <li>○ that the parties are entitled to set a specific date for performance which becomes a condition of the contract <i>Rickards v Oppenheim</i></li> <li>○ that, in the absence of a specific date being set, the test is the same as for innominate terms, the late performance will be repudiatory if the other side is deprived of substantially the whole benefit of the contract <i>Astea v Time</i></li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>● Credit any other relevant case(s).</li> <li>● Credit any other relevant point(s).</li> </ul>		

		<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Flighty and Bill</b></p> <ul style="list-style-type: none"> <li>Identify that the contract requires Bill to perform the whole obligation and that the basic rule is that performance must be complete</li> <li>Identify that this may be a severable contract if there is a benefit to Flighty in getting each individual chapter</li> <li>Identify that the contract gives a price per chapter which would support the contract being severable</li> <li>Identify that if the contract is severable then Bill has discharged part of his obligations by offering the 8 chapters and Flighty will be in breach for not accepting them</li> <li>Identify that Flight probably can't publish 8 chapters by themselves and so the contract would not be seen as severable</li> <li>Conclude the Bill will not be entitled to any payment for the work that he has done</li> </ul> <p><b>Flighty and Lucy</b></p> <ul style="list-style-type: none"> <li>Identify that the basic rule is that Lucy's performance must be exact and complete in order to claim any money for the work she has done</li> <li>Identify that Lucy could argue that the amount which remains to be done is so small that her work amounts to substantial performance</li> <li>Identify that the effect on Flighty is considerable as they will not be able to use her illustrations for the trade show, and that this would suggest there has not been substantial performance</li> <li>Conclude that Lucy will not be able to claim any payment for the work that she has done</li> </ul>	20	<table border="1" data-bbox="1279 236 1682 448"> <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><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks															
5	17–20															
4	13–16															
3	9–12															
2	5–8															
1	1–4															

		<p><b>Flighty and Pressers</b></p> <ul style="list-style-type: none"> <li>• Identify that where there is no specific date set for performance in a contract, performance must take place within a reasonable time</li> <li>• Identify that Flighty are entitled to give reasonable notice that they require performance of the contract, in this case delivery of the machine</li> <li>• Discuss whether 2 weeks is likely to be seen as a reasonable period of time for the manufacture of a machine</li> <li>• Identify that if the 2 weeks is a reasonable time, Flighty will be entitled to treat the contract as repudiated and not accept the machine or make any payment for it</li> <li>• Come to a reasonable conclusion</li> <li>• Credit any other relevant point(s).</li> </ul>														
		<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table 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
AO1 + AO2 Marks	AO3 Mark															
37–45	5															
28–36	4															
19–27	3															
10–18	2															
1–9	1															

## SECTION C

Question		Indicative Content	Mark	Guidance	
7		<b>Assessment Objective 2 - Analysis, evaluation and application</b>		<b>AO2 Levels</b>	<b>AO2 Marks</b>
				5	5
				4	4
				3	3
				2	2
				1	1
	<b>(a)</b>	<p>P1 Reason that the contract between Alfie and Rick will be void if there is a mistake which is fundamental</p> <p>P2 Reason that where a contract is conducted face to face the contract is made with the person present regardless of what identity is claimed</p> <p>P3 Reason that in this case Rick appears to be present in order to show the passport to Alfie</p> <p>P4 Reason that the contract will not be void for mistake</p> <p>P5 Conclude that the statement is <b>inaccurate</b></p>	5		
	<b>(b)</b>	<p>P1 Reason that Alfie can recover the painting if he still had title when Rick sold the painting to Tina</p> <p>P2 Reason that if the contract is voidable for misrepresentation, title may pass until the contract is rescinded</p> <p>P3 Reason that Alfie can rescind the contract and regain title if he does so before the goods have been sold on to Tina</p> <p>P4 Reason that as the contract to Tina takes place on Thursday, Alfie's contacting the police on Wednesday would count as rescission</p> <p>P5 Conclude that the statement is <b>accurate</b>.</p>	5		
	<b>(c)</b>	<p>P1 Reason that the contract between Alfie and Bram will be void for unilateral mistake if there is no true agreement</p> <p>P2 Reason that where one party is aware that the other is mistaken as to a term in the contract, the contract will be void</p>	5		

Question	Indicative Content	Mark	Guidance
	P3 Reason that in this case Bram must have been aware that Alfie was mistaken in his offer P4 Reason that the contract will be void for mistake P5 Conclude that the statement is <b>accurate</b> .		
(d)	P1 Reason that lapse of time will only be an issue if the contract is voidable for misrepresentation P2 Reason that where a contract is void for mistake it does not need to be rescinded as there was never a contract P3 Reason that the contract between Alfie and Bram is void for mistake and not voidable for misrepresentation P4 Reason that lapse of time will not prevent Alfie ending the contract P5 Conclude that the statement is <b>inaccurate</b> .	5	

Question		Indicative Content	Mark	Guidance	
8		<b>Assessment Objective 2 - Analysis, evaluation and application</b>		<b>AO2 Levels</b>	<b>AO2 Marks</b>
				5	5
				4	4
	(a)	<p>P1 Reason that constructive notice applies if the bank should have been aware of the likelihood of improper pressure by Harry</p> <p>P2 Reason that constructive notice applies where a jointly owned home has been used as security for business debts</p> <p>P3 Reason that in this case Harry and Daisy jointly own the home and it being used as security for Harry's business debts</p> <p>P4 Reason that constructive notice will apply as both criteria are satisfied</p> <p>P5 Conclude that the statement is <b>accurate</b>.</p>	5	3	3
				2	2
				1	1
	(b)	<p>P1 Reason that to avoid constructive notice taking place the bank must give Daisy independent and detailed advice</p> <p>P2 Reason that the advice must include the level of risk and the ability of the parties to repay the loan by other means</p> <p>P3 Reason that in this case the only advice given to Daisy was that if the loan was not repaid the house was at risk</p> <p>P4 Reason that the advice to Daisy was not detailed enough to be sufficient</p> <p>P5 Conclude that the statement is <b>inaccurate</b>.</p>	5		
	(c)	<p>P1 Reason that if improper pressure was placed on Sheila to the knowledge of the Bank, then that would be seen as actual undue influence</p> <p>P2 Reason that when arguing actual undue influence, a relationship of trust is not necessary</p> <p>P3 Reason that Sheila was subject to improper pressure when she was upset and not allowed to ask any</p>	5		

Question		Indicative Content	Mark	Guidance
		<p>questions</p> <p>P4 Reason that Sheila can claim actual undue influence</p> <p>P5 Conclude that the statement is <b>inaccurate</b>.</p>		
	<b>(d)</b>	<p>P1 Reason that there is no need to show a transaction calling for explanation when arguing actual undue influence</p> <p>P2 Reason that there is evidence that Sheila entered the deal through improper pressure</p> <p>P3 Reason that as Sheila was improperly influenced she can bring the contract to an end for actual undue influence</p> <p>P4 Reason that the adequate value of the shares is therefore irrelevant in this case</p> <p>P5 Conclude that the statement is <b>inaccurate</b>.</p>	5	



### APPENDIX 1 – Advanced GCE Law Levels of Assessment

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

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

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