

# **Mark Scheme for June 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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This mark scheme must be used in conjunction with the Advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

Candidates can score in the top bands without citing all the points suggested in the scheme. Answers, which contain no relevant material at all, will receive no marks.

For question 1 AO3 marks should be awarded as follows:

- If 1-3 marks awarded for AO2 = award 1 AO3 mark
- If 4-6 marks awarded for AO2 = award 2 AO3 marks
- If 7-9 marks awarded for AO2 = award 3 AO3 marks
- If 10-12 marks awarded for AO2 = award 4 AO3 marks

For question 2 AO3 marks should be awarded as follows:

- If 1-8 marks awarded for AO1/AO2 = award 1 AO3 mark
- If 9-16 marks awarded for AO1/AO2 = award 2 AO3 marks
- If 17-23 marks awarded for AO1/AO2 = award 3 AO3 marks
- If 24-30 marks awarded for AO1/AO2 = award 4 AO3 marks

- 1\* Discuss the contribution made to the development of the law on communication of acceptance by the case of *Household Fire Insurance Co. v Grant* [Source 5 page 6 Special Study Materials]. [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
Level 4	4
Level 3	3
Level 2	2
Level 1	1

Principle of discrimination is the quality of the candidate's analysis of the contribution made by the reasoning in this case. Three marks are available for discussion of the critical point of the case; three marks are available for discussion of a linked case or cases and six marks are available for further analytical discussion.

Potential answers **MAY**:

**Assessment Objective 2 – Analysis, evaluation and application** [12]

**CP1** Discuss the development made by the case that the contract was formed when the letter was posted, even though the letter was subsequently lost in the post

Discuss the reasoning given in the case:

**AP** Discuss the argument of the judge that the Post Office could be seen as the agent of the offeree

**AP** Discuss the argument of the judge that if the Postal Rule were not to apply, communication by letter would continue ad infinitum

**AP** Discuss the argument of the judge that there could be no 'contemporaneous meeting of minds'

**AP** Discuss the point made by the judge that in practice 'a contract complete upon the acceptance of an offer being posted, but liable to be put an end to by an accident in the post, would be more mischievous than a contract only binding upon the parties to it upon acceptance actually reaching the offeror'

**AP** Make any other relevant point

**LC** Link to any related case for development eg *Adams v Lindsell*; *Re London and Northern Bank (1900)*

Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without discussing the key critical point arising from the case and using a linked case to show development. Stretch and 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 – Communication and presentation** [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 2 [page 3 lines 4-5 Special Study Materials] the author suggests that “on a number of occasions ... great difficulty is experienced in accommodating many everyday transactions within the offer and acceptance framework ...”.

Discuss whether judges have been able to develop the rules on offer and acceptance effectively in the light of the above statement.

[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
Level 4	4
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

#### Assessment Objective 1 – Knowledge and understanding

[16]

Principle of discrimination is the breadth and depth of the relevant legal knowledge used to address the question.

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, internet cause problems in determining when a contract is formed *Entores v Miles*
- Some of these problems have now been resolved by the e-commerce directive and the Consumer Protection (Distance Selling) Regulations.

### Assessment Objective 2 – Analysis, evaluation and application

[14]

The AO2 principle of discrimination is the extent to which candidates provide developed discussion of the issues raised in the question.

Discuss some everyday transactions that may be affected by the rules of offer and acceptance and whether judges have overcome the difficulties effectively:

- Goods displayed in advertisements, catalogues etc – the judges have developed the notion of invitation to treat and identified that this puts the onus on the prospective buyer to make an offer to buy which the seller is perfectly entitled to reject preserving freedom of contract – seems to be effective
- Self service arrangement in shops – the judges have applied the same principles as above – again preserving freedom of contract and avoiding the situation eg where an off licensee might be in breach of contract with a person under 18 trying to buy alcohol – clearly effective
- Auction and tenders – where the judges have provided simple effective alternatives to the normal rules
- Competitive tenders – where the judges have had to develop yet more different rules for effectiveness
- Complex negotiations such as those in *Gibson v Manchester City Council* – for same reason
- Rewards – where the judges have created the unilateral offer and identified that it cannot be revoked while the offeree is still performing – so this is effective
- Counter offers – particularly in negotiations involving standard form contracts – where the judges in effect have identified that the final counter offer forms the basis of the contract
- Completely different types of transaction where there is no actual negotiation between the parties eg vending machines, multi storey car parks – where the judges have identified that the contract occurs at the point where the person connects with the machine so that the seller/service provider cannot introduce any terms that would not have been known to the other party after that – so this makes the law effective for the consumer
- Problems associated with communication of offer, revocation of offer, acceptance at a distance – where the judges firstly created the postal rule to deal with them - not that effective
- Problems associated with different modern means of communication eg electronic methods – judges differentiated between instantaneous (analogous with face to face) communication and delayed communication – but this has been overtaken by EU and statutory provisions – so EU provisions may be effective
- Reach any illogical conclusion.

Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without a discussion that focuses on the quote. Stretch and 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) Alison buys Stains Go after seeing Stains Go's advertisement which states: 'Use Stains Go on your carpet and if the stain is still there we will give you your money back and buy you a new carpet'. After using the stain remover there are still stains in Alison's carpet. (10)
- (b) Baljit sees a newspaper advertisement for an auction which identifies a number of the items that are to be sold at the auction. One of these is an antique grandfather clock. Baljit wants a grandfather clock so she goes to the auction which is being held in another town twenty miles away. She is very distressed when she finds out that the grandfather clock has been withdrawn from the auction. (10)
- (c) Cicero asks Dante if Dante wishes to buy Cicero's collection of twenty valuable porcelain figures for a bargain price of £20,000 and to let him know within one week. Dante says that he would love to buy the figures and is happy with the price but asks if Cicero would consider selling them to him one per month rather than all in one go. Cicero says that he will have to think about this. Later that day, Dante phones Cicero and says that he will buy the figures in one go, but Cicero has already sold them. (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

The principle of discrimination is the extent to which candidates can apply relevant legal rules to the facts provided in order to reach a reasoned conclusion. Three marks are available for statements of relevant legal principles; three marks are available for use of relevant legal authorities; three marks are available for applying relevant legal principles to the facts of the problem and one mark is available for reaching a reasoned conclusion.

Potential answers **MAY**:

**Assessment Objective 1 – Knowledge and understanding** [10]

Use any relevant case

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

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

- Identify that an advertisement is usually an invitation to treat eg *Partridge v Crittenden*
- Discuss whether the wording of the advertisement here makes it a unilateral offer eg *Carlill v Carbolic Smoke Ball Co*
- Consider that if it does then the offer cannot be withdrawn while the offeree is still performing eg *Errington v Errington & Woods*
- Conclude that Alison has complied with the terms of the offer so there is probably an enforceable contractual agreement.

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

- Identify that a newspaper advertisement is only an invitation to treat not an offer to sell eg *Partridge v Crittenden*
- Discuss the fact that at auction people make bids to buy (offers) and the contract is only formed on the fall of the auctioneer's hammer (acceptance) eg *Harris v Nickerson*; *Payne v Cave*
- Identify that there is no guarantee that the articles will actually be in the auction
- Conclude that there is no enforceable contractual agreement.

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

- Identify that Cicero has made an offer
- Discuss whether Dante's statements were a counter offer *Hyde v Wrench* – if so the offer is no longer open and Cicero is able to sell
- Discuss whether Dante's statements were a mere enquiry *Stevenson v McLean* and if so Cicero should have communicated revocation of the offer to Dante before Dante accepted *Byrne v Van Tienhoven*
- Conclude that there is probably an enforceable contractual agreement.

Candidates are able to achieve Level 5 without reference to revocation and *Byrne v Van Tienhoven*.

**Annotations****Questions 1 and 3**

AP1, AP2 etc	to indicate the analytical point indentified
CP	to indicate the critical point identified
R	repetition
}	irrelevant (use for more than a couple of lines of text otherwise use the following)
N/R	not relevant
N/Q	not quite
S/O	sort of
CON	conclusion (question 3)

**Question 2**

✓	knowledge (AO1)
def	definition (AO1)
def/s	definition/statute (AO1)
C1 etc	to indicate cases (AO1)
C1+	to indicate a case which has been well developed
AO2	to indicate a bold comment
AO2+	to indicate developed comment/discussion
AO2(LTQ)	to indicate a bold comment that is linked to the quote
AO2(LTQ)+ (AO2)	to indicate a developed comment/discussion that is linked to the quote vague comment
LTS	indicates either AO1/AO2 comment that is linked to the source
R	repetition
}	irrelevant (use for more than a couple of lines of text otherwise use the following)
N/R	not relevant
N/Q	not quite
S/O	sort of

### 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.

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