

**To be taken only between ... and ... 2012**

**AS GCE LAW**

**G155/01/I: Law of Contract**

Candidates answer on the Answer Booklet

**OCR Supplied Materials:**

- 18-page Answer Booklet

**Duration: 2 hours**

**Other Materials Required:**

None



**INSTRUCTIONS TO CANDIDATES**

- Write your name, centre number and candidate number in the spaces provided on the Answer Booklet. Please write clearly and in capital letters.
- Use black ink. HB Pencil may be used for graphs and diagrams only.
- Read each question carefully. Make sure you know what you have to do before starting your answer.
- Answer **three** questions; **one** from Section A, **one** from Section B and **one** from Section C
- When answering the following questions you are required to demonstrate some synoptic thinking. In Section A this is achieved by relevant reference to precedent and/or statutory materials including the development of law and comments on justice or morality where appropriate. In Section B this is achieved by relevant use of precedent and/or statutory materials in the application of legal reasoning to given factual situations, including comment on the justice or morality of the outcome where appropriate. You are not required to demonstrate synoptic thinking in Section C.
- If additional space is required, you should use pages 14 to 16 of the Answer Booklet. If you use additional sheets of paper, fasten these securely to the Answer Booklet.
- Do **not** write in bar codes.

**INFORMATION FOR CANDIDATES**

- The number of marks is given in brackets [ ] at the end of each question or part question.
- The total number of marks for this paper is **120**.
- Candidates are reminded of the need to write in continuous prose, where appropriate, in answering **Section A** and **Section B** questions you will be assessed on the quality of your written communication (QWC) including your use of appropriate legal terminology. These questions are marked with an asterisk (\*).
- This document consists of **14** pages. Any blank pages are indicated.



Answer **three** questions.

Answer **one** question from Section A, **one** question from Section B and **one** question from Section C.

You are advised to spend 50 minutes on Section A, 50 minutes on Section B and 20 minutes on Section C.

### SECTION A

Answer only **one** question from this section.

1\* 'The general rule is that performance, to be effective, must be exact and complete.'

Discuss whether the strict application of this rule leads to injustice.

[50]

Start your answer on **page 2** of the Answer Booklet.

2\* Discuss whether the increased use of the innominate term means that it is no longer important to differentiate between conditions and warranties.

[50]

Start your answer on **page 2** of the Answer Booklet.

3\* 'An intention to be legally bound is a requirement in forming a contract; the presumption for or against this intention can give much needed protection.'

Analyse the reasons for requiring an intention to be legally bound in the light of the above statement.

[50]

Start your answer on **page 2** of the Answer Booklet.

**SECTION B**

Answer only **one** question from this section.

- 4\* Logan, a shoe manufacturer, notices an advertisement for equipment to be sold by auction. At the auction Logan finds that the item in which he is interested has been withdrawn from sale. He is angry at having wasted his time and money on this journey.

Logan then places an order with Manesh via the Internet on 2nd May for a quantity of leather. Manesh only sees the order on 11th May. Manesh replies by email immediately, agreeing to supply the leather. However, before Logan receives the email he places an order for the leather with another firm. On 17th May Manesh delivers the leather and requests payment.

Nigel, an engineer, says that he will service some machines for Logan for £300, but Logan rejects this. However, finding that other engineers charge even more, Logan later contacts Nigel, claiming to accept his offer to do the work for £300. Nigel states that he is now fully booked and cannot now service the machines.

Apply the principles of offer and acceptance to each of these situations.

**[50]**

Start your answer on **page 10** of the Answer Booklet.

- 5\* Alison visits Bestever Theme Park and, wishing to spend some time on rides, leaves her coat at a cloakroom where she pays a fee and is handed a receipt.

While Alison is queuing for a ride, a park attendant, Callum, driving a small vehicle collides with her, causing injury to her shoulder and leg. Callum apologises on behalf of the Park, but points to a sign at the entrance which states, 'Bestever Theme Park takes no responsibility for injury to visitors however caused'.

