

**Applied Business**

Advanced GCE **F256**

Business Law

**Mark Scheme for June 2010**

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Question		Expected Answer	Mark	Additional Guidance
1	(a)	<p><b>State four legal provisions of the Partnership Act.</b></p> <p><b>One mark for each correct identification, up to a maximum of four.</b></p> <p>No context required.</p> <p>Possible responses may include:</p> <ul style="list-style-type: none"> <li>• all profits or losses to be shared (1)</li> <li>• no capital withdrawal allowed (1)</li> <li>• if a partner leaves or dies, the partnership must be dissolved (1)</li> <li>• no partner can be paid a salary (1)</li> <li>• sick pay cannot be paid (1)</li> <li>• all partners are jointly (and severally) liable for the debts of the partnership (1)</li> <li>• each partner is an agent of the firm making decisions on behalf of all other partners (1)</li> <li>• no interest is payable on capital (1)</li> <li>• partners can be indemnified for expenses (1)</li> <li>• every partners allowed a say in decision making (1).</li> </ul> <p>Eg Partners must get a share of the profit (1).</p> <p>Eg If Martin is ill he cannot receive sick pay (1).</p>	<p><b>[4]</b> AO14</p>	<p>Do not accept '2 -20 members' as this is not a provision of the Partnership Act (it is a provision of the Companies Acts).</p> <p>"Unlimited liability" insufficient.</p>

Question	Expected Answer	Mark	Additional Guidance
(b)	<p><b>Martin and Dorothy drew up a Deed of Partnership. Explain <u>one</u> benefit to Martin and Dorothy of drawing up a Deed of Partnership</b></p> <p><b>Level 1: (1 mark)</b> Candidate explains a benefit with no context.</p> <p><b>Level 2: (2 marks)</b> Candidate explains a benefit with context.</p> <p>Possible responses may include:</p> <ul style="list-style-type: none"> <li>• overrule the Partnership Act (1)</li> <li>• stops future disputes (1)</li> <li>• clarity of operation (1)</li> <li>• to personalise the partnership (1).</li> </ul> <p>Eg They can overrule the Partnership Act (L1) and pay partners sick pay if ill (L1).</p> <p>Eg It can be referred to in case of dispute (L1) so if the Martin and Dorothy split up and wished to end the partnership, they could refer to the arrangements stated in the Deed (L2).</p> <p>Eg It states the responsibilities of partners (0).</p>	<p><b>[2]</b> AO1 1 AO2 1</p>	<p>Response must relate to an advantage/benefit of a DoP and not simply a factual comment about DoP.</p>

Question	Expected Answer	Mark	Additional Guidance
(c)	<p><b>Explain why unlimited liability might be of concern to Martin and Dorothy.</b></p> <p>One mark for the principle of unlimited liability, plus up to two further marks for explaining why this would be a cause of concern.</p> <p>Unlimited liability means that the owners of an unincorporated business are fully responsible for a firm's debts. There is no limit to this liability. The owners may be required to sell personal possessions to meet the financial obligations of the business.</p> <p>Responses include:</p> <ul style="list-style-type: none"> <li>• Lose personal possessions</li> <li>• Paying the debt</li> <li>• Difficult to gain external finance</li> </ul> <p>Eg Unlimited liability means that if the business got into financial difficulty, then the business debt might have to be repaid (1) from personal funds (1). This would mean that the Cargills could lose their house (1).</p> <p>Eg Unlimited liability means that the owners are responsible for repaying business debts (1). The partners and the business are seen as one in the eyes of the law (1). They may have to sell their personal possessions to pay off the business debts (1).</p>	<p><b>[3]</b> AO1 1 AO2 2</p>	<p>Accept references to being unincorporated or not having a separate legal identity as this is the legal foundation to unlimited liability.</p> <p>Allow references to being personally sued and, therefore, losing personal funds.</p> <p>Allow references to being jointly and severally liable as this is how unlimited liability applies to partnerships.</p>

Question	Expected Answer	Mark	Additional Guidance
(d)	<p><b>Explain <u>four</u> elements required to make contracts between <i>Cargill Creations</i> and its customers legally enforceable.</b></p> <p>One mark for each correct identification up to a maximum of four identifications, plus a further one mark for each of four developments.</p> <p>Elements:</p> <ul style="list-style-type: none"> <li>• Offer (1) – a statement without misrepresentation (+1)</li> <li>• Acceptance (1) – unconditional consent to all terms (+1)</li> <li>• Consideration (1) – some sense of mutual exchange of value (+1)</li> <li>• Intention (1) – both parties intending to be legally bound by the contract (+1)</li> <li>• Capacity (1) – ability/authority to make a contract (+1)</li> <li>• Legality (1) – within legal parameters (+1).</li> </ul> <p>The development mark can be an explanation (as above) or an example relating to <i>Cargill Creations</i>.</p> <p>Eg Consideration (1) both parties must offer something in exchange (1).</p> <p>Eg Consideration (1) <i>Cargill Creations</i> offer to supply key rings, whilst the petrol station would offer payment (1).</p>	<p><b>[8]</b> AO1 4 AO2 4</p>	<p>Do <b>not</b> accept “agreement” for “acceptance”.</p>

Question	Expected Answer	Mark	Additional Guidance
(e)	<p><b>As <i>Cargill Creations</i> was struggling to keep up with demand, an order for 200 passport wallets was delivered one month late to a retailer in a London airport terminal. Explain <u>two</u> ways in which <i>Cargill Creations</i> could resolve this breach of contract.</b></p> <p>One mark for each identification to a maximum of two identifications, plus up to one further mark for each of two explanations.</p> <p>Possible responses include:</p> <ul style="list-style-type: none"> <li>• pay money back (1)</li> <li>• compensation (1)</li> <li>• free passport wallets (1)</li> <li>• credit note (1)</li> <li>• future discount (1)</li> <li>• other free goods (1)</li> <li>• letter of apology (1)</li> <li>• free delivery (1)</li> <li>• court settlement, damages (liquidated/unliquidated)(1).</li> </ul> <p>Eg They could give the retailer ten free passport wallets (1) so that the retailer at the airport is happy to deal with <i>the</i> business again (1).</p> <p>Eg <i>Cargill Creations</i> could give a price reduction on the next order (1). This would stop the retailer at the airport from taking legal action for damages for breaking the contract (1).</p>	<p><b>[4]</b> AO1 2 AO2 2</p>	<p>Must be a way to resolve conflict with the <b>retailer</b> not with private customers.</p>

Question		Expected Answer	Mark	Additional Guidance
2	(a)	<p><b>In the context of the Data Protection Act, what is meant by personal data?</b> <b>Up to two marks.</b></p> <p>Personal data means any data relating to a living individual for example address and date of birth. It does not just mean sensitive data such as medical information.</p> <p>Allow one mark for example(s).</p> <p>Eg Personal data is information about a specific human being (1), eg bank details (1).</p> <p>Eg Personal data is information relating to an individual (1). It does not need to be particularly sensitive in nature (1).</p> <p>Eg Personal data does not just include delicate information such as religion (1). It includes any data about an individual (1).</p> <p>Eg Credit card details and phone number (1 max).</p>	<p>[2] AO1 2</p>	Accept "information about a person".

