

# **Mark Scheme for January 2011**

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

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

Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

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Any enquiries about publications should be addressed to:

OCR Publications  
PO Box 5050  
Annesley  
NOTTINGHAM  
NG15 0DL

Telephone: 0870 770 6622  
Facsimile: 01223 552610  
E-mail: [publications@ocr.org.uk](mailto:publications@ocr.org.uk)

- 1\* Discuss the significance of the case of *Carlill v Carbolic Smoke Ball Co* [Source 1 pages 2–3. Special Study Materials] to the development of the law of offer and acceptance. [16]

Mark Levels	AO2
Level 5	11–12
Level 4	9–10
Level 3	7–8
Level 2	4–6
Level 1	1–3

Mark Levels	AO3
4	4
3	3
2	2
1	1

Potential answers **MAY**:

**Assessment Objective 2** (12)

- CP** Discuss the significance of the case – extended the law so that a contract could exist even though the offer was made to the whole world rather than to an individual.
- AP** Discuss the reasoning given in the case:
- An offer can be made to the whole world – the contract is formed when a person performs the terms demanded by the offer
  - It differed from mere offers to negotiate.
- AP** Discuss also that the offer was identified as a unilateral offer – and that:
- A unilateral offer can be accepted by performance
  - This means that acceptance of the offer does not have to be directly communicated to the offeror.
- AP** Make any other relevant comment.
- LC** Link to any related case for development eg *Errington v Errington & Woods* for unilateral offer, *Partridge v Crittenden* for distinction from invitation to treat, *Brogden v Metropolitan Railway Co* for rules on acceptance by conduct, *Felthouse v Bindley* to contrast with rule that silence is not acceptance or any other relevant case on offer and acceptance.

Maximum three marks for Critical Point (CP)

Maximum three marks for any Analytical Point (AP)

Maximum three marks for any second Analytical Point (AP)

Maximum three marks for a relevant Linked Case (LC)

Candidates will be unable to achieve level 5 AO2 marks without discussing the key critical point arising from the case, using a linked case to show development and making two further analytical points. Stretch, challenge and synoptic consideration can be demonstrated by candidates whose discussion does this and identifies the role played by judges in developing the law.

**Assessment Objective 3**

**(4)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2\* In Source 3 [page 4 lines 22-25 Special Study Materials] the authors refer to Lord Wilberforce stating that: “*English law... in application takes a practical approach, often at the cost of forcing the facts to fit uneasily into the worked slots of offer [and] acceptance ...*”.

Discuss how accurately the above statement reflects how judges have developed the law on offer and acceptance. [34]

Mark Levels	AO1	AO2
Level 5	14–16	13–14
Level 4	11–13	10–12
Level 3	8–10	7–9
Level 2	5–7	4–6
Level 1	1–4	1–3

Mark Levels	AO3
4	4
3	3
2	2
1	1

Potential answers **MAY**:

### Assessment Objective 1

(16)

Explain the basic rules of offer and acceptance in contract law:

- A contract is only made where there is an agreement between two parties
- An agreement is defined as a valid offer followed by a valid acceptance
- An offer must be distinguished from:
  - ◊ an ‘invitation to treat’ – *Boots v Pharmaceutical Society of GB*
  - ◊ a mere statement of price – *Harvey v Facey*
  - ◊ an intention of willingness to negotiate *Gibson v Manchester City Council*.
- Competitive tendering is different – *Royal Trust Co. of Canada v Harvela Investments*
- An offer must be communicated to the offeree – *Taylor v Laird*
- The offeree must be aware of the existence of the offer *IRC v Fry*
- An offer can be made to the whole world – *Carlill v Carbolic Smoke Ball Co*
- The terms of the offer must be certain – *Guthing v Lynn*
- An offer can be withdrawn any time up to acceptance – *Routledge v Grant*
- But the withdrawal must be communicated to the offeree – *Byrne v van Tienhoven*
- Although this can be done by a reliable third party – *Dickinson v Dodds*
- A unilateral offer does not require acceptance, only performance – *Errington v Errington and Woods*
- An offer ends:
  - ◊ on acceptance
  - ◊ on proper withdrawal
  - ◊ on lapse of time
  - ◊ on death of one of the parties.
- Acceptance must be communicated – *Felthouse v Bindley*
- If use of the post is the normal anticipated method of acceptance, the contract is formed on posting (the postal rule) – *Adams v Lindsell*
- This applies even if the acceptance is never received – *Household Fire Insurance v Grant*

- Acceptance must be unconditional – *Hyde v Wrench*
- But mere enquiries are not rejections of the offer – *Stevenson v McLean*;
- Modern methods of communicating such as fax, e-mail and the internet etc. cause problems in determining when a contract is formed *Entores v Miles*.

**Assessment Objective 2****(14)**

Discuss whether the rules of offer and acceptance do indeed mean that the fit between the law and the facts of cases is an uneasy one:

- An agreement occurs when a valid offer is followed by a valid acceptance – but not all agreements are as simple as that
- Not everything that looks like an offer is an offer eg invitation to treat, mere statements of price, invitations to negotiate such as those in *Gibson v Manchester City Council*
- More complex situations do not fit either categorisation very easily – eg competitive tenders eg *Harvela Investments v Royal Trust Co of Canada*
- Auctions and tenders, in any case, are more complex situations that require different rules
- The problem of whether an offer can be made to the whole world
- Unilateral offers and rewards
- Completely different types of transaction where there is no real negotiation eg vending machines, multi storey car parks etc
- Problems associated with communication of offer, revocation of offer and acceptance
- Problems associated with different means of communication – face to face, post and electronic methods
- Counter offers – and use of standard form contracts.