Alison decides to leave the Park, but when she returns to collect her coat she finds that it has been given to the wrong person. The assistant, Dana, points out a statement on her receipt which reads, 'All items are left at owner's risk. Bestever Theme Park takes no responsibility for loss or theft of items, however this may arise'.

Advise Alison whether she should make a claim against Bestever Theme Park concerning her injury and the loss of her coat.

**[50]**

Start your answer on **page 10** of the Answer Booklet.

6\* Nazir advertises her car for sale in the local newspaper. A woman calling herself Pauline Smith arrives to see the car. She says that she likes the car, but as she knows little about cars, would like to take the car to a mechanic friend for inspection.

Pauline persuades Nazir to let her take both the car and the registration document. Although Nazir has doubts, Pauline produces a local authority identity pass, which has a photograph. Nazir telephones the council offices to check the identity card. She is told that there is a Pauline Smith on the staff of the council and takes a cheque as security.

One week later Pauline has not returned the car and so Nazir banks the cheque. Three days later Nazir is notified by her bank that the cheque is a worthless forgery. In the meantime Pauline has sold the car to John.

Discuss whether Nazir can recover the car and what action she might take against Pauline if she can be found. **[50]**

Start your answer on **page 10** of the Answer Booklet.

**SECTION C**

Answer only **one** question from this section.

- 7 Spencer has purchased a car from Belinda after being told that it had done 20 000 miles. Belinda relied on the recorded mileage on the car. Shortly after buying the car Spencer sets out on a journey to his friend's house 80 miles away. As he starts out on the journey the car breaks down and he has to call a mechanic to fix it. The mechanic informs Spencer that there are a lot of faults with the car and it has probably done 120 000 miles. Spencer is annoyed at this and, after completing the trip to see his friend, drives the car to Belinda to complain about it.

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. Start your answer on **page 18** of the Answer Booklet.

**Statement A:** If Spencer is able to prove misrepresentation he will have a remedy in rescission.

**Statement B:** Spencer will have a remedy under S.2(1) Misrepresentation Act 1967.

**Statement C:** Belinda has made a misrepresentation in not informing Spencer about the other faults with the car.

**Statement D:** Belinda has made a fraudulent misrepresentation to Spencer. **[20]**

- 8 Sue owns a hotel and is having 20 rooms redecorated before the summer season. The work is to be completed by Hamish at a cost of £400 per room. Hamish completes 12 of the rooms and then informs Sue that he is unable to purchase materials he needs in order to complete the other 8 rooms. Sue does not have time to look for another decorator and is worried that she will have unfinished rooms for the summer season. She offers Hamish an extra payment of £600 to help pay for the materials. Hamish accepts and continues with the work. As Hamish is grateful he also promises to paint the entrance hall. Some time later Sue is refusing to pay the extra £600 and Hamish has not painted the entrance hall.

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. Start your answer on **page 18** of the Answer Booklet.

**Statement A:** Hamish has provided good consideration for the extra payment.

**Statement B:** Sue would be estopped from going back on her promise to pay the bonus.

**Statement C:** Sue can avoid paying the extra £600 on the basis of economic duress.

**Statement D:** Sue has not provided any consideration for Hamish's promise to paint the entrance hall. **[20]**

**Section C Total [20]**

**Paper Total [120]**

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**OXFORD CAMBRIDGE AND RSA EXAMINATIONS**

**Advanced GCE**

**LAW**

**[Q155MS]**

Unit G155: Law of Contract

**Specimen Mark Scheme**

This mark scheme must be used in conjunction with the Advanced GCE Law Assessment Grid.

Candidates answering these questions are required to demonstrate some synoptic thinking. In Section A this is achieved by relevant reference to precedent and/or statutory materials including the development of law and comments on justice or morality where appropriate. In Section B this is achieved by relevant use of precedent and/or statutory materials in the application of legal reasoning to given factual situations, including comment on the justice or morality of the outcome where appropriate. Candidates are not required to demonstrate synoptic thinking in Section C.

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. Reward grammar, spelling and punctuation.

*This mark scheme contains indicative content but it is not exhaustive or prescriptive. It should be used alongside the matrix of levels of assessment and live exemplar standardisation scripts (which cover a range of responses identifying where within a level of assessment a particular response lies). Examiners are required to use the indicative content of the mark schemes **only** in conjunction with the matrix of levels of assessment as informed by actual responses in the standardisation scripts. Examiners should not be drawn prescriptively and quantitatively to the content of the mark scheme when marking candidates' responses and should follow the specific guidance provided by the Principal Examiner in terms of breadth and depth of responses. Appropriate credit will be given for non-standard answers.*

SECTION A																												
Question Number	Answer			Max Mark																								
1*	<p><b>'The general rule is that performance, to be effective, must be exact and complete.'</b>  <b>Discuss whether the strict application of this rule leads to injustice.</b></p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Outline the general rule that performance must be exact and full; refer to cases such as <i>Cutter v Powell</i>, <i>The Kathleen</i> and <i>Re Moore and Landauer</i> and S.30 Sale and Supply of Goods Act 1994.</p> <p>Explain the exceptions to the rule such as substantial performance; refer to cases such as <i>Hoening v Isaacs</i>, <i>Dakin v Lee</i> and <i>Bolton v Mahadeva</i>.</p> <p>Explain the exception of severable contracts; refer to cases such as <i>Taylor v Webb</i>.</p> <p>Explain acceptance of partial performance; refer to cases such as <i>Sumpter v Hedges</i>.</p> <p>Explain the exception of prevention of performance; refer to cases such as <i>Planche v Colburn</i>.</p> <p>Explain the <i>de minimis</i> rule.</p> <p><b>Assessment Objective 2</b></p> <p>Discuss the issues raised in the question. These may include (but are not confined to) the following matters:</p> <ul style="list-style-type: none"> <li>• The potential hardship caused by the full performance rule, as in <i>Cutter v Powell</i>.</li> <li>• That they may give another party an escape route from an inconvenient contract as in <i>Arcos v Ronaason</i>.</li> <li>• The reason for the exception of severable contracts; that it requires just payment for obligations that have been performed.</li> <li>• The reason for the exception of substantial performance; that minor breaches may not be used as an excuse to escape payment. Compare cases such as <i>Hoening v Isaaca</i> and <i>Bolton v Mahadeva</i>, consider the uncertainty in application of a rule that requires the court to determine what amounts to substantial performance.</li> </ul>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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1* cont'd	<p><b>Assessment Objective 3</b></p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p> <p style="text-align: right;"><b>Total marks</b></p>			[5] [50]																								
2*	<p><b>Discuss whether the increased use of the innominate term means that it is no longer important to differentiate between conditions and warranties.</b></p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Explain the difference in status of terms within a contract.</p> <p>Distinguish between conditions and warranties; refer to cases such as <i>Poussard v Spiers and Pond</i>, <i>Bettini v Gye</i>, <i>Photo Production v Securicor</i>.</p> <p>Explain the consequences of a breach of both conditions and warranties.</p> <p>Explain the use of the innominate term approach by the courts; refer to cases such as <i>Hong Kong Fir Shipping v Kawasaki Kisen Kaisha</i>, <i>The Hansa Nord</i>.</p> <p>Explain the test used to determine the consequences of breach of an innominate term.</p> <p>Explain the situations where conditions are used through common usage in the courts; refer to cases such as <i>Bunge Corporation v Tradax</i>, <i>The Mihalis Angelos</i>.</p> <p>Explain the consequences of a term being labelled as a condition by the parties; refer to cases such as <i>Schuler v Wickman Tools</i>; <i>Lombard North Central v Butterworth</i>.</p> <p>Explain the terms that are labelled as a condition by statutes such as the Sale of Goods Act 1979.</p> <p>Explain the approach taken by the courts to establishing the nature of a particular term.</p>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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	<p><b>Assessment Objective 2</b></p> <p>Discuss the issues raised in the question. These may include (but are not confined to) the following matters:</p> <ul style="list-style-type: none"> <li>The reason why the courts differentiated between conditions and warranties in the first place; giving certainty and predictability where there has been a breach of contract.</li> <li>The problems that arose through use of the term based approach where all terms were either conditions or warranties; allowing parties to escape from inconvenient contracts where there has been a breach by one of the parties.</li> <li>The benefits of the breach based approach where innominate terms are used; allowing the courts to examine the actual consequences of the breach of contract.</li> <li>Discuss whether the use of innominate terms gives flexibility at the expense of</li> </ul>			[20]																								

<p>2* cont'd</p>	<p>uncertainty.</p> <ul style="list-style-type: none"> <li>• The reason why some terms are still seen as conditions through common usage in the courts; allowing certainty in respect of certain trade practice.</li> <li>• The reason why the parties are still allowed to determine the status of terms themselves; giving the parties control over their own bargain, and the reason for the court not following this approach in <i>Shuler v Wickman</i>.</li> <li>• The benefits of implied terms by statute being conditions; improved consumer protection where there is inequality of bargaining power.</li> <li>• Discuss whether the current practice of using all three kinds of term gives a reasonable compromise between certainty in some cases and flexibility for the court in others.</li> </ul>	
	<p><b>Assessment Objective 3</b>  <i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i>  <i>Reward grammar, spelling and punctuation.</i></p> <p style="text-align: right;"><b>Total marks</b></p>	<p>[5] [50]</p>

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3*	<p><b>'An intention to be legally bound is a requirement in forming a contract; the presumption for or against this intention can give much needed protection.'</b></p> <p><b>Analyse the reasons for requiring an intention to be legally bound in the light of the above statement.</b></p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Explain the general requirement of legal intent as a formation requirement.</p> <p>Explain the presumption of no legal intent in social and domestic situations: <i>Balfour v Balfour</i>, <i>Jones v Padvaton</i>.</p> <p>Explain that legal intent is a requirement in some cases where the presumption is rebutted: <i>Merritt v Merritt</i>, <i>Parker v Clarke</i>, <i>Simpkin v Pays</i>.</p> <p>Explain the presumption of legal intent in agreements made in a commercial context: <i>Carlill v Carbolic Smoke Ball Co</i>, <i>Esso v Commissioners of Customs and Excise</i>. Show how the presumption may in some cases be rebutted through an honourable pledge clause between companies: <i>Rose and Frank Co v Crompton Bros</i>, <i>Edwards v Skyways</i>, <i>Kleinwort Benson v Malaysia Mining Corporation</i> and in consumer contracts: <i>Jones v Vernons Pools</i>, <i>Appleson v Littlewoods Pools</i>.</p> <p>Explain the special position of agreements made in the context of collective bargaining: <i>Ford Motor Co Ltd v Amalgamated Union of Engineering and Foundry Workers</i>.</p> <p><b>Assessment Objective 2</b></p> <p>Analyse the issues raised in the question. These may include (but are not confined to) the following matters:</p> <ul style="list-style-type: none"> <li>• The requirement of legal intent is so important and integral to a commercial contract that it is presumed rather than proved.</li> <li>• The benefit in terms of safeguard that is derived from this where both parties are in business – the need for certainty and commercial expectation.</li> <li>• The protection that legal intent provides for a consumer in terms of expectation of the parties and safeguard from unfair exploitation.</li> <li>• The need to prove legal intent where the presumption is rebutted in social or domestic situations, in the interests of the parties.</li> <li>• Why this extends beyond the strict confines of the family (<i>Buckpitt v Oates</i>) and who may derive protection in such cases.</li> <li>• The position of the consumer in the 'pools' cases (and similar agreements), the effect of the Unfair Terms in Consumer Contract Regulations 1994 on honourable pledge causes, and why such protection may be needed.</li> </ul>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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SECTION B																												
Question Number	Answer			Max Mark																								
4*	<p>Logan, a shoe manufacturer, notices an advertisement for equipment to be sold by auction. At the auction Logan finds that the item he is interested in has been withdrawn from sale. He is angry at having wasted his time and money on this journey.</p> <p>Logan then places an order with Manesh via the internet on 2nd May for a quantity of leather. Manesh only sees the order on 11th May. Manesh replies by email immediately, agreeing to supply the leather. However, before Logan receives the email he places an order for the leather with another firm. On 17th May Manesh delivers the leather and requests payment.</p> <p>Nigel, an engineer, says that he will service some machines for Logan for £300, but Logan rejects this. However, finding that other engineers charge even more, Logan later contacts Nigel, claiming to accept his offer to do the work for £300. Nigel states that he is now fully booked and cannot now service the machines.</p> <p>Apply the principles of offer and acceptance to each of these situations.</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Explain the general principle of offer and acceptance, and the need for these in order to have a binding contract.</p> <p>Explain that an advert to hold an auction is normally an invitation to treat: <i>Harris v Nickerson</i>.</p> <p>Explain the principles of communication of acceptance and in particular instant communication: <i>Yates v Pulleyn</i>, <i>Entores v Miles Far East Corporation</i>, <i>Brinkibon v Stahag Stahl</i>.</p> <p>Explain the principles of lapse of an offer: <i>Ramsgate Hotel v Montefiore</i>.</p> <p>Show knowledge of the Consumer Protection (Distance Selling) Regulations 2000 and the Electronic Commerce (EC Directive) regulations.</p> <p>Explain the operation of a counter offer: <i>Hyde v Wrench</i>.</p>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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	<p><b>Assessment Objective 2</b></p> <p>Consider whether the advert to hold an auction was an offer or an invitation to treat.</p> <p>Apply the principles of offer and acceptance to the exchanges between Logan and Manesh.</p> <ul style="list-style-type: none"> <li>Consider whether the order on 2nd May was a bilateral offer.</li> <li>Consider whether that offer has lapsed (lapse of time) between 2nd and 11th.</li> <li>Consider when the reply from Manesh takes effect, generally on arrival for instant methods of communication.</li> <li>Consider the possible effect of the Distance Selling Regulations, that Logan may have</li> </ul>			[20]																								

<p><b>4*</b> <b>cont'd</b></p>	<p>a 7 day cooling off period if it can be seen as a consumer contract.</p> <p>Apply the principles of offer and acceptance to the exchange between Logan and Nigel:</p> <ul style="list-style-type: none"> <li>• Consider whether Nigel has made a bilateral offer to Logan.</li> <li>• Consider the effect of the rejection from Logan, that this will prevent any future acceptance of the offer.</li> </ul> <p>Come to any reasonable conclusion on each situation.</p>	
	<p><b>Assessment Objective 3</b></p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>	<p><b>[5]</b></p>
	<p><b>Total marks</b></p>	<p><b>[50]</b></p>

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SECTION B [continued]																												
Question Number	Answer			Max Mark																								
5*	<p>Alison visits Bestever Theme Park and, wishing to spend some time on rides, leaves her coat at a cloakroom where she pays a fee and is handed a receipt.</p> <p>While Alison is queuing for a ride, a park attendant, Callum, driving a small vehicle collides with her, causing injury to her shoulder and leg. Callum apologises on behalf of the Park, but points to a sign at the entrance which states, 'Bestever Theme Park takes no responsibility for injury to visitors however caused'.</p> <p>Alison decides to leave the Park, but when she returns to collect her coat she finds that it has been given to the wrong person. The assistant, Dana, points out a statement on her receipt which reads, 'All items are left at owner's risk. Bestever Theme Park takes no responsibility for loss or theft of items, however this may arise'.</p> <p>Advise Alison whether she may make a claim against Bestever Theme Park concerning her injury and the loss of her coat.</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Explain the general nature and effect of exemption clauses.</p> <p>Discuss briefly the common law position on incorporation of terms (candidates will not have time to be exhaustive on this) citing cases such as <i>L'Estrange v Graucob</i>, <i>Parker v SE Railway</i>, <i>Olley v Marlborough Court Hotel</i>.</p> <p>Discuss the common law rules of construction of terms including the main purpose rule.</p> <p>Discuss the main (relevant) provisions of the Unfair Contract Terms Act (UCTA)1977: S12 'deals as a consumer'; S2(1) concerning personal injury or death; S2(2) concerning other negligence liability; S3(1) liability for breach of contract.</p> <p>Discuss the rules on reasonableness of exclusion clauses, citing cases such as <i>Smith v Bush</i>.</p> <p>Discuss the Unfair Contract Terms Regulations 1994 and 1999.</p>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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<p><b>5*</b> <b>cont'd</b></p>	<p><b>Assessment Objective 2</b></p> <p>Identify the issue of attempts to avoid liability via exemption clauses.</p> <p>Apply the law on exemption clauses to the facts of the question.</p> <p>Consider where the contract(s) to visit the park and leave the coat were made.</p> <p>Consider whether the notices were incorporated as part of the contracts.</p> <p>Consider whether the notices can be construed to cover the personal injury and the loss of the coat – apply the main purpose rule in particular.</p> <p>Identify Alison is a consumer.</p> <p>Consider the effect of 2(1) of UCTA that Bestever will not be able to exclude liability for the injury to Alison.</p> <p>Consider the effect of 2(2) and 3(1) of UCTA that Bestever will only be able to avoid liability for the loss of the coat if such exclusion is seen to be reasonable.</p> <p>Consider whether the term is likely to be seen as reasonable, applying the tests of insurance, knowledge of the term and relative bargaining power.</p> <p>Consider the effect of the Unfair Contract Term Regulations, that the terms must be seen as justifiable and included in good faith.</p> <p>Come to any reasonable conclusion on the enforceability of the second exclusion clause.</p>	<p>[20]</p>																								
	<p><b>Assessment Objective 3</b></p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p> <p style="text-align: right;"><b>Total marks</b></p>	<p>[5]</p> <p>[50]</p>																								
<p><b>6*</b></p>	<p><b>Nazir advertises her car for sale in the local newspaper. A lady calling herself Pauline Smith arrives to see the car. She says that she likes the car, but as she knows little about cars, would like to take the car to a mechanic friend for inspection.</b></p> <p><b>Pauline persuades Nazir to let her take both the car and the registration document. Although Nazir has doubts, Pauline produces a local authority identity pass which has a photograph. Nazir telephones the council offices to check the identity card. She is told that they have a Pauline Smith on the staff of the council and takes a cheque as security.</b></p> <p><b>One week later Pauline has not returned the car and so Nazir banks the cheque. Three days later Nazir is notified by her bank that the cheque is a worthless forgery. In the meantime Pauline has sold the car to John.</b></p> <p><b>Discuss whether Nazir can recover the car and what action she might take against Pauline if she can be found.</b></p> <table border="1" data-bbox="236 1736 821 1986"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table>	Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	
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<p><b>6*</b> <b>cont'd</b></p>	<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Discuss whether there is a common law mistake and/or misrepresentation.</p> <p>Discuss the effect of a contract being void for mistake as opposed to being voidable for misrepresentation.</p> <p>Discuss the principles required when considering whether or not the contract is void for mistake – that the contract was fundamentally different to what the parties thought and that the mistake was due to exceptional circumstances.</p> <p>Discuss how the principles of mistake apply specifically to unilateral mistake, citing cases such as <i>Phillips v Brooks</i>; <i>Lewis v Averay</i> and the conflicting outcome in <i>Ingram v Little</i>.</p> <p>Discuss how a contract may be avoided for misrepresentation, citing cases such as <i>Car and Universal Finance v Caldwell</i>.</p> <p>Discuss the criteria for misrepresentation in outline.</p> <p>Describe fraudulent misrepresentation citing a case such as <i>Derry v Peak</i>.</p> <p><b>Assessment Objective 2</b></p> <p>Identify that this is a case of unilateral mistake.</p> <p>Apply the case law from unilateral mistake to the problem.</p> <p>The contract here is unlikely to be seen as void for unilateral mistake as it is a face to face contract.</p> <p>Nazir has probably not done anything to indicate that she wishes to contract with anyone but the person in front of her.</p> <p>The contract is likely to be voidable because of the misrepresentation of 'Pauline'.</p> <p>Nazir can avoid that contract but she must do so before the sale of the car to John in order to avoid title passing to him.</p> <p>In this case Nazir has not taken any appropriate action to avoid the contract.</p> <p>Good title will have passed to John and he will not have to return the car to Nazir.</p> <p>If Nazir can find 'Pauline' she will have an action against her in fraudulent misrepresentation.</p> <p><b>Assessment Objective 3</b></p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>	<p>[25]</p> <p>[20]</p> <p>[5]</p>
	<p><b>Total marks</b></p>	<p>[50]</p>
	<p><b>Section B Total</b></p>	<p>[50]</p>

SECTION B [continued]		
Question Number	Answer	Max Mark
7	<p>Spencer has purchased a car from Belinda after being told that it had done 20 000 miles. Belinda relied on the recorded mileage on the car. Shortly after buying the car Spencer sets out on a journey to his friend's house 80 miles away. As he starts out on the journey the car breaks down and he has to call a mechanic to fix it. The mechanic informs Spencer that there are a lot of faults with the car and it has probably done 120 000 miles. Spencer is annoyed at this and, after completing the trip to see his friend, drives the car to Belinda to complain about it.</p> <p>Evaluate the accuracy of <u>each</u> of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.</p> <p><b>Mark Levels AO2</b></p> <p>Level 5      17-20  Level 4      13-16  Level 3      9-12  Level 2      5-8  Level 1      1-4</p> <p>Potential answers <b>MAY</b>:</p>	
	<p><b>Assessment Objective 2</b></p> <p><b>Statement A: If Spencer is able to prove misrepresentation he will have a remedy in rescission.</b></p> <ul style="list-style-type: none"> <li>Identify that rescission is available as a remedy for all kinds of misrepresentation.</li> <li>Identify that rescission is an equitable remedy and that the rights to rescind a contract can be lost through lapse of time or delay.</li> <li>Conclude that in continuing with his journey Spencer will have probably lost his right to rescind the contract.</li> <li>Identify that the court has the discretion to award damages in lieu of rescission.</li> </ul> <p><b>Statement B: Spencer will have a remedy under S.2(1) Misrepresentation Act 1967.</b></p> <ul style="list-style-type: none"> <li>Identify that for a statutory misrepresentation Spencer will have to show a false statement of fact on the part of Belinda. The question makes it clear that she has done so in relation to the mileage of the car.</li> <li>Identify that the burden of proof is then reversed and that Belinda has to prove that she had reasonable grounds to have made the statement.</li> <li>Discuss whether it is reasonable for Belinda to believe the stated mileage of car when she has only owned it for a short period. Whether she had reasonable grounds may depend on what other information is available to her. Draw a reasonable conclusion based on the facts.</li> </ul>	

SECTION C												
Question Number	Answer	Max Mark										
7 cont'd	<p><b>Statement C: Belinda has made a misrepresentation in not informing Spencer about the other faults with the car.</b></p> <ul style="list-style-type: none"> <li>Identify that in order to sue in misrepresentation Spencer will have to show a false statement of fact, silence does not normally amount to a misrepresentation.</li> <li>Identify that there are exceptions such as not updating when the facts have changed, and contracts such as insurance, but this is not one of those situations.</li> <li>Conclude that the lack of information on the poor state of the car will not be a misrepresentation.</li> </ul> <p><b>Statement D: Belinda has made a fraudulent misrepresentation to Spencer.</b></p> <ul style="list-style-type: none"> <li>Identify that in order to sue in fraudulent misrepresentation Belinda would have to have made the statement about the mileage of the car dishonestly or recklessly.</li> <li>Identify that it would be for Spencer to show that this was the case.</li> <li>Conclude that in this case it seems that she believed the mileage on the dashboard and so it is unlikely that this can be seen as fraudulent.</li> </ul>	[20]										
8	<p><b>Sue owns a hotel and is having 20 rooms redecorated before the summer season. The work is to be completed by Hamish at a cost of £400 per room. Hamish completes 12 of the rooms and then informs Sue that he is unable to purchase materials he needs in order to complete the other 8 rooms. Sue does not have time to look for another decorator and is worried that she will have unfinished rooms for the summer season. She offers Hamish an extra payment of £600 to help pay for the materials. Hamish accepts and continues with the work. As Hamish is grateful he also promises to paint the entrance hall. Some time later Sue is refusing to pay the extra £600 and Hamish has not painted the entrance hall.</b></p> <p><b>Evaluate the accuracy of <u>each</u> of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.</b></p> <p><b>Mark Levels AO2</b></p> <table> <tr> <td>Level 5</td> <td>17-20</td> </tr> <tr> <td>Level 4</td> <td>13-16</td> </tr> <tr> <td>Level 3</td> <td>9-12</td> </tr> <tr> <td>Level 2</td> <td>5-8</td> </tr> <tr> <td>Level 1</td> <td>1-4</td> </tr> </table>	Level 5	17-20	Level 4	13-16	Level 3	9-12	Level 2	5-8	Level 1	1-4	
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	<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 2</b></p> <p><b>Statement A: Hamish has provided good consideration for the extra payment.</b></p> <ul style="list-style-type: none"> <li>• Identify that every promise must be matched by consideration in order for it to be enforced. The rule in <i>Stilk v Myrick</i> requiring further consideration in order to enforce a second promise still stands.</li> <li>• Identify that where the person who makes a further promise gains some benefit from making that second promise that can be seen as good consideration from the person to whom the promise is made, as in <i>Williams v Roffey</i>.</li> <li>• Conclude that in this case Sue improves her chances of getting the work done in time for the summer season when she makes the second promise and so this may well be seen as good consideration on the part of Hamish.</li> </ul> <p><b>Statement B: Sue would be estopped from going back on her promise to pay the bonus.</b></p> <ul style="list-style-type: none"> <li>• Identify that promissory estoppel requires a promise to be made not to enforce a contract, which is subsequently relied on.</li> <li>• Identify that promissory estoppel acts as a defence and not a cause of action – a shield and not a sword. (Candidates should also be rewarded for commenting on the non-binding authorities that contradict this statement of law but this is not required for maximum marks).</li> <li>• Conclude that although Sue makes a promise to Hamish and he relies on it, the promise is to give something extra rather than not to enforce a contract and so promissory estoppel is unlikely to apply.</li> </ul> <p><b>Statement C: Sue can avoid paying the extra £600 on the basis of economic duress.</b></p> <ul style="list-style-type: none"> <li>• Identify that economic duress will apply if an illegitimate threat was made by Hamish. When Hamish said he could not complete the work on time that may be seen as an illegitimate threat as it was a threat to breach a contract.</li> <li>• Identify that the threat must have left Sue with no alternative but to comply. In this case it is not certain that Sue was left with no alternative, she might have sacked Hamish and taken on another decorator.</li> <li>• Draw a reasonable conclusion based on the facts.</li> </ul> <p><b>Statement D: Sue has not provided any consideration for Hamish’s promise to paint the entrance hall.</b></p> <ul style="list-style-type: none"> <li>• Identify that a contract consists of mutual promises and that past consideration is not generally seen as good consideration. Hamish promised that he would paint the entrance hall after Sue promised the extra money, and so her consideration is past.</li> <li>• Identify that there are exceptions to the rule against past consideration but they are unlikely to apply here as there was never any expectation that Hamish painted the entrance hall at the time that Sue made the promise.</li> <li>• Conclude that Sue is unable to bring an action against Hamish for his failure to paint the entrance hall.</li> </ul>	
	<b>Section B Total</b>	<b>[20]</b>
	<b>Paper Total</b>	<b>[120]</b>

## 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 the 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 <b>or</b> 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.

