

GCE

Law

H418/04: The nature of law and the law of contract

A Level

Mark Scheme for June 2025

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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MARKING INSTRUCTIONS**PREPARATION FOR MARKING****RM ASSESSOR**

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *RM Assessor Online Training: OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are available in RM Assessor
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **required number** of standardisation responses.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the RM Assessor 50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone, email or via the RM Assessor messaging system.
5. **Crossed-Out Responses**
Where a candidate has crossed out a response and provided a clear alternative then the crossed-out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed-out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM Assessor, which will select the highest mark from those awarded. *(The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.)*

Multiple-Choice Question Responses

When a multiple-choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only one mark per response)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. *(The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)*

Short Answer Questions (requiring a more developed response, worth two or more marks)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space).

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there, then add the annotation 'SEEN' to confirm that the work has been seen and mark any responses using the annotations in section 11.

7. There is a NR (**No Response**) option. Award NR (No Response):

- if there is nothing written at all in the answer space
- OR if there is a comment which does not in any way relate to the question (e.g., 'can't do', 'don't know')
- OR if there is a mark (e.g., a dash, a question mark) which is not an attempt at the question.

Note: Award 0 marks – for an attempt that earns no credit (including copying out the question).

8. The RM Assessor **comments box** is used by your Team Leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.**

9. *Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.*

10. For answers marked by levels of response: Not applicable in F501

To determine the level – start at the highest level and work down until you reach the level that matches the answer

To determine the mark within the level, consider the following

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

11. Annotations

Annotation	Meaning
	Blank Page – this annotation must be used on all blank pages within an answer booklet or on each additional page where there is no candidate response.
	Worthy of credit
	Nothing to be credited
	Not answered question
	Repeated content
	Applied point
	Developed point
	Extended point
	Further extension to the point
	Relevant case, statute or key thinker
	Evaluation point
	Conclusion
	No Response

12. Subject Specific Marking Instructions

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios.
- Present a legal argument using appropriate legal terminology.

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

When there are 2 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Consistently meets the criteria for this level	At top of level

When there are 3 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Meets the criteria but with some slight inconsistency	Middle of level
Consistently meets the criteria for this level	At top of level

Section A

- 1* 'The problem with defining justice is that very few people agree on what justice actually means.' Discuss how the legal system defines justice given this statement.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

The meaning of justice and definitions of justice.

Theories of justice e.g. Distributive justice (Aristotle, Aquinas, Marx, Perelman) and Utilitarianism (Bentham, Mill). Credit any other relevant theories of justice e.g. social and economic theories (John Rawls, Marxism) libertarian theories (Nozick).

Different types of justice: formal justice, substantive justice, distributive justice and corrective justice:

- Use examples of formal justice – legal institutions such as the police, courts, judiciary, juries, and appeals.
- Use examples of substantive justice – legal rules e.g. fault and defences in criminal law, fault in tort law, rights and freedoms in the Human Rights Act and fairness in contract law.
- Use examples of distributive justice - the fair allocation of resources e.g. wealth, power, rights, resources e.g. anti-discrimination laws, minimum wage and reallocation of wealth through taxation and the welfare state.
- Use examples of corrective justice – sentencing in criminal law e.g. retribution and remedies in tort and contract.

AO1 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully explain principles relating to justice with some reference to key thinkers or theories of justice.

Credit any other relevant point(s).

AO3 Indicative content

Answers may include:

- The struggle to find or agree on a common definition of justice that is shared by all members of society.
- The varied theories of law and justice and the struggle to create justice in a society.
- Credit any relevant evaluation of the theories of justice.
- The different types of justice with examples from the whole course of study:
 - Formal justice: the struggles faced by the criminal justice system in the miscarriages of justice cases. The findings of the Runciman Commission and the Criminal Cases Review Commission. The Stephen Lawrence case and the findings of the McPherson Report. Criticisms could be made of the judiciary. Evaluation of the system of 'trial by your peers'.
 - Substantive justice: any legal rule and whether it achieves justice.
 - Distributive justice: how the law struggles to create justice for everyone regardless of class, wealth, gender, race or disability. How this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence etc.
 - Corrective justice: the high re-offending rates. Inequality of bargaining power in civil cases.
- The approach taken given the lack of a common or agreed definition.

