

Mark Scheme for January 2011

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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 read in conjunction with the advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those which 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 that contain no relevant material at all, will receive no marks.

Section A

- 1* 'If a false statement is made before contracting, the innocent party may find it easier to prove misrepresentation but will receive greater damages if they can prove a breach of contract.'

Discuss the extent to which this statement is justified.

[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	A03
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

(25)

Explain the criteria for a statement becoming a term of the contract:

- That the statement was important to the contracting parties; *Bannerman v White*
- That the maker of the statement was more likely to know the truth than the recipient; *Oscar Chess v Williams, Dick Bentley Ltd v Harold Smith (Motors) Ltd*
- That there had not been significant lapse of time between the statement and the contract *Routledge v McKay, Couchman v Hill*.

Explain the remedies for breach of a contract term;

- That the contract may be repudiated if the term is a condition *Poussard v Spiers*, or if it is a substantial breach of an innominate term *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha*
- That any breach of a contract term may result in a claim for damages
- That damages are measured on the basis of putting the claimant back in the position they would have been in had the contract been properly completed and performed by the defendant.

Explain the criteria for a pre-contractual statement being actionable as a misrepresentation:

- That there was a statement of fact
- That the statement was false *Edgington v Fitzmaurice*
- That the statement was made to the other contracting party *Commercial Bank of Sydney v Brown*
- That it induced the other party into the contract *JEB Fasteners v Marks Bloom & Co.*
- Explain the remedies for a misrepresentation:
- That the remedy depends upon the type of misrepresentation
- That the damages are calculated as being to place the victim back in the position as if the misrepresentation had never been committed
- That for fraudulent misrepresentation the damages are calculated on the basis of all direct damage, reference to cases such as *Doyle v Olby, Smith and New Court Securities v Scrimgeour Vickers Ltd*

- Explain damages under section 2(1) Misrepresentation Act 1967, *Royscot Trust Ltd v Rogerson*
- That damages are not normally available for innocent misrepresentation, explain section 2(2) of Misrepresentation Act 1967
- That the contract may be rescinded unless there are bars to rescission; affirmation *Long v Lloyd*, delay *Leaf v International Galleries*, impossibility of restitution, third party rights *Phillips v Brooks*.

Assessment Objective 2**(20)**

Discuss the benefits of bringing a claim in misrepresentation compared to a claim in breach of contract:

- That since the 1967 Misrepresentation Act it has become much easier to claim damages and that the burden of proof is on the maker of the statement to justify their actions
- That it is easier to show that the statement was a relevant factor in inducing the other party to enter the contract than to argue that the statement was important to the parties
- That the relative knowledge of each of the parties is less likely to be significant in a claim in misrepresentation
- That a short lapse of time is less likely to prevent something becoming a misrepresentation than it is a term of the contract
- That the damages in fraudulent misrepresentation are now unlimited by any requirement of foreseeability
- That it is easier to end a contract by claiming rescission in misrepresentation than claiming a repudiatory breach of contract
- That a claim in misrepresentation is less dependent upon discretionary factors for the court to decide and thus more predictable for the party bringing the action.

Discuss the possible benefits for a party in suing for breach of a contract term rather than misrepresentation:

- That repudiation of a contract is less likely to be prevented by lapse of time than a claim for rescission in misrepresentation
- That an innocently made statement that becomes a term will render the maker liable for damages, whereas an innocent misrepresentation will not normally lead to a claim for damages
- That the calculation of damages may be more favourable in breach of contract than in misrepresentation if there is an element of profit included in the claim.

Come to a reasoned conclusion in response to the question.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without a discussion that is focussed on both incorporation of terms and misrepresentation.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion identifies the changes to the balance of the law in this area after the Misrepresentation Act 1967 and that a party needs to make a tactical choice in deciding which legal remedy to pursue.

Assessment Objective 3**(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* 'Even before the Contract (Rights of Third Parties) Act 1999 there were so many exceptions to the rule of privity that it could hardly be said to have been a rule at all.'

Discuss whether privity is still a relevant rule in contract law in the light of the above statement.

[50]

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Level 4	5
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Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

(25)

Explain the rules of privity:

- That a contract can only be enforced by and against the parties to the contract *Tweddle v Atkinson, Dunlop v Selfridge*
- Candidates may explain that the rule comes from the need for the parties to have given consideration to the agreement in order to enforce it.

