

Mark Scheme for June 2011

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of pupils of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, OCR Nationals, 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.

© OCR 2011

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

Section A

- 1* 'When assessing whether there is an intention to create legal relations, the nature of the agreement is more important than the relationship of the parties.'

Discuss the accuracy of the above statement.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Principle of discrimination – the extent to which discussion ties the topic of intention with nature of agreement (subject matter of contract) with relationship of parties (domestic or commercial).

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

- Explain that contracts made between friends or family members have a presumption that there is no intention to create legal relations *Jones v Padavatton* and *Balfour v Balfour*
- Explain that the presumption can be rebutted in certain circumstances, such as:
 - where there is a commercial basis to the contract
 - where there has been reliance on the contract or in certain gambling agreements
 - where the parties agree to split winnings equally in certain gambling agreements *Simpkins v Pays*, *Albert v Motor Insurer's Bureau*, *Parker v Clarke*, *Merrit v Merrit*, *Snelling v Snelling*, *Tanner v Tanner*.
- Explain that in commercial cases there is a presumption that the parties intend to be legally bound *Esso v Commissioners for Customs & Excise*, *Kleinwort*
- Explain that the commercial presumption can be rebutted if clear words are used to show no legal intent *Rose and Frank v Crompton*, *Edwards* and *Jones v Vernon Pools*.

Assessment Objective 2 – Analysis, evaluation and application [20]

Discuss the reasons for the presumptions in domestic situations and the policy that they reflect – that the courts time should not be taken up with trivial cases

Discuss whether the cases that have rebutted the domestic presumption are in line with the quote. This could include but is not limited to:

- *Merrit v Merrit* does not follow the quote because the focus was on the nature of the relationship at the time of the agreement
- *Simpkins v Pays* and *Tanner v Tanner* would tend to support the quote because of the nature of the agreement being one of mutual reliance
- *Albert v MIB* clearly supporting the quote because of the strong indication of the judge that the agreement gave rise to legal relations regardless of the actual intention of the parties.

Discuss the policy in commercial cases – that business deals need certainty, and the fact that this is reflected in the presumptions in such cases

Discuss whether the cases that have rebutted the commercial presumption are in line with the quote. This could include but is not limited to:

- *Rose and Frank v Crompton* where the words used to rebut the presumption were inherently part of the agreement and not to do with the relationship of the parties
- *Kleinwort Benson v Malaysian Mining* where the nature of the agreement failed to create a legal obligation for the parent company to pay off the subsidiary's loan
- And compare *Edwards v Skyways* where the nature of the agreement suggested legal relationships and there was nothing in the agreement to rebut the presumption.

Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without a discussion that focuses on the key elements of presumptions and rebuttal in both domestic and commercial cases.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the difference between objective and subjective reasoning in the cases and the influence of policy in law making.

Assessment Objective 3 – Communication and presentation [5]

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

- 2* 'The most important aim of contract law is certainty for the parties, innominate terms fail to achieve this aim and leave the outcome to the opinion of the judge.'

Discuss the extent to which contracting parties can assess the likely consequences of a breach of contract in the light of the above statement.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Principle of discrimination – the extent to which the discussion ties the topic of consequences of breach (classification of terms into c/w/i) with certainty (parties ability to predict when breach will lead to repudiation) and the opinion of judge (subjective view and less predictability).

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

Define innominate terms, *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha*

Explain the consequences of breach of an innominate term, allowing the innocent party to terminate the contract and claim damages if they are deprived of substantially the whole benefit of the contract *Hansa Nord* to illustrate a non-repudiatory breach of an innominate term

Define conditions, using cases such as *Poussard v Spiers*

Explain the consequences of breach of a condition, allowing the innocent party to terminate the contract and claim damages in all cases

Explain the situations where the court will still use conditions today:

- Statutory implied conditions Sale of Goods Act
- Identification as a condition due to customary trade usage *Lombard v Butterworth*
- Definition of the term by the parties themselves *Lombard v Butterworth*, *Schuler v Wickman*.