Reach any sensible conclusion.

AO3 - Levels are accessed based on the completeness of the response.

A Level 4 excellent responses will cover a range of evaluative points focused on the question including at least one well developed point and a conclusion.

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7–8	- Excellent analysis and evaluation of a wide range of legal concepts and issues. - The response is wide ranging and has a well sustained focus on the question. - The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	10-12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5-6	- Good analysis and evaluation of a range of legal concepts and issues. - The response has a mainly consistent focus on the question. - Most of the key points are well discussed and well developed to reach a valid conclusion where required by the question. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	7-9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3-4	- Basic analysis and evaluation of legal concepts and issues. - The response is partially focused on the question. - Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with basic structure. The information is supported by basic evidence.</i>	4-6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1-2	- Limited analysis of legal concepts and/or issues. - The response has limited focus on the question. - Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

- 2* 'The rule of law is a deceptive term because there is no single 'rule' to follow. It is best understood as a collection of principles designed to produce fair and just outcomes.' Discuss this view of the rule of law.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

The rule of law according to Professor Dicey in 'An Introduction to the Study of the Law of the Constitution 1885' and its core elements: absence of arbitrary power, equality before the law & supremacy of ordinary law.

Key concepts:

- No punishment without law.
- No man is above the law – *R (Miller) v Prime Minister*.
- Judicial decisions of the courts protect the rights of citizens.

The origins of the rule of law from writers such as Aristotle and Plato.

The influence the rule of law had on other countries such as the American Bill of Rights 1791 and the French Declaration of the Rights of Man and the Citizen 1789.

Examples of cases where the rule of law was enforced e.g. *Entick v Carrington* (1765).

Modern concepts of the rule of law, showing its specific relevance to human rights, equality, fair trials and dispute resolution as explained by Tom Bingham in 'The Rule of Law'.

Link to Articles 5 & 6 of the European Convention on Human Rights.

AO1 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully explain principles relating to the rule of law with some reference to key thinkers or principles.

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

- The development of the concept of the rule of law: basic beginnings in Magna Carta (chapters 39 and 40) – everyone including the King is subject to the rule of law.
- No punishment without law: this links to the legal principle of *habeas corpus* which states that a person cannot be detained without the authorisation of a court. The Habeas Corpus Amendment Act 1679. Guantanamo Bay 2001 - 2009 where suspected terrorists were held without charge.
- No man is above the law: this provides a safeguard to prevent dictatorship and arbitrary use of power.
- Consider how Dicey collected and formalised the theory of the rule of law.
- The Act of Settlement 1701 protects the tenure of judges and ensures their independence from pressure when deciding cases.
- The reasons why the rule of law is seen as fundamental in the English legal system.
- Whether the rule of law is still important today e.g. the detention of suspected terrorists, Article 5 ECHR etc.
- Credit any recent relevant examples of the rule of law in practice such as *Miller v Prime Minister (2019)*.
- The extent to which the statement in the question is true.

Reach any sensible conclusion.

AO2 - Levels are accessed based on the completeness of the response.

A Level 4 excellent responses will cover a range of evaluative points focused on the question including at least one well developed point and a conclusion.

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7-8	- Excellent analysis and evaluation of a wide range of legal concepts and issues. - The response is wide ranging and has a well sustained focus on the question. - The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	10-12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5-6	- Good analysis and evaluation of a range of legal concepts and issues. - The response has a mainly consistent focus on the question. - Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	7-9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack details in places and is partially developed. There will be some reference to statutes and case law.	3-4	- Basic analysis and evaluation of legal concepts and issues. - The response is partially focused on the question. - Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	4-6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of relevant statutes and case law is limited.	1-2	- Limited analysis of legal concepts and/or issues. - The response has limited focus on the question. - Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