Explain the exceptions developed by the courts:

- The trust device in equity; where an implied trust was used to avoid the rules of privity *Les Affreteurs Reunis v Walford*
- Restrictive covenants in equity; where restrictions on the use of land can be passed to subsequent purchasers *Tulk v Moxhay*
- Collateral contracts; where a new contract was imposed by the court between a person making a representation and the person who acted on that representation *Shanklin Pier v Detel Products*
- Special cases, where the courts have decided that one person may sue to recover losses suffered by another party *Jackson v Horizon Holidays, Woodar v Wimpey, Linden Gardens Trust v Lenesta Sludge*
- Credit can also be given for mentioning other ways that the rule of privity may be avoided at common law: assignment, agency, suing under the law of negligence.

Explain statutory exceptions:

- Married Women's Property Act and Road Traffic Act; where someone not a party to the original contract may enforce an insurance policy
- Contract (Rights of Third Parties) Act (C(RTP)Act); allowing a party who was intended to benefit from a contract to which they were not a party to, to enforce the contract in their own right.

Assessment Objective 2**(20)**

Discuss the reasons for the rule in privity – that a party who has not given consideration to a contract should not be able to enforce it and consider whether this is still a relevant basis for the law today.

Discuss whether the doctrine of privity has survived the 1999 Act and conclude that it probably has because the act can be excluded in order to prevent a third party from directly enforcing a contractual benefit.

Discuss the situations where the act may not have any effect and so privity will still apply unless one of the old common law exceptions applies:

- Where a party has made a warranty about goods which falls outside the scope of the original contract *Shanklin Pier v Detel*
- Where a party purchases goods and gives them to another party as a gift the 1999 Act is unlikely to apply in this situation
- Where an exclusion clause does not fall within the scope of the 1999 Act and so will only prevent the original parties to the contract
- Where a developer constructs a building with the intention of selling it on when completed *St Martin's Property v Sir Robert McAlpine*.

Discuss situations where privity will no longer prevent a party from upholding a claim under contract law:

- Where they are expressly intended to benefit from a contract made in their favour by two other parties *Tweddle v Atkinson*
- Where a party makes contracts on behalf of themselves and other parties *Jackson v Horizon Holidays*.

Come to a reasoned conclusion in response to the question.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without a discussion that focuses on the relevance of the exceptions which existed before the 1999 Act.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role of the judges and the influence of policy in law making.

Assessment Objective 3**(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 law on contract terms in restraint of trade is generous to the stronger party; it imposes few limits.'

Discuss the extent to which this statement is true.

[50]

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Level 5	21-25	17-20
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Potential answers **MAY**:

Assessment Objective 1

(25)

Explain the nature of a term in restraint of trade, a term by which one party agrees to limit or restrict his ability to carry on his trade, business or profession.

Explain that such terms are commonly found in contracts between employer and employee and in contracts for the sale of a business.

Explain the general prohibition on terms to restrain trade, cite cases such as *British Reinforced Concrete v Schleff*, *Nordenfeld v Maxim Nordenfeld*.

Explain the criteria for allowing such terms;

- That there is a reasonable interest to protect such as business investment *Nordenfeld*, or specialist knowledge *Forster v Suggett*, or client details *Hanover Insurance v Schapiro*
- That the scope is reasonable in respect of time *Home Counties Dairies v Skilton*
- That the scope is reasonable in respect of distance *Fitch v Dewes*
- That the scope is reasonable in terms of what is included *Mont v Mills*
- That the term is reasonable both between the parties and in the interest of the public
- That the burden of proof in showing reasonableness lies with the person seeking to enforce the restraint.

Explain that the rules also cover mutual undertakings such as exclusive dealing arrangements, citing cases such as *Schroeder Music v Macaulay*, *Panayiotou v Sony*, *Esso Petroleum v Harper's Garage*.

Explain the effect of term being found to be unreasonably in restraint of trade; it will be unenforceable although in some cases it may be blue-pencilled to have an offending part removed *Goldsoll v Goldman*.

Assessment Objective 2**(20)**

Discuss the reasons for such clauses generally being void – that they prevent people from making a living and inhibit free competition which is against the interest of consumers and the wider economy.