Discuss whether the judges do indeed take a practical approach:

- Although there are many simple rules judges have also made exceptions to them eg distinguishing mere enquiries from counter offers
- Judges have tried to adapt the rules to create business efficacy eg in competitive tendering
- The development of the postal rule – but question whether this is either fair or relevant in modern society.

Discuss whether this does involve ‘forcing the facts into the fixed slots’:

- Lord Wilberforce is admitting that judges do just that
- The problem with modern means of communication and how to deal with them
- *Cleveland Bridge Engineering v British Steel Corporation* is a classic example of judges being unable to apply the rules effectively.

Discuss the ways in which the judges have developed the law:

- Where judges have had difficulty in developing the law to adequately meet technological change, legislation has come to their aid: some of the problems have now been resolved by the E-Commerce Directive and the Consumer Protection (Distance Selling) Regulations

Credit any other relevant point.

Reach any logical conclusion.

Candidates are unable to achieve level 5 AO2 marks without a discussion that focuses on the quote. Stretch, challenge and synoptic consideration can be demonstrated by candidates whose discussion identifies the role played by judges in defining the area, and the fairness and justification of their decision making.

**Assessment Objective 3**

**(4)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

3 Consider whether there is an enforceable contractual agreement in each of the following situations:

- (a) Alfonso contacts Brad who advertises installation of new central heating systems, including a boiler and six radiators, for £2,000. Alfonso wants seven radiators and asks if Brad would install the extra radiator for the same price as six. Brad says that he would not, and that the price for seven would be £2,300. Later when Alfonso discovers that £2,300 is a very good price he asks Brad to do the work but Brad says that he is now too busy. (10)
- (b) Carlos sends Dalvinder a letter asking if Dalvinder wants to buy Carlos' car for £5,000. Dalvinder immediately writes a letter stating that he would like to buy the car for £4,000 and posts it. After Carlos has read Dalvinder's letter Dalvinder phones Carlos and says that he has changed his mind and will pay the original price of £5,000. (10)
- (c) On Tuesday Eli, an antiques dealer, e-mails Francesca, a regular customer, asking whether she wants to buy a rare Greek urn that he is selling at a bargain price of £500. Eli asks Francesca to e-mail him back immediately because he has other potential customers. Francesca does not reply but gets her husband Giorgio to go to Eli's shop on Saturday to buy the urn. By then Eli has sold it. (10)

[30]

Mark Levels	AO1	AO2	(a), (b) or (c)
Level 5	9–10	17–20	9–10
Level 4	7–8	13–16	7–8
Level 3	5–6	9–12	5–6
Level 2	3–4	5–8	3–4
Level 1	1–2	1–4	1–2

Potential answers **MAY**:

**Assessment Objective 1** (10)

- Use any relevant cases.

**Assessment Objective 2** (20)

In the case of (a):

- Identify that the advertisement is an invitation to treat not an offer *Partridge v Crittenden* and that Alfonso's question is thus an offer to buy
- Consider that Brad's quote of £2,300 for seven radiators is therefore a counter-offer *Hyde v Wrench*
- Identify that Alfonso has only a 'reasonable time' to accept so to wait until 'later' may be too late *Ramsgate Victoria Hotel v Montefiore*
- **CON** Conclude that there is probably no enforceable agreement.

In the case of **(b)**:

- Identify Carlos's letter as an offer
- Recognise that Dalvinder's response is a rejection of the offer and a counter offer *Hyde v Wrench*
- Dalvinder's phone call is an offer to buy which Carlos may or may not accept
- **CON** Conclude that there is no enforceable contract unless Carlos decides to accept the offer.

In the case of **(c)**:

- Identify that Eli has made an offer
- Identify that Eli has specified a particular method of acceptance *Yates v Pulleyn* – and that Francesca has failed to accept in the prescribed method
- Identify that Eli has also limited the time for acceptance – 'immediately' – so a 'reasonable time' may have lapsed by Saturday *Ramsgate Victoria Hotel v Montefiore*
- **CON** Consider that there is probably no enforceable agreement.

For each part:

- Maximum three marks for discussing the relevant law (depositions) (L)
- Maximum three marks for relevant authorities (A)
- Maximum three marks for applying the law to the facts (F)
- Maximum one mark for a suitable conclusion to the scenario (C)

**Annotations****Question 1**

CP	Critical point
AP	Analytical point
LC	Linked case
+	Well developed... eg CP+
R	Repeat
SO	Sort of
}	Irrelevant material

**Question 2**

C1	Case
C1+	Case – well explained
✓	Credited AO1 material
2	Point (AO2)
2+	Developed point (AO2)
2++	Well developed point (AO2)
LTS	Link to source
R	Repeat
SO	Sort of
}	Irrelevant material

**Question 3**

L	Law
A	Authority
F	Factual applications
C	Conclusion
R	Repeat
SO	Sort of
}	Irrelevant material

### Advanced GCE Law Levels of Assessment

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

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

**OCR (Oxford Cambridge and RSA Examinations)**  
**1 Hills Road**  
**Cambridge**  
**CB1 2EU**

**OCR Customer Contact Centre**

**14 – 19 Qualifications (General)**

Telephone: 01223 553998

Facsimile: 01223 552627

Email: [general.qualifications@ocr.org.uk](mailto:general.qualifications@ocr.org.uk)

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**Head office**  
**Telephone: 01223 552552**  
**Facsimile: 01223 552553**