Section B

- 3 Advise whether Leo has made binding contracts with Amos and Rosa and whether Sundip's offer has been successfully revoked.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

The rules of acceptance

- That a letter of acceptance takes effect when it is posted even if it doesn't arrive - *Adams v Lindsell*.
- That the postal rule does not apply if the offer was made by instant means - *Quenerduaine v Cole*.
- if an offer specifies a method of acceptance but does not make it mandatory, any equally effective method of acceptance will form a valid contract, *Yates v Pulleyn*.
- An offer lapses after a reasonable period of time - *Ramsgate Hotel v Montefiore*.
- That an acceptance sent by email takes effect when and where it arrives subject to sound business practice and the parties' expectations of where the risks should lie – *Thomas v BPE Solicitors*, *Entores v Miles Far East Corporation*, *Brinkibon v Stahag Stahl*.

The rules of revocation:

- Revocation must be communicated before acceptance - *Byrne v Van Tienhoven*.
- A promise not to revoke an offer is not valid unless consideration has been given - *Dickinson v Dodds*.
- Revocation can be made by a reliable third party - *Dickinson v Dodds*.

AO1 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully explain principles relating to communication of offer and acceptance and rules relating to revocation, including at least 2 relevant cases.

Credit any other relevant point(s).

AO2 Indicative content

Answers may include:

Leo and Amos

- The postal rule does not apply, as the original offer was made by instant means.
- The acceptance letter would have to have been delivered to be effective.
- 4 weeks was probably not a reasonable time for Amos to wait, and the offer would have lapsed within this time.
- Conclude that Leo and Amos do not have a binding contract.

Leo and Rosa

- Leo's email would be effective once it is delivered, subject to sound business practise.
- 10:00 at night is not within usual business hours, so Rosa may not have been expecting Leo's reply.
- Rosa sent her offer at 10:00 at night so it appears that she was communicating at that time.
- If acceptance was effective at 10.00, Rosa's revocation was too late.
- Come to any reasoned conclusion on the facts.

Leo and Sundip

- Sundip made two offers, one to sell the painting and another to keep her offer open for a week.
- Sundip's offer to keep the offer open would only have become binding if Leo accepted and gave consideration.
- Leo did not give any consideration for Sundip's offer to keep the offer open.
- Sundip's friend can revoke the offer if they are seen as a reliable third party.
- As they are a friend they are likely to be seen as reliable.
- Any reasonable conclusion on the facts.

AO2 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully apply to all three situations, making good use of the facts in the scenario to reach a reasoned conclusion.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law	7-8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10-12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5-6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7-9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law	3-4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4-6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1-2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

- 4 Advise whether issues of privity will prevent Anika from suing the soft drinks company and Coupe, and from suing the restaurant on behalf of herself and the mechanics.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

The rule of privity

- That a contract can only be enforced by the parties to it and by those who have given consideration - *Tweddle v Atkinson*.
- A party can only sue for their own losses - *Beswick v Beswick*.

The rights of third parties under the Contract (Rights of Third Parties) Act 1999

- That a contract may be enforced by a third party, provided they can be identified in the contract and that the contract expressly says they can enforce it - s.1(1)(a).
- That a contract can be enforced by a third party if the contract purports to give them a benefit – s.1(1)(b).
- That s.1(1)(b) applies unless the contract excludes the rights of the third party - *Nisshin Shipping v Cleaves*.

The common law exceptions to the rules of privity

- That a collateral contract may be formed between a contracting party and a third party, provided each has given consideration - *Shanklin Pier v Detel Products*.
- That in special cases a contracting party may recover damages on behalf of a third party - *Jackson v Horizon Holidays*.
- That a contract made between a party and an agent may be enforced by the principal - *Scruttons v Midland Silicones*.

AO1 - Levels are assessed based on the completeness of the response.

A Level 4 excellent response will explain both the doctrine of privity and exceptions to the rule at common law and by statute.

Credit any other relevant point(s).