Discuss whether the reasons for allowing a restraint tend to favour a dominant party:

- Where a party has knowledge of specialist or secret information about a company – this is an objective test and not one that can easily be manipulated by the dominant party. It cannot be used to stop someone taking a generic skill to another workplace
- Where one party has knowledge of a client base – this protects an employer but the terms of the restraint must be reasonable and not oppressive
- Where a business vendor is prevented from setting up in competition with the buyer – this again must be justified in terms of the scope and it is unlikely that the buyer will be seen to be in a dominant position over the seller
- Where a solus agreement is enforced, this is more likely to be enforced by a dominant party such as a petrol company who have lent money to allow a business to start up. Although the courts require such an agreement to be justified in terms of showing some consideration this is likely to involve a lengthy tie-in between the parties
- Where an entertainer is signed to a record label there is unlikely to be an equality of bargaining power and some such agreements have been found to be highly oppressive (*Schroeder v Macaulay*). In such agreements the secret nature of compromise agreements means that the exact nature of restraints is unlikely to be open to public scrutiny or open competition.

Discuss whether the restrictions are justifiable in terms of time, distance and scope (comparing cases such as *Mont v Mills* and *Nordenfeld v Maxim Nordenfeld*).

Discuss the limitations of blue pencilling – that the restraining party has to make sure the term is justifiable in the first place because the courts will not edit or change it to make it reasonable if not.

Come to a reasoned conclusion in response to the question.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without a discussion that focuses on both the reasons for generally not approving of terms in restraint of trade as well as the reasons why a legitimate interest to restrain trade exists.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion shows an appreciation of the balance that needs to be drawn by the courts in assessing the reasonableness of a term.

Assessment Objective 3**(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* Press Up are a company who make biscuit tins. They hire some large machines from Rentamac for use in their factory, the contract requiring them to pay rent on the first day of each month. This month they were five days late in paying the rent. Rentamac are threatening to end the contract and reclaim the machines.

Two months ago Quki, a biscuit baking company, ordered 5,000 biscuit tins from Press Up, saying they needed them as soon as possible. Press Up have not yet delivered the tins and Quki are threatening to end the contract.

Press Up have recently delivered a large quantity of tins to Snakit, another biscuit baking company. Several of the tins cracked when Snakit started to pack biscuits into them and Snakit are unable to use the tins.

Advise whether Rentamac, Quki and Snakit may terminate their contracts with Press Up.

[50]

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Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1**(25)**

Explain that a repudiatory breach is one which allows the other party to treat the contract as at an end.

Explain that there are 3 different categories of contract terms.

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 a term will be defined as a condition;

- A term may be a condition because of customary trade usage *Bunge v Tradax*
- The parties themselves may define a term as a condition, *Lombard v Butterworth* although this is not always conclusive *Shuler v Wickman*
- Under the Sale of Goods Act and Sale and Supply of Goods Act it is a condition that goods are as described, fit for their purpose and of satisfactory quality.

Define innominate terms, using cases such as *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. Use cases such as *Hansa Nord* to illustrate a non-repudiatory breach of an innominate term.

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*.

Discuss the rules for time of performance. Performance on time is unlikely to be a condition of the contract unless expressly made a condition or where circumstances such as perishable goods exist or where a party gives a reasonable time limit after delay has already occurred, *Charles Rickards Ltd v Oppenheimer*.

Assessment Objective 2

(20)

Rentamac

- Identify that the term that has been breached is paying the rent on time
- Discuss whether there may be grounds to see this term as a condition, use the reasoning in *Hong Kong Fir Shipping*
- Discuss the fact that the term in this case does not seem to have been labelled by the parties as a condition and is unlikely to be seen as a condition by customary trade usage or by statute
- Identify that the term is innominate and thus breach will only be repudiatory if Rentamac are deprived of substantially the whole benefit of the contract
- Conclude that this is unlikely to be the case and thus Rentamac will be unable to terminate the contract for the machines.

Quki

- Identify that the term that has been breached is delivering as soon as possible.
- Discuss whether this is clear enough to amount to an express provision, this does not seem to be the case
- Discuss the fact that Quki do not seem to have given an extra time limit once Press Up were first seen to be late in delivering
- Conclude that Quki will be unable to terminate the contract for the biscuit tins but may be advised to give reasonable notice as soon as possible.

Snakit

- Identify that as this is a contract for the sale of goods there would be an implied term that the tins are fit for purpose and of satisfactory quality
- Discuss the fact that it seems unlikely that the tins are satisfactory or fit for the usual purpose for which biscuit tins are used
- Conclude that Press Up have committed a repudiatory breach of contract and Snakit can return the tins

It is unlikely that a candidate can reach level 5 without references to both conditions and innominate terms.

Assessment Objective 3

(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* A cargo of scrap metal, arriving on a ship called Bella Vista from Japan, was advertised as being for sale by auction. Gollum, a scrap metal buyer, saw the advert and he discovered that a ship called Bella Vista was arriving on 1 October. He purchased the cargo at the auction. In fact the auctioneers knew that the Bella Vista would arrive on 1 December. The Bella Vista arriving on 1 October was a different ship carrying fruit from Africa.

A year ago Gollum purchased a large container of scrap metal which both he and the seller thought was valuable aluminium. He has recently opened the container and discovered that the metal is in fact steel which is worth far less.

Advise whether Gollum is obliged to pay for the cargo of scrap metal that will arrive later than he thought, and whether he is able to return the container of steel and get his money back.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
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Mark Levels	A03
Level 4	5
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Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

(25)

Explain the consequences of the court finding an actionable mistake, that it makes the contract void.

Describe the different categories of mistake at common law, using cases to illustrate each; Where the parties make the same mistake as each other (known as common mistake or mutual mistake)

- Cases where the parties make the same mistake, where generally the mistake should be fundamental in nature and due to exceptional circumstances
- *Couturier v Hastie, Bell v Lever Brothers, Leaf v International Galleries, Great Peace Shipping v Tsavlis Salvage*
- Cases where the parties are at cross-purposes; *Tamplin v James, Raffles v Wichelhaus*.

Where one party has made a mistake which the other party is aware of (known as unilateral mistake, cross purposes mistake or mistake negating consent)

- *Hartog v Shields, Cundy v Lindsay, Phillips v Brooks, Smith v Hughes*.

Explain that a contract may be voidable because of misrepresentation

- Explain that a false statement is likely to amount to a misrepresentation
- Explain that if the statement is made innocently the remedy will be rescission
- Explain that if the remedy is made without reasonable grounds to believe it is true it will be statutory and the maker of the statement will be liable to pay damages Misrepresentation Act 1967.

Assessment Objective 2**(20)****Gollum and the cargo on the Bella Vista**

- Identify that Gollum and the seller of the scrap metal are at cross purposes and that this is likely to be a mutual mistake (also sometimes referred to as a common mistake)
- Discuss whether a reasonable onlooker would have thought that the contract referred to the shipment on 1st October or 1st December
- Discuss the fact that there were two ships with the same name is similar to *Raffles v Wichelhaus* and thus would tend to show that Gollum's mistake was a reasonable one
- Discuss the distinguishing facts that in *Raffles* the 2 ships were coming from the same port with the same cargo and that is not the case here, making the mistake less reasonable
- Come to any reasonable conclusion based on the preceding argument.

Gollum and the container of metal

- Identify that Gollum and the seller of the container of metal seem to be equally mistaken about what the metal was, indicating a common mistake
- Discuss the fact that common mistakes of quality are rarely seen as being a fundamental difference in the contract matter
- Discuss whether this is a mistake as to quality or attributes – in this case the mistake was of more than just the value of the consignment but involves the contract matter itself
- Identify that the mistake must be due to exceptional circumstances
- Discuss the fact that Gollum had not seen the metal and it may depend on how reasonable it was for him to have inspected the contents of the container before purchase.

Possible remedies in misrepresentation

- Identify that Gollum may also have an action in misrepresentation if the seller made statements suggesting that the contents of the container were aluminium
- Discuss the fact that it appears to be an innocent mistake as the seller thought they were selling aluminium
- Discuss the fact that it could be a statutory mistake if the seller did not have reasonable grounds to believe it was aluminium
- Discuss the fact that a year has passed and so the remedy of rescission would be lost
- Conclude that the best chance for Gollum is if the misrepresentation was statutory and he is therefore able to claim damages for the difference in price.

It is possible for a candidate to reach level 5 without reference to misrepresentation as long as both aspects of the question are fully discussed in the law of mistake.

Assessment Objective 3**(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* Carrbon are a petrol producing company. They are building an oil rig in the North Sea and they make a contract with Rigit for diving services. After Rigit have started to perform the contract the price of hiring divers goes up and Rigit realise they are going to make a loss. They tell Carrbon that they cannot carry on with the contract unless the contract price goes up by 20%. Carrbon have no choice but to agree as they cannot get diving services elsewhere at such short notice and so pay the extra. Afterwards they complain to Rigit and refuse to pay the extra 20%.

Rigit obtain their compressed air cylinders from Airfill. Airfill rely on Rigit for much of their trade. Rigit are keen to cut costs. They tell Airfill that, if they are to place any more orders, Airfill have to cut the cost of their cylinders by 25%. Airfill make it clear that they are not happy about this but feel they have no choice but to agree.

Advise Carrbon and Airfill whether they are able to avoid their contracts with Rigit on the basis of economic duress.

[50]

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Level 5	21-25	17-20
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Mark Levels	A03
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

(25)

Explain the consequences of economic duress on a contract, that it becomes voidable

Explain when the courts will decide that there has been unlawful duress:

- That in order to claim economic duress there must be an unlawful threat
- That the unlawful threat can be to breach a contract *Atlas Express v Kafco*
- That the unlawful threat can be to commit a tort *Universal Tankships v ITWF*
- That ordinary commercial pressure will not amount to an unlawful threat or to duress *The Siboen and Sibotre, CTN Cash and Carry v Gallagher*
- That the threat must have vitiated the consent of the other side and left them with no realistic alternative *Atlas Express, Pao On v Lau Yiu Long*
- That the party seeking to claim duress must have protested at the time
- That they must not hesitate in taking legal action to avoid the contract *Pao On v Lau Yiu Long, The Atlantic Baron*.

Assessment Objective 2**(20)****Rigit and Carrbon**

- Discuss whether Rigit has made an unlawful threat to Carrbon. They probably have because it is a threat to breach a contract
- Discuss whether the threat leaves Carrbon with no choice but to comply, which it probably does, as it appears that Carrbon would be unable to continue with the oil rig construction without their services
- Discuss whether there are other factors that would weaken or strengthen Carrbon's case. They did not complain at the time or make it clear to Rigit that they were not happy with the extra payment, and they may have waited too long before bringing a case in which case they would be unable to claim rescission of the promise to pay extra due to lapse of time
- Come to a sensible conclusion on the facts of the case.

Rigit and Airfill

- Discuss whether Rigit have made an unlawful threat to Airfill, unlikely in this case as the threat was not to renew rather than to break a contract
- Discuss whether the threat left Airfill with no choice but to reduce the price. This test would probably be satisfied because Airfill are reliant on Rigit's custom
- Draw a reasonable conclusion as to whether there was economic duress by Rigit. There probably isn't due to the nature of the threat.

In order to reach level five a candidate would need a highly structured answer which explores each aspect of this topic in a methodical way.

Assessment Objective 3**(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 **Bob is the manager of a sports stadium hosting a professional football game. He is worried about crowd problems and the local police agree to station extra police officers outside the stadium. After the match Bob promises to pay the police for the extra work they did. Bob also promises to pay his staff a bonus because they worked very hard. When Bob gets home he promises to cook his wife, Megan, her favourite meal if she stops complaining about him working so hard.**

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: Bob's promise to the police is unenforceable because their consideration is past.

Statement B: The police have not provided any consideration because they are performing their public duty.

Statement C: Bob's staff gave no consideration because they have not gone beyond their normal contractual duty.

Statement D: If Megan stops complaining this will be good consideration and she will be able to enforce Bob's promise of the meal.

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

(20)

Statement A: Bob's promise to the police is unenforceable because their consideration is past.

- P1. Reason that past consideration is not normally good consideration
- P2. Reason that it can be good if the act was done at the other side's request, this is probably the case here
- P3. Reason that for this to be good consideration a reward must have been in the minds of the parties.
- P4. Reason that this may be the case here because the police were clearly doing extra work
- P5. Conclude that the statement is likely to be accurate.

Statement B: The police have not provided any consideration because they are performing their public duty.