Question	Expected Answer	Mark	Additional Guidance
(b)	<p><b>Following the introduction of information technology to the business, evaluate the likely effects of the Data Protection Act on <i>Cargill Creations</i>.</b></p> <p><b>Level 1: (1 - 2 marks)</b> Candidate demonstrates knowledge of DPA with no context</p> <p><b>Level 2: (3 - 5 marks)</b> Candidate explains the effect(s) of the DPA on <i>Cargill Creations</i>.</p> <p><b>Level 3: (6 - 9 marks)</b> Candidate analyses the likely effect(s) of the DPA on <i>Cargill Creations</i> if information technology is implemented.</p> <p><b>Level 4: (10 - 14 marks)</b> Candidate evaluates the likely effect(s) of the DPA on <i>Cargill Creations</i> if information technology is implemented.</p> <p>Issues include:</p> <ul style="list-style-type: none"> <li>• register with Data Commissioner</li> <li>• data obtained and processed lawfully</li> <li>• data kept only for the purposes of the register</li> <li>• data not disclosed/used for any other purpose</li> <li>• data adequate, relevant and not excessive</li> <li>• data accurate and kept up to date</li> <li>• data not kept longer than necessary</li> <li>• reasonable access to correct and erase</li> <li>• obligation to protect security</li> <li>• must not trade without explicit</li> <li>• consent</li> <li>• not to be traded outside the EU</li> <li>• have a duty to disclose to data subject on request.</li> <li>• Labour – time/cost</li> <li>• Legal action – time/cost/publicity/reputation</li> </ul>	<p>[14] AO1 2 AO2 3 AO3 4 AO4 5</p>	<p>L1 Statements about data protection or DPA principles with no context. Eg protects data subject from misuse of data.</p> <p>L2 DPA principles applied to <i>Cargill Creations</i>. Eg <i>Cargill Creations</i> must ensure that out of date data is destroyed.</p> <p>L3 Development of DPA principles. Eg constantly having to check for out of date data will take up valuable time and cost the <i>Cargill Creations</i> money.</p> <p>L4 Look out for an overall decision from previous analysis as to the effects of DPA - which is the greatest benefit/drawback, short-term versus long-term, or counter-arguments for L4 evaluation.</p> <p>Reward more highly evaluation points which relate specifically to Ian/<i>Cargill Creations</i>.</p>

Question	Expected Answer	Mark	Additional Guidance
(b)	<p>Eg The DPA demands that a customer's express permission is needed before data is passed on or sold to third parties <b>(L1)</b>. If Ian is to sell directly to the public via his new website, he must ensure that he gets his customers' permission if he intends to sell the data in his database <b>(L2)</b>. This will mean that Ian, in order to obey the law, needs to design a form which customers can complete to give their express permission <b>(L3)</b>. However, some customers may be put off by having to fill in the form and may decide to use another supplier, losing Ian valuable custom <b>(L4)</b>.</p> <p>Eg The DPA protects personal data held by a business <b>(L1)</b>. Computerising will lead to <i>Cargill Creations</i> keeping more customer records and, therefore, having more data which must be kept secure <b>(L2)</b>. Time and money will need to be spent ensuring that current systems can cope with the demands of securing increasing amounts of data <b>(L3)</b>. In the short term this may cost a fair amount of money, but ignoring the law would be a false economy as any potential leaks of personal data could result in complaints from customers causing the company to lose its good reputation, income and profit in the long run <b>(L4)</b>.</p>		

Question		Expected Answer	Mark	Additional Guidance
	(c) (i)	<p><b>Outline the main principle of The Limited Partnership Act.</b></p> <p>Up to three marks.</p> <p>No context required.</p> <p>Limited partnership Act: At least one partner must retain unlimited liability. The other partners can have their liability limited to the amount stated in the partnership agreement, usually the amount invested in the business. In return they normally sacrifice a say in the day-to-day running of the business.</p> <p>Eg Some of the partners can have limited liability (1) meaning that they can only lose what they have invested in the business and not their home (1). There must, however, be at least one partner with unlimited liability as the partnership itself does not have limited liability (1).</p> <p>Eg One partner must have unlimited liability (1) and be responsible for the debts of the partnership should the business get into difficulty (1). However, the other partners can have limited liability (1).</p> <p>Eg Limited partners do not put their homes at risk (1) but lose out on a say in how the business is run (1).</p>	<p><b>(3)</b> AO1 3</p>	<p>For an award of full marks the candidate must make clear that the partnership itself retains unlimited liability, even though some of the partners have the privilege of limited liability.</p> <p>If only limited liability is referred to then maximum two marks.</p>

Question	Expected Answer	Mark	Additional Guidance
	<p>(ii) <b>Rather than remaining as general partners in <i>Cargill Creations</i>, Martin and Dorothy are considering becoming limited (silent) partners. Explain <u>two</u> benefits to Martin and Dorothy of taking this action</b>  <b>One mark for each correct identification up to a maximum of two identifications, plus a further one mark for each of two explanations.</b></p> <p>Possible responses include:</p> <ul style="list-style-type: none"> <li>• limited liability (1)</li> <li>• less financial risk (1)</li> <li>• less active role (1)</li> <li>• still take profits (1)</li> <li>• less stress/hassle (1).</li> </ul> <p>Eg Martin and Dorothy may want the security of limited liability (1) because they are approaching retirement age and do not feel they have the time and energy to rebuild their family wealth at this time in their lives (1).</p> <p>Eg The stress and hassle of running the business may be getting too much for them, so they no longer want to take an active part in running the business (1). However, they still want to benefit from the profits that the business they set up is making (1).</p>	<p>[4] AO2 4</p>	<p>Response must relate to a <b>benefit</b> not just a statement about being a limited partner as this was tested in 2(c)(i).</p> <p>Do not award disadvantages.</p>

Question			Expected Answer	Mark	Additional Guidance
3	(a)	(i)	<p><b>What is a patent?</b></p> <p>Up to two marks.</p> <p>A patent is one of a range of intellectual property rights. A patent covers an invention or idea which is capable of industrial application. It provides legal protection to the inventor preventing anyone else from copying or using the idea.</p> <p>No context required.</p> <p>Eg A patent protects an inventor (1) from having his idea copied (1).</p> <p>Eg A patent covers new inventions (1) so that the inventor has time to develop the work (1).</p> <p>Eg The protection of intellectual property (1) so that an idea cannot be used without permission (1).</p>	<p>[2] AO1 2</p>	<p>Do not award answers relating to how to get a patent as the question asks '<b>what is</b>' a patent Eg Do not award UK Patents Office, cost or jurisdiction.</p> <p>Do not award for trademarks or brand names, or copyrighted items such as songs and literary works.</p> <p>Do <b>not</b> award examples.</p>

Question	Expected Answer	Mark	Additional Guidance
	<p>(ii) <b>Explain <u>two</u> reasons why Ian should patent his 'key finder' idea.</b></p> <p>Up to two marks for two reasons explained.</p> <p>One mark for each correct identification up to a maximum of two identifications, plus a further one mark for each of two explanations.</p> <p>Possible responses may include:</p> <ul style="list-style-type: none"> <li>• allow time for development (1)</li> <li>• so no one can beat him to it (1)</li> <li>• protection from copying (1)</li> <li>• sell it (1)</li> <li>• transfer it (1)</li> <li>• license it (1).</li> </ul> <p>Eg The patent will give him time to fully develop his idea (1), so that it can go into production and only he can benefit from the profits (1).</p> <p>Eg Once fully developed Ian could sell the idea to a larger business for production (1) raising a lot of money for himself (1).</p> <p>Eg The patent can be licensed to other key fob companies (1) and Ian can charge a fee for this, which will provide him will an additional source of revenue (1).</p>	<p><b>[4]</b> AO2 4</p>	<p>Response must relate to a <b>benefit</b> not just a statements about a patent as this was tested in 3(a)(ii).</p> <p>Do not award disadvantages.</p>

Question	Expected Answer	Mark	Additional Guidance
(b)	<p><b>Explain <u>two</u> differences between civil law and criminal law.</b></p> <p>One mark for each side of a difference to a maximum of two differences.</p> <p>Possible differences may include:</p> <ul style="list-style-type: none"> <li>• burden of proof (1)</li> <li>• courts used (1)</li> <li>• purpose (1)</li> <li>• remedies (1)</li> <li>• parties involved (1).</li> </ul> <p>Eg Criminal law can lead to imprisonment (1), whereas civil law tends to lead to fines and damages (1).</p> <p>Eg Criminal law regulates dangerous behaviour (1), whereas civil law governs relationships between two parties (1).</p> <p>Eg In criminal law it is the state that takes action against offenders (1), whereas in civil law it is the person who is wronged who takes action (1).</p> <p>Eg The main aim of criminal law is to punish the offender (1), whereas the main aim of civil law is to compensate the victim (1)</p> <p>Eg Criminal cases are heard in Magistrates' or Crown Courts (1), whereas civil cases are dealt with in County and High courts (1).</p> <p>Eg Burden of proof for a criminal case is 'beyond all reasonable doubt' (1), whereas for a civil case it is only "on the balance of probabilities" (1).</p>	<p>[4] AO1 4</p>	<p>For each difference award two marks if both sides (criminal and civil) are given. Award max one mark if only one side of the argument (criminal or civil) is present. Eg the main aim of criminal law is to punish the offender (1).</p> <p>Accept 'criminal law involves the police', 'civil law concerns private disputes'.</p> <p>Accept 'private law', 'public law'.</p>

Question	Expected Answer	Mark	Additional Guidance
(c)	<p><b>Explain whether the law relating to occupiers' liability would make <i>Cargill Creations</i> liable for the injury to Daniel.</b></p> <p>Occupiers' liability refers to the controller of the premises' duty of care to visitors. Liability stretches to outdoors and open spaces. The law only covers lawful visitors and not trespassers, unless deliberate traps have been set to harm them.</p> <p><b>Level 1: (1 - 2 marks)</b> Candidate demonstrates knowledge of the law relating to occupier's liability with no context.</p> <p><b>Level 2: (3 - 4 marks)</b> Candidate applies knowledge of occupier's liability to the incident at <i>Cargill Creations</i>.</p> <p>Eg This law refers to liability of 'occupiers' for the safety of 'visitors' (L1) but not to trespassers (L1). The law does cover <i>Cargill Creations</i>' back yard (L2); however, because Daniel was a trespasser <i>Cargill Creations</i> would not be liable (L2).</p> <p>Eg Owners have a duty of care to visitors (L1) whether inside their premises or on their land (L1).</p> <p>Eg Daniel was a trespasser on <i>Cargill Creations</i>' land and, as such, would not be able to sue <i>Cargill Creations</i> (L2) unless he could prove that the hazards in the back yard were placed there deliberately to hurt intruders (L2).</p>	<p>[4] AO1 2 AO2 2</p>	Award L1 if no context given.

Question	Expected Answer	Mark	Additional Guidance
(d)	<p><b>Explain how the partners of <i>Cargill Creations</i> should go about dissolving the partnership.</b></p> <p><b>Level 1: (1 - 2 marks)</b> Candidate demonstrates knowledge of the dissolution of partnerships with no context.</p> <p><b>Level 2: (3 - 4 marks)</b> Candidate applies knowledge of the dissolution of partnerships to Martin, Dorothy and Ian.</p> <p>Possible responses may include:</p> <ul style="list-style-type: none"> <li>• Martin, Dorothy and Ian should hold a meeting to decide how to dissolve the</li> <li>• final accounts prepared</li> <li>• payments made to all outside creditors</li> <li>• loans made by partners repaid</li> <li>• repayment of Martin and Dorothy's capital (Ian buy them out? Funding?)</li> <li>• surplus paid to partners in agreed ratio.</li> </ul> <p>Eg Once all creditors have been paid <b>(L1)</b> the balance should be divided amongst the partners <b>(L1)</b>. Since there was a deed of partnership, Martin, Dorothy and Ian would receive a percentage of the balance as outlined in the Deed <b>(L2)</b>, as founding partners Martin and Dorothy's share is likely to be larger than Ian's <b>(L2)</b>.</p> <p>Eg Final accounts would need to be prepared <b>(L1)</b>, so that payments could be made to all creditors <b>(L1)</b>.</p> <p>Eg Martin and Dorothy should discuss their plans with Ian <b>(L2)</b>.</p>	<p><b>[4]</b> AO1 2 AO2 2</p>	<p>Must be <b>actions/steps</b>.</p> <p>One valid point made with reference to the specific context of Martin Dorothy and Ian will score 3 marks.</p>

Question	Expected Answer	Mark	Additional Guidance
(e*)	<p><b>Evaluate Ian's decision to operate as a sole trader rather than look for new business partners when his parents retire from Cargill Creations.</b></p> <p>NB This question is assessed for QWC.</p> <p><b>Level 1: (1 - 2 marks)</b> Candidate demonstrates knowledge of sole trader/partnerships with no context.</p> <p><b>Level 2: (3 - 5 marks)</b> Candidate explains the difference(s) between operating as a sole trader/partnership applicable to Ian.</p> <p><b>Level 3: (6 - 9 marks)</b> Candidate analyses advantage(s) and/or disadvantage(s) of operating as a sole trader/partnership to Ian.</p> <p><b>Level 4: (10 - 14 marks)</b> Candidate evaluates the case for and against Ian operating as sole trader.</p> <p>Issues include:</p> <ul style="list-style-type: none"> <li>• does not have to share profit, keeps all profit</li> <li>• limited funds, no contribution of partner's capital</li> <li>• own responsibility, no shared decision-making</li> <li>• no one with whom to share workload, holidays, time-off</li> <li>• lack of additional expertise, no one to discuss ideas with</li> <li>• not accountable to a partner</li> <li>• own boss</li> <li>• not bound by joint and several liability</li> <li>• banks more willing to lend to more formal businesses</li> <li>• expansion possibilities limited by time, experience, finance.</li> </ul>	<p>[14] AO1 2 AO2 3 AO3 4 AO4 5</p>	<p>NB Unless considering taking on a limited partner, unlimited liability is not an issue.</p> <p>L1 Statements about sole trader/partnerships, eg A partnership is owned by between 2 and 20 people.</p> <p>L2 Benefits/drawbacks/differences, eg Being the sole owner Ian would be the main provider of funds.</p> <p>L3 Advantages and disadvantages analysed eg, Being the main provider of funds may mean that Ian's funds are severely limited and that he does not have enough funds available to develop his key finder idea.</p> <p>L4 Candidate must make an overall judgement, in line with their previous analysis, as to whether Ian should operate as a sole trader rather than take on new partners which</p> <p>Reward more highly evaluation points which relate specifically to Ian/<i>Cargill Creations</i>.</p>

Question	Expected Answer	Mark	Additional Guidance
(e*)	<p>Eg A sole tradership is owned and controlled by one person <b>(L1)</b>. Ian would be able to make business decisions without have to consult anyone else <b>(L2)</b>. This means that Ian has much more freedom in the way the business would be run and can have the satisfaction of running the business his way <b>(L3)</b>. However, since Ian is relatively new to the business and, furthermore, has no previous experience of running a business, he might make some big mistakes which could be averted by having a more experienced partner alongside him <b>(L4)</b>.</p> <p>Eg Having a partner is likely to make extra capital available to a business <b>(L1)</b>. Ian desperately needs this capital as before the business ran smoothly because of his parents' investment <b>(L2)</b>. Not taking on a partner might limit <i>Cargill Creations</i> to such an extent that Ian cannot develop his 'key finder' idea. <b>(L3)</b>. However, if Ian really does not like the idea of sharing responsibility with a partner, he may be able to obtain a bank loan to develop his new idea, if the concept is good enough <b>(L4)</b>.</p>		

Question	Expected Answer	Mark	Additional Guidance
4 (a)	<p><b>Explain <u>one</u> issue at <i>Cargill Creations</i> which appears to be in breach of working time regulations.</b></p> <p>One mark for a correct identification, plus a further one mark for development.</p> <p>Possible responses include:</p> <ul style="list-style-type: none"> <li>• Working Time Regulations require employers to allow employees who work more than 6 hours to take a break of at least 20 minutes</li> <li>• the break must be uninterrupted and away from their work</li> <li>• employees are entitled to at least 11 hours off between shifts</li> <li>• the employee should not be made to work more than 48 hours in an average week.</li> </ul> <p>Eg Ian's staff have to work 50 hours a week just to keep up (1). This is greater than the limit of 48 hours imposed by the regulations (1).</p> <p>Eg Employees are entitled to a 20 minute break in a 6 hour shift (1). Lucas frequently did not get his lunch break (1).</p> <p>Eg Rhianna had to man the telephone line during her break (1). The law says that break should be uninterrupted and away from work (1).</p>	<p>[2] AO1 1 AO2 1</p>	<p>1 mark for stating an aspect of the law. 1 mark for the apparent contravention at <i>Cargill Creations</i>.</p> <p>Do not award for references to employees voluntarily giving up breaks.</p>

Question	Expected Answer	Mark	Additional Guidance
(b)	<p><b>The Working Time Directive is an example of European Union law. Name <u>two</u> institutions involved in the creation of European Union law.</b></p> <p>One mark for a correct identification to a maximum of two identifications.</p> <p>Institutions:</p> <ul style="list-style-type: none"><li>• Council of Ministers (1)</li><li>• European Parliament (1)</li><li>• European Commission (1)</li><li>• European Court of Justice (1).</li></ul>	<p>[2] AO1 2</p>	<p>Only accept these 4 institutions.</p> <p>The names of institutions must be precise.</p>

Question	Expected Answer	Mark	Additional Guidance
(c)	<p><b>Explain how having a contract of employment might be of benefit to Rhianna and Lucas.</b></p> <p>One mark for a correct identification plus one further mark for development.</p> <p>Possible answers include:</p> <ul style="list-style-type: none"> <li>• to clarify roles/responsibilities (1)</li> <li>• written evidence of terms (1)</li> <li>• in case of dispute (1)</li> <li>• to refer back to (1)</li> <li>• to formalise the employment (1).</li> </ul> <p>Eg Rhianna and Lucas could look back at their contract to find out their sick pay entitlement (1) to check that Ian has paid them correctly (1).</p> <p>Eg The employees could refer to their contract for clarification (1) in order to settle a dispute over working hours (1).</p> <p>Eg Having their duties set out in writing means that they know what they are being paid to do (1) and can reasonably refuse to do additional tasks, such as administration or complaint handling (1).</p> <p>Eg Rhianna could use it as evidence at an employment tribunal (1) to support her claim for constructive dismissal (1).</p>	<p>[2] AO1 1 AO2 1</p>	<p>Response must relate to a <b>benefit</b> of a contract of employment not just statements about what is contained in one.</p> <p>Accept 'to take employer to court'.</p>

Question	Expected Answer	Mark	Additional Guidance
(d)	<p><b>Explain <u>two</u> steps Rhianna should take in order to pursue her claim for constructive dismissal.</b></p> <p>One mark for identifying a correct step up to a maximum of two steps, plus a further one mark for each of two developments.</p> <p>Possible responses include:</p> <ul style="list-style-type: none"> <li>• get legal advice (1)</li> <li>• contact ACAS(LRA) (1)</li> <li>• contact a solicitor (1)</li> <li>• contact her trade union (1)</li> <li>• apply to employment tribunal (1)</li> <li>• choose whether to represent herself (1)</li> <li>• write a statement listing the problems she encountered (1)</li> <li>• collect evidence (1).</li> </ul> <p>Eg Rhianna should seek legal advice (1) from a solicitor (1).</p> <p>Eg Rhianna should make a log of all of the factors which have led to her resignation (1), so that she can present them at the employment tribunal (1).</p> <p>Eg Rhianna should take her case to an employment tribunal (1) which will hear the case and, if successful, negotiate a settlement (1).</p>	<p><b>[4]</b> AO1 2 AO2 2</p>	<p>Must be <b>actions/steps</b> not statements of law.</p> <p>Accept 'take employer to court'.</p>

Question	Expected Answer	Mark	Additional Guidance
(e)	<p><b>Evaluate Rhianna's claim for constructive dismissal.</b></p> <p>Constructive dismissal is where an employee resigns claiming the employer has made it impossible to stay. The employer has made the position of the employee intolerable. Such an employee has the right to seek redress for unfair dismissal at an employment tribunal.</p> <p><b>Level 1: (1 - 2 marks)</b> Candidate demonstrates knowledge of constructive dismissal with no context.</p> <p><b>Level 2: (3 - 5 marks)</b> Candidate explains issue(s) appropriate to Rhianna's claim.</p> <p><b>Level 3: (6 - 9 marks)</b> Candidate analyses issue(s) appropriate to Rhianna's claim.</p> <p><b>Level 4: (10 - 14 marks)</b> Candidate evaluates Rhianna's claim.</p> <p>Issues include:</p> <ul style="list-style-type: none"> <li>• excessive working hours</li> <li>• made to stay late</li> <li>• interrupted breaks answering the phone</li> <li>• doing tasks not hired for – enquiries, complaints</li> <li>• unreasonable demands to finish orders?</li> <li>• accused of deliberate vandalism</li> <li>• shouted at</li> <li>• humiliated in front of Lucas</li> <li>• threatened deduction from pay</li> <li>• contract of employment?</li> <li>• lateness – cause? frequency?</li> <li>• rushing – why?</li> <li>• failing to report broken blade</li> </ul>		<p>NB This question is about <b>constructive dismissal</b>, do not award arguments concerning unfair or wrongful dismissal.</p> <p>L1 Statements about constructive dismissal with no context, eg An employee who is not paid according to his contract has grounds to claim constructive dismissal.</p> <p>L2 Candidate specifies issues in the case, eg Rhianna was forced to work very long hours.</p> <p>L3 Candidate argues why the issue would make the claim valid/invalid, eg Forcing Rhianna to do more than her contracted hours would be deemed unreasonable and be a point in favour of her claim for constructive dismissal.</p> <p>L4 Candidate must make an overall judgement, in line with their previous analysis, as to the extent of the validity of the claim, or the likelihood of success.</p> <p>Reward more highly evaluation points which relate specifically to Rhianna/<i>Cargill Creations</i>.</p>

Question	Expected Answer	Mark	Additional Guidance
	<ul style="list-style-type: none"> <li>• left early</li> <li>• texting unreasonable?</li> <li>• daughter's welfare?</li> <li>• complaints to Ian?</li> <li>• attempts to resolve conflict?</li> <li>• slow worker?</li> <li>• genuine demands?</li> <li>• tired – cause?</li> </ul> <p>Eg Constructive dismissal is where an employee resigns because their job has been made impossible by the employer <b>(L1)</b>. Ian does not allow Rhianna a proper break <b>(L2)</b>. If Rhianna received proper breaks she would be able to text her childminder during her break times <b>(L3)</b>. Since she gets no interrupted breaks, the demands of her employer are unreasonable and her claim is likely to be successful <b>(L4)</b>.</p> <p>Eg Being humiliated in front of fellow employees is a valid reason to claim constructive dismissal <b>(L1)</b>. Being shouted at by Ian, in full earshot of Lucas, would be humiliating to Rhianna <b>(L2)</b>. However, it could be argued that Rhianna deserved to be shouted at because she left the order incomplete and did not report this fact to Ian <b>(L3)</b>. Ian should have treated his employee with respect and taken her to one side to discipline her. For this reason, the tribunal is likely to decide in Rhianna's favour <b>(L4)</b>.</p>	<p><b>[14]</b> AO1 2 AO2 3 AO3 4 AO4 5</p>	

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