AO2 Indicative content

Answers may include:

Anika and the soft drinks company

- Contract is between Black Ram and the soft drinks company, therefore Anika is not privy to this contract.
- Contract does not provide for Annika to have a direct right of enforcement, therefore *s.1(1)(a)* does not apply.
- Contract purports to give Anika a benefit, the £10,000 that she will gain if she wins a race, therefore *s.1(1)(b)* does apply.
- Anika can be identified in the contract as she is named, and her rights to enforce the contract have not been expressly excluded.
- Conclude that the doctrine of privity will not prevent Anika from suing the soft drinks company for the £10,000.

Anika and Coupe

- The contract is between Coupe and Black Ram, and Anika is not privy to this contract.
- Coupe have given consideration when they promised that the race suit would keep Anika cool.
- Anika has given consideration to Coupe when she asks Black Ram to buy the suit.
- There is a collateral contract between Anika and Coupe, so privity will not prevent her from suing for compensation.

Credit an answer applying the C(RTP) Act, that the contract may purport to benefit Anika even if she is not named.

Credit an answer based on agency – that the racing team were acting as Anika's agents when contracting for the racing suit.

Anika and the restaurant

- The contract is between the restaurant and Anika and that privity would normally prevent her from suing for compensation on behalf of other parties.
- The contract between the restaurant and Anika is a special case, where one party would be expected to make a contract on behalf of themselves and others.
- Anika will therefore be able to sue for compensation for herself and for her mechanics.
- Alternatively, credit an argument that the contract purports to benefit the mechanics and they may have a direct right to claim under *s.1(1)(b)*.

AO2 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully apply to all three situations, making good use of the facts in the scenario to reach a reasoned conclusion.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7-8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10-12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5-6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7-9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3-4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4-6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1-2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

5* & 8* Discuss the extent to which the presumption against legal intent in domestic and commercial contracts and the circumstances in which the presumption is rebutted, leads to predictable outcomes.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

The presumption in domestic contracts:

- That domestic contracts made between family members or friends are presumed not to have legal intent - *Balfour v Balfour*, *Jones v Padavatton*.

When the presumption will be rebutted in domestic contracts:

- When one party has acted in reliance on the agreement - *Parker v Clarke*.
- When a party has received legal advice and is not being disadvantaged - *Radmacher v Granatino*.
- When the parties agree to be equally bound on certain terms - *Simpkins v Pays*.

The presumption in commercial contracts:

- That commercial contracts made between two companies or between a company and consumer, are intended to be legally binding - *Esso v CCE*, *Carlill v CSBC*, *Edwards v Skyways*, *Jones v Vernon Pools*.

When the presumption will be rebutted in commercial contracts:

- When the parties have inserted an honour clause in the contract - *Rose & Frank v Crompton*.
- When the agreement constitutes a letter of comfort and not a binding contract - *Kleinwort Benson v Malaysia Mining*.

AO1 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully explain the presumption in **either** domestic **or** commercial cases **and** contains at least two relevant cases.

Credit any other relevant point(s).

AO3 Indicative content

Candidates may discuss any topic within intention to create legal relations in answering this question. The following points are indications of topics which may be relevant but any other points may be credited. None of these points are mandatory.

Arguments that it does lead to predictable outcomes

- That parties who make a domestic agreement never intended it to be binding in the first place.
- That the court's willingness to uphold anti-nuptial contracts reflect the fact that the parties will have had independent legal advice and should be aware of what they were entering into.
- That agreements to share the proceeds from competitions or the lottery are binding if they are specific and detailed and therefore the parties are likely to have expected them to be binding.
- That agreements made when a couple are separating would be expected to be binding as the parties would have bargained more keenly.
- There is a strong commercial presumption for intention and this gives vital certainty to contracting parties where there may be a lot of money at stake.
- Commercial parties who bargain at arm's length should be at liberty to decide what is and isn't binding and to make use of honour clauses.
- That it is proper for a commercial agreement involving a consumer, where the company makes promises in order to increase sales, to have legal effect and that consumers would expect this to be so.