- P1. Reason that carrying out a public duty is not generally seen as good consideration
- P2. Reason that it is good if one party goes beyond their public duty
- P3. Reason that the courts have been willing to see the police as going beyond their normal public duty when they provide policing for large sporting events
- P4. Reason that in this case the police have probably gone beyond their public duty
- P5. Conclude that the statement is inaccurate.

Statement C: Bob's staff gave no consideration because they have not gone beyond their normal contractual duty.

- P1. Reason that performing an existing contractual duty is not seen as good consideration for a further promise to pay
- P2. Reason that it will be good consideration if performance goes beyond what was previously expected
- P3. Reason that it will be seen as good if by making a second promise of payment one side avoids a specific detriment or gains a specific benefit
- P4. Reason that in this case the staff do not seem to have worked extra and Bob does not seem to have avoided a detriment and so the staff have not provided consideration
- P5. Conclude that the statement is accurate.

Statement D: If Megan stops complaining this will be good consideration and she will be able to enforce Bob's promise of the meal.

- P1. Reason that consideration must consist of something of actual value
- P2. Reason that if consideration is giving something up, there must have been a right to do that thing in the first place
- P3. Reason that Megan has no right to complain.
- P4. Reason that in not complaining she is not giving up something of value
- P5. Conclude that the statement is inaccurate.

- 8 Northbys is holding an art auction in London. The advert for the auction said there would be a painting by Picasso and one by Cezanne, each with a reserve price of £2 million, and a sculpture by Rodin with no reserve price. Jenny travels from New York hoping to buy the painting by Picasso.

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 Picasso painting is withdrawn from the auction Jenny can sue for wasted travel costs.

Statement B: Northbys do not have to sell the painting by Picasso to Jenny regardless of how much she has bid.

Statement C: Northbys can withdraw the Cezanne painting from the auction even if the bidding for it has begun.

Statement D: Northbys must sell the Rodin sculpture to the highest bidder.

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

(20)

Statement A: If the Picasso painting is withdrawn from the auction Jenny can sue for wasted travel costs.

- P1. Reason that an advert to hold an auction normally amounts to an invitation to treat
- P2. Reason the bids at the auction are bilateral offers which can be accepted or rejected by Northbys
- P3. Reason Jenny has no contractual relationship with Northbys
- P4. Reason that the act of merely travelling to the auction cannot amount to acceptance
- P5. Conclude that that the statement is inaccurate.

Statement B: Northbys do not have to sell the painting by Picasso to Jenny regardless of how much she has bid.

- P1. Reason that an advert to hold an auction amounts to an invitation to treat
- P2. Reason that Jenny's bids amount to bilateral offers to buy
- P3. Reason that a bilateral offer can be accepted or rejected and there is no contractual relationship until an offer is accepted
- P4. Reason that Jenny does not have a right to the painting until there is a binding contract
- P5. Conclude that that the statement is accurate.

Statement C: Northbys can withdraw the Cezanne painting from the auction even if the bidding for it has begun.

- P1. Reason that the bids in an auction with reserve are bilateral offers
- P2. Reason a bilateral offer can be accepted or rejected
- P3. Reason that it is for Northbys to accept a bid and they can withdraw the goods at any time before a contract is concluded
- P4. Reason that there was no binding contract for the painting before it was withdrawn from the auction
- P5. Conclude that that the statement is accurate.

Statement D: Northbys must sell the Rodin sculpture to the highest bidder.

- P1. Reason that an advert to hold an auction with no reserve can be seen as a unilateral offer to sell to the highest bidder
- P2. Reason that the making of each highest bid is the start of the conduct amounting to acceptance
- P3. Reason that once the conduct amounting to acceptance has begun a unilateral offer cannot be revoked
- P4. Reason that once bids have been placed the auction must continue and Northbys must sell to the highest bidder
- P5. Conclude that that the statement is accurate.

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.

Annotations

R repetition

}

irrelevant (use for more than a couple of lines of text)

S/O sort of

✓ knowledge (AO1)

def definition (AO1)

C1 etc to indicate cases (AO1)

Case name in brackets indicates incomplete information,
eg no name or a wrong name

n/o to indicate use of a case but in name only

^ omission

AO2 to indicate a bold comment

AO2+ to indicate developed comment / discussion

AO2++ to indicate extremely well developed comment / discussion

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