Define warranties using cases such as *Bettini v Guy*

Explain the consequences of breach of a warranty, allowing the innocent party to claim damages but not to terminate the contract

Explain the way in which the court approaches the identification of any particular term, using the criteria laid out in *Kawasaki Kisen Kaisha v Hong Kong Fir Shipping*.

Assessment Objective 2 – Analysis, evaluation and application**[20]**

Discuss issues surrounding certainty of outcome for the parties to the contract:

- Whether there was greater certainty as to the consequences of a breach of contract when all terms were conditions or warranties and there were no innominate terms
- Why certainty is a desirable attribute for the parties to a contract, so that they can assess the likely consequences of a course of action in advance
- The limitation of this certainty, that it can cause rigidity and unjust outcomes where a party is able to terminate for a trivial breach of a condition *Arcos v Ronaasen*.

Discuss whether the use of innominate terms leads to more justice between the parties:

- The flexibility given to the court by using innominate terms and assess whether the outcome in *Kawasaki* was more satisfactory as a result
- The extent to which the test used in innominate terms – deprived of substantially the whole benefit of the contract – is likely to lead to a predictable result or whether it leaves too much discretion to the judge or arbitrator in the case
- Whether there is still a level of uncertainty in the use of conditions, using *Schuler v Wickman* to illustrate the courts overriding the parties' own label of a term
- The 'reasons' for retaining conditions in some cases; to make consumer protection more effective and to give consistency in some commercial contracts.

Draw a conclusion as to whether the combination of the different kinds of terms leads to a reasonable amount of certainty when assessing the likely consequences of breach

Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without a discussion that focuses on the different reasons for still using conditions, as identified in the *Hong Kong* case, as well as innominate terms.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the unpredictable nature of common law development in this area.

Assessment Objective 3 – Communication and presentation**[5]**

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

- 3* 'The suspicion of improper pressure is not enough by itself to make a contract voidable, there must be other factors in place as well.'

Discuss the extent to which the law on undue influence provides clarity and justice in the light of the above statement.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

- Explain that undue influence is an equitable doctrine
- Explain the rules on Class 1 (actual) undue influence *BCCI v Aboody*, *Williams v Bayley*
- Explain the situations where a presumption of undue influence will arise:
 - traditional relations where it is recognised Class 2A *Allcard v Skinner*
 - on the facts of the relationship Class 2B *Lloyds Bank v Bundy*
- Explain the requirement of 'a transaction that requires explanation', formerly known as a manifest disadvantage *CIBC v Pitt*, *BCCI v Aboody*, *Nat West Bank v Morgan*, *Cheese v Thomas*
- Explain the cases involving undue influence and third parties *Royal Bank Scotland v Etridge*, *Barclays Bank v O'Brien*.

Assessment Objective 2 – Analysis, evaluation and application [20]

- Discuss whether it is satisfactory that there is no definition of actual undue influence and that it is up to the court to examine each case on its merits – relate this to the question in that this is not dependant upon a suspicion but actual knowledge of some wrongdoing
- Discuss whether the traditional list of relationships that can lead to a presumption of undue influence is still relevant
- Discuss whether the cases in which a claim of undue influence has been based on a proven relationship of trust existing between the parties have led to satisfactory outcomes
- Discuss whether the further requirement in Class 2 cases, that there should be a contract which requires further explanation, can have the effect of limiting the right of a party to claim undue influence and whether this limitation is justified
- Discuss whether Lord Denning's view, that there should be a general right to avoid a contract that has been based on an inequality of bargaining power, as expressed in *Lloyds Bank v Bundy*, should be adopted by the courts
- Discuss whether a co-owner of property, such as a spouse, is now adequately protected after the judgement in *Etridge*. Consider whether the requirement of advice is sufficient to protect someone from the reality of an overbearing relationship
- Discuss whether banks should allow someone to enter a contract that is so obviously disadvantageous that no sensible person would do so.

Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without a discussion that focuses on both Class 1 and Class 2 cases as well as the cases involving third parties.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identified the developing role of the common law and the compromises involved in the cases in this area.

Assessment Objective 3 – Communication and presentation [5]

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

Section B

- 4* Ken owns a fruit and vegetable shop. He gives a price list to Saffron, a local restaurant, who emails an order to Ken every week. Ken does not reply to these emails but always delivers the fruit and vegetables the following day. One week Saffron places a very large order for mangos that Ken is not able to supply.

Another restaurant, The Galley, invites local fruit and vegetable suppliers to compete to supply them for six months, saying they will accept the lowest prices. Ken's prices are the lowest so The Galley asks him to be their supplier. After three months Ken and The Galley have an argument, after this The Galley starts to order their produce from another company instead of Ken's.

Advise Ken whether he has a binding contract to supply the mangos to Saffron and whether The Galley are in breach of contract in placing their orders with another company.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

Explain the principles of contracting for goods:

- Giving information about products is seen as making an invitation to treat *Fisher v Bell, Boots v PSGB*
- An invitation of treat is usually followed by a bilateral offer
- A bilateral offer can be accepted, rejected or revoked before acceptance *Hyde v Wrench, Byrne v Van Tienhoven*
- A bilateral offer can be accepted by communicating agreement *Felthouse v Bindley*, or by performance, *Brogden v Metropolitan Railway*.

Explain the principles of contractual tenders:

- Tendering a price is seen as making a bilateral offer *Spencer v Harding* the tender can be accepted to form a binding contract
- Where 2 or more parties are invited to compete by trying to offer the lowest tender, the invitation forms a unilateral offer to contract with the lowest tender *Harvela Investments v Royal Trust of Canada*
- A unilateral offer is accepted by carrying out the specified conduct in order to form a binding contract *Carlill v Carbolic Smoke Ball Company*

- Where a party is invited to make a non-specific tender, for example where a price list is tendered, this creates a standing offer to supply *Percival v LCC Asylums*, *Great Northern Railway v Witham*
- A standing offer to supply binds the supplier to meet any orders that are placed within the duration of the offer *Great Northern Railway v Witham*
- The offeror is not bound to place orders with the party who has made the tender to supply *Percival v LCC Asylums*.

Assessment Objective 2 – Analysis, evaluation and application

[20]

Ken and Saffron

- Identify that the price list is probably an invitation to treat
- Identify that when Saffron place an order they are making a bilateral offer to buy
- Identify that the bilateral offer can be accepted or rejected by Ken
- Identify that when the goods are delivered each week that is probably acceptance by conduct – this is because by delivering, Ken is showing agreement with the specific offer that has been placed
- Conclude that there is no binding contract between Ken and Saffron if he is unable to deliver the mangos.

Ken and The Galley

- Consider that Ken's offer could be a standing offer to supply at a fixed price for a period of 6 months
- Consider that in this situation the orders are an acceptance, each one creating a binding contract when the order is placed
- Conclude that if this is the case The Galley are probably entitled to place their orders elsewhere if they feel that they no longer wish to order from Ken
- Alternatively credit an analysis that identifies the invitation to compete for The Galley's business as a unilateral offer – the conduct required for acceptance being to offer the lowest prices
- Identify that this could form the basis for a contract where Ken agrees to supply for 6 months at those prices and The Galley agrees not to order from anyone else during that time
- Conclude that in this case The Galley will be in breach of contract if they order their fruit and vegetables from someone else.

Candidates are unlikely to reach Level 5 without identifying the key legal differences between the situation in Saffron and The Galley.

Assessment Objective 3 – Communication and presentation

[5]

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

- 5* Lydia is a theatre director who is putting on a play. Before the first performance Davina, a local authority safety officer, inspected the theatre to make sure it was safe to put on the play; this is a legal requirement. Davina decided that the theatre was safe. Lydia said she was very happy that Davina had not caused Lydia's play any trouble so she would send her free tickets.

In order to make sure her play was a success Lydia promised Gregor, the leading actor, a large bonus payment if he inspired the other actors.

Bernard, the play's make-up artist, was working for nothing as he was still training. After the last performance Lydia said she was so happy with his work she would pay him £500.

The play was very successful but Lydia has not kept any of her promises.

Advise whether Davina gave good consideration for the promise of free tickets and whether Gregor and Bernard gave good consideration for the promised bonus payments.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Principal of discrimination – extent to which advice identifies relevant areas of consideration defines the law with relevant cases and explains and applies the law to come to a logical conclusion.

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

Sufficiency

Explain that consideration needs to be sufficient but need not be adequate *Thomas v Thomas*

Explain that consideration generally needs to have some economic value *Chappell v Nestle*

Explain that a personal obligation may amount to good consideration *Hamer v Sidway* (a persuasive American case), *Ward v Byham*

Explain that consideration must be real and tangible *White v Bluett*.

Past consideration

Explain that past consideration is not good consideration *Re McArdle, Roscorla v Thomas*

Explain that it will be seen as good consideration if 3 criteria are satisfied:

- The act was done at the promisor's request *Lampleigh v Braithwaite*
- The reward was in the parties' minds *Stewart v Casey*
- The consideration would be good if it was not past *Pao On v Lau Yiu Long*.

Public duty

Explain that a promise to pay someone for carrying out an obligation that is imposed by law will not normally be enforceable *Collins v Godefroy*

Explain that the promise may be enforced if the promisee goes beyond their public duty in some way *Glasbrook v Glamorgan; Ward v Byham*.

Assessment Objective 2 – Analysis, evaluation and application**[20]****Gregor**

Consider whether 'inspiring other actors' has any economic value and is real and tangible.

Come to any reasonable conclusion

Credit any discussion which focuses on Gregor having an existing contractual duty to inspire other actors, discussing cases such as *Stilk v Myrick, Williams v Roffey*.

Davina – local authority safety officer

Consider that the promise was made to her after she had done the work and thus her actions were past consideration

Consider whether she carried out the inspection at the request of Lydia and whether a reward was in the minds of the parties – probably no for each case

Consider whether her consideration would have been good if not past:

- She was carrying out her public duty and this is not normally considered to be good consideration
- She did not go beyond her public duty when she carried out the inspection.

Conclude that she did not provide good consideration for the promise of the tickets.

Bernard – make-up artist

Consider that the promise was made to him after he had done the work and thus his actions were past consideration

Consider whether he did the work at the request of Lydia and whether a reward was in the minds of the parties – as he was still training he may have volunteered to work and not been asked, it is also unlikely that any reward was in the mind of the parties if it was agreed that he would work for free

Consider whether her consideration would have been good if not past, this is probably the case even if he was still training

Conclude that Bernard may have provided good consideration if it is reasonable to say that the reward was in their minds and that he did extra or Lydia gained a benefit.

It is unlikely that a candidate can reach Level 5 without a full discussion of each of the three areas of law which arise in this question.

Assessment Objective 3 – Communication and presentation**[5]**

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

6* Luther, a car dealer, deals with several clients.

Luther tells Sally that a particular model has exceptional fuel economy. Sally says she is mostly interested in the car because she wants to put a folded wheelchair in the back. Luther is sure that the car will not be big enough for the wheelchair but he says nothing. Sally buys the car but finds that it uses a large amount of fuel and the wheelchair will not fit in.

Another client, Rupinder, says she wants a car that will not cost much to tax. Luther shows her a car and tells her that it will be very cheap to tax. Rupinder returns two weeks later and buys the car. By this time the tax rules have changed and the car is now expensive to tax but Luther does not know this.

Advise Sally and Rupinder whether they can return the cars. Also advise Rupinder whether she can claim for the tax and insurance she has paid since buying the car.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

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

Edgington v Fitzmaurice and that it must not be mere opinion *Bissett v Wilkinson*

Explain that non disclosure of a potentially material fact will not amount to a misrepresentation in most cases, *Fletcher v Krell*, but it can be if facts change after a particular statement has been made *With v O'Flanagan*

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 *Attwood v Small*

Explain that it is not necessary that a reasonable person would be induced into the contract, that the test is subjective *Museprime v Adhill*

Explain the different kinds of misrepresentation in outline:

Fraudulent misrepresentation if the statement was dishonest

Negligent misstatement where a duty of care is owed in relation to professional advice.

Statutory misrepresentation where the false statement of fact was made without reasonable grounds

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) *Misrepresentation Act*

Explain that alongside rescission an indemnity payment can be made for inevitable expenses *Whittington v Seale Hayne*.

Assessment Objective 2 – Analysis, evaluation and application

[20]

Sally

- Discuss whether the statement about the exceptional economy is a statement of fact – possibly not as this is vague and difficult to pin down to an exact meaning
- Discuss whether the statement induced Sally to enter the contract in the first place – her main concern was whether the wheelchair fitted into the car
- Discuss the extent to which the statement needs to be a relevant factor for Sally to have entered the car, as long as fuel economy was at all relevant it can form the basis for an actionable misrepresentation, her interest in the size of the car would not prevent this
- Identify that Luther had no duty to raise his doubts about the capacity of the car to take the wheelchair
- Identify that if there is a false statement of fact that induced Sally, any kind of misrepresentation will allow her to rescind the contract and claim back her money, as long as there are no bars to rescission present
- Come to any reasonable conclusion on the facts
- Credit any discussion which focuses on Sally having the right to sue for breach of the implied term that goods are fit for a purpose which she has made known, under section 14 of the Sale of Goods Act
- Credit any discussion which focuses on the potential for the contract to be void for unilateral mistake.

Rupinder

- Identify that Luther made a statement of fact to Rupinder, and this statement appears to have induced her into the contract
- Consider that as Luther had made a statement about the tax, if the situation changes before completion of the contract then this will amount to a false statement of fact as he had a duty to update her
- Identify that if there is a false statement of fact that induced Rupinder, any kind of misrepresentation will allow her to rescind the contract and claim back her money, as long as there are no bars to rescission present
- Consider that this appears to be an innocent misrepresentation and so Luther will not be liable to pay damages unless in lieu of rescission under Misrepresentation Act section 2(2), and even in this case this would not allow consequential damages
- Consider whether this could be seen as a statutory misrepresentation as Luther did not have reasonable grounds to make the on-going assertion about the tax liability, in which case damages could be claimed for the wasted expenses on tax and insurance
- Consider that Rupinder may be able to claim the tax and insurance as an indemnity payment and this is available to all kinds of misrepresentation
- Come to any reasonable conclusion on the facts
- Credit any discussion which focuses on the potential for the contract to be void for common mistake.

It is unlikely that a candidate can reach Level 5 without references to both the component parts of a misrepresentation as well as the remedies that attach to different kinds of misrepresentation.

Assessment Objective 3 – Communication and presentation**[5]**

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

Section C

- 7 Dan has a contract with a publisher to write a book about the history of the Secret Service. His fee, payable when he finishes the book, includes his expenses for carrying out research. Dan spends three months writing the book and travelling at his own expense. He has also booked a venue to give a lecture about the book once it is published. Shortly before the book is completed Parliament passes a statute making it an offence to write any books about the Secret Service.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario. [20]

Statement A: If the book cannot be published the publishers will be in breach of contract to Dan.

Statement B: Dan will not be liable to pay the costs of the venue he has hired to give a lecture.

Statement C: Dan will not be able to claim the expenses for his travels because he is not yet due to be paid the money.

Statement D: Dan will be able to claim against the publishers for the three months work done before the statute was passed.

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2 – Analysis, evaluation and application [20]

Statement A: If the book cannot be published the publishers will be in breach of contract to Dan.

- Reason that if the contract is frustrated neither Dan nor the publishers will be liable in breach of contract
- Reason the grounds for frustration include illegality in performing the contract and radical change of circumstances
- Reason that in this case the publication of the book would be illegal.
- Reason that the contract for Dan to write the book is frustrated
- Conclude that the statement is inaccurate.

Statement B: Dan will not be liable to pay the costs of the venue he has hired to give a lecture.

- Reason that Dan's contract may be frustrated for radical change of circumstances
- Reason that in this case the booking is made pointless by the statute that makes the book illegal
- Reason that the circumstances are sufficiently different to frustrate the contract
- Reason that Dan will be relieved of his obligation to pay for the hall.
- Conclude that the statement is accurate.
- Credit an alternative line of argument and relevant conclusion – that there is not a sufficiently radical change of circumstances to frustrate the contract.

Statement C: Dan will not be able to claim the expenses for his travels because he is not yet due to be paid the money.

- Reason that under the Law Reform (Frustrated Contracts) Act 1943 section 1(2) where a contract has been frustrated any money paid in advance must be repaid minus just expenses
- Reason that there is no general right to reclaim expenses incurred before frustration
- Reason that in this case no money was paid in advance
- Reason that there is no legal basis for reclaiming the money
- Conclude that the statement is accurate.

Statement D: Dan will be able to claim against the publishers for the three months work done before the statute was passed.

- Reason that a claim may be made under the Law Reform (Frustrated Contracts) Act 1943 section 1(3) to prevent unjust enrichment
- Reason that a claim under this section requires one side to have obtained a valuable benefit before the contract was frustrated
- Reason that in this case the publishers have not obtained any benefit from the work done so far by Dan
- Reason that therefore Dan does not have a claim for any payment for work done so far
- Conclude that the statement is inaccurate.

- 8 Adam, a film producer, makes a contract with Betty, a famous singer, to make a film about her life. Betty insists that Claudette, a writer, must write the script. Adam agrees to this term and includes it in his contract with Betty, along with Claudette's fee of £50,000. Shortly after making the contract Adam falls out with Claudette and no longer wants her to do the work.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

[20]

Statement A: Claudette has a statutory right to enforce the contract between Adam and Betty.

Statement B: When drafting the contract, Adam and Betty could not have prevented Claudette from having a direct right to enforce it.

Statement C: Claudette has a collateral contract with Adam for her to do the work.

Statement D: The courts will decide that Adam and Betty are a special case and therefore, Betty can sue on behalf of Claudette.

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2 – Analysis, evaluation and application

[20]

Statement A: Claudette has a statutory right to enforce the contract between Adam and Betty.

- Reason that Claudette is not privy to the contract between Adam and Betty
- Reason that the Contract (Rights of Third Parties) Act 1999 allows a third party who is intended to benefit from a contract to enforce it in their own name
- Reason that Claudette appears to directly benefit from this contract
- Reason that Claudette can enforce the contract between Adam and Betty
- Conclude that the statement is accurate.

Statement B: When drafting the contract, Adam and Betty could not have prevented Claudette from having a direct right to enforce it.

- Reason that the Contract (Rights of Third Parties) Act 1999 allows a third party to directly enforce a contract which purports to benefit them
- Reason that the Act allows the contracting parties to explicitly exclude a third party's rights to enforce a contract directly
- Reason that in this case Adam and Betty could include a term in the contract to prevent Claudette from enforcing it
- Reason that this would mean Claudette has no direct rights if Adam no longer wanted her to do the work
- Conclude that the statement is inaccurate.

Statement C: Claudette has a collateral contract with Adam for her to do the work.

- Reason that a collateral contract would run alongside the main contract made between Adam and Betty
- Reason that where one party persuades another to enter a contract this can amount to good consideration for a collateral contract
- Reason that in this case it seems Claudette did not persuade Adam to enter the contract with Betty
- Reason that they do not have a collateral contract
- Conclude that the statement is inaccurate.

Statement D: The courts will decide that Adam and Betty are a special case and therefore, Betty can sue on behalf of Claudette.

- Reason that special cases arise when one person makes a contract on behalf of themselves and others such as a contract to visit the theatre
- Reason that in such special cases the contracting party can sue on behalf of others who were intended to benefit from the contract
- Reason that in this case a publishing deal is not a special case contract
- Reason that Betty can only sue for her own losses under the contract, not Claudette's
- Conclude that the statement is inaccurate.

- Credit an answer which argues agency as a special case contract

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.

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

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office; 1 Hills Road, Cambridge, CB1 2EU
Registered Company Number: 3484466
OCR is an exempt Charity



OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553

© OCR 2011