Arguments that it does not lead to predictable outcomes

- That there are so many ways for the presumption to be rebutted that it is now meaningless.
- That agreements to share winnings, for example a lottery syndicate, may be binding depending on the sheer chance of the words used in the agreement.
- That developing the law through case decisions has retrospective effect, for example on anti-nuptial agreements, and that this should properly be the role of Parliament.
- That comfort letters would appear to have binding effect and that where they have been relied on, potentially involving a large sum of money in commercial contracts, there is no reason not to uphold the parties' expectations.
- That the words used in a contract may not have the effect the contracting parties expected, for example a promise to make an *ex gratia* payment.
- Evaluative comments on the fairness of the law are not credited unless they form part of the development of a relevant comment on predictability.

Credit links made to contract law theory relevant to the focus of the question.

AO3 - Levels are accessed based on the completeness of the response.

A Level 4 excellent responses will cover a range of evaluative points focused on the question including at least one well developed point and a conclusion. The question is focussed on predictability of the law, so comments based on fairness will not be credited.

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7-8	- Excellent analysis and evaluation of a wide range of legal rules and principles. - The response is wide ranging and has a well sustained focus on the question. - The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	10-12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5-6	- Good analysis and evaluation of a range of legal rules and principles. - The response has a mainly consistent focus on the question. - Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	7-9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3-4	- Basic analysis and evaluation of legal rules and principles. - The response is partially focused on the question. - Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	4-6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1-2	- Limited analysis of legal rules and principles. - The response has limited focus on the question. - Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

- 6 Advise whether the exclusion clauses on the Blue Acres website will prevent Ben and Kareem from claiming compensation and whether Ivan has to pay the £100.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

The rules for incorporation of exclusion clauses into a contract

- Terms must be available before acceptance - *Thornton v Shoe Lane Parking*.
- Signature will normally incorporate terms into a contract as long as what was signed was a contractual document - *L'Estrange v Graucob*, *Grogan v Robin Meredith*.
- A term may be incorporated by a course of dealings as long as they are regular and consistent – *McCutcheon v MacBrayn*.
- A harsh or unusual term must be made prominent - *Interfoto v Stiletto Visual Products*.
- That under the Consumer Rights Act 2015 there is an implied term in a consumer contract that goods are satisfactory quality S.9 and fit for purpose S.10.

The rules for interpretation of exclusion clauses

- Terms must be clear about the liability they are excluding, and any terms which are vague or too wide are unlikely to be given effect by the courts, sometimes called the *contra proferentem* rule, s.69 CRA, *Shell v P&O Road Tankers*.

The limitations on exclusion clauses under the Consumer Rights Act 2015

- That under s.31 the implied terms as to satisfactory quality etc cannot be excluded in a consumer contract.
- That under s.62 unfair terms do not bind a consumer.
- That under s.62(4) a term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.
- In *ParkingEye v Beavis* a £100 parking ticket was not considered to be contrary to the requirement of good faith.
- That under s.65 liability for death or personal injury cannot be excluded.
- That Schedule 2 contains a list of terms which are to be regarded as unfair.

AO1 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully explain principles relating to incorporation of exclusion clauses as a contract term and principles of statutory regulation.

Credit any other relevant point(s).

AO2 Indicative content

Answers may include:

Blue Acres Farm and visitors

- The terms are available on the website before the contract is completed.
- Customers have to scroll to the end of a lengthy set of terms to accept them, and this could be seen as analogous to signing.
- The exclusion clauses could be seen as harsh or unusual and so would need to be made prominent in order to be accepted, they do not appear to have been made prominent.

Credit a discussion about whether any of the terms are clear enough to be relevant to the loss suffered.

Blue Acres Farm and Ben

- Blue Acres have probably been negligent in placing the donkey in a field where customers have access.
- The farm cannot exclude liability for injury caused by their negligence, under s.65 CRA.
- Conclude that Ben will be able to sue Blue Acres.

Blue Acres Farm Shop and Kareem

- The exclusion clause is quite vague and does not specify what kind of losses Blue Acres is excluding, this means it is unlikely to be enforced by a court under s.69 CRA.
- The farm shop are trying to exclude liability for the scarf being fit for purpose and of satisfactory quality.
- Due to the poor quality of the scarf it would not be satisfactory quality.
- Under s.31 CRA liability for breach of the implied terms cannot be excluded.
- Conclude that Kareem will be able to sue Blue Acres.

Credit an application of S.62 – any discussion of whether it may be reasonable for the shop to exclude liability.

Blue Acres Farm and Ivan

- Term 2 of Blue Acres contract must be seen as reasonable in order to be enforceable, under s.62 CRA.
- The harsh fine could be seen as reasonable as it deters people from parking inappropriately.
- Any reasonable conclusion on the facts.

AO2 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully apply to all three situations, making good use of the facts in the scenario to reach a reasoned conclusion.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7-8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10-12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5-6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7-9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3-4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4-6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1-2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

- 7 Advise what common law remedies Emma has against Hi Zone Garage for missing the wedding and for the wasted expenditure for the space at the classic car show, and what statutory remedies she can claim for the music system being faulty. You can assume that Hi Zone is in breach of contracts for all three claims.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

The basis for awarding damages at common law

- That damages can be claimed for consequential losses that result from non-performance – *Ruxley Electronic & Construction v Forsyth*.
- That damages can be claimed for reliance expenditure - *Anglia Television Ltd v Reed*.

Limitations for awarding common law damages

- That the parties should take reasonable steps to mitigate losses – *Thai Airways v K L Holdings*.
- That if mitigation removes or could have removed any actual loss suffered, there can be no claim for damages - *British Westinghouse Electric v Underground Electric*.
- That the losses suffered must have been those which would arise naturally or been within the contemplation of the parties - *Hadley v Baxendale*.
- That any unusual losses must have been within the contemplation of the parties - *Victoria Laundry v Newman*, but that the parties are expected to contemplate the normal losses that would have been suffered by a business - *The Heron II*.
- That damages are not normally awarded for distress unless the contract was aimed at pleasure in the first place - *Farley v Skinner*, *Jackson v Horizon Holidays*.

The basis for awarding damages under the Consumer Rights Act 2015

The remedies for breach of any of these rights

- That there is a short term right to reject the goods under s.20.
- That this right can be exercised up to 30 days after purchase under s.22.
- That there is a right to have the goods repaired or replaced under s.23.
- That there is a final right to have a price reduction or to reject the goods under s.24.

- That any refund to the consumer may be reduced by a deduction for use, but not if the final right to reject is within 6 months of purchase.

The rights which are implied into consumer contracts in the Consumer Rights Act 2015

- That under s.9 goods must be of satisfactory quality.
- That under s.10 goods must be fit for purpose.
- That under s.11 goods must be as described.
- Credit information about regulation of consumer services under S.48-56 CRA.

AO1 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully explain principles relating to awarding damages at common law and the remedies available under the Consumer Rights Act.

Credit any other relevant point(s).

AO2 Indicative content

Answers may include:

Emma and her sister's wedding

- Emma may be able to claim for consequential losses for missing the wedding.
- The wedding must have been in the contemplation of Hi Zone Garage which does appear to be the case.
- Damages for distress would not apply as Hi Zone's contract was not aimed at providing pleasure.
- Emma is under a duty to mitigate her losses, in this case she could have hired a car in order to attend the wedding.
- Conclude that Emma will not be able to claim damages against Hi Zone for missing the wedding.

Emma and the classic car show

- Emma may be able to claim reliance losses for the wasted expenditure for the ticket.
- Losses can only be claimed if they were in the contemplation of both Hi Zone and Emma when making the contract.
- Unlikely to be the case as Emma does not appear to have mentioned the car show to the garage.
- Conclude that Emma will not be able to claim damages against Hi Zone for the wasted ticket price.

Emma and the music system

- Emma has rights relating to faulty goods under the Consumer Rights Act
- Emma has a short term right to reject the goods and that this can be exercised up to 30 days after purchase.
- Emma also has a right to have the goods repaired or replaced.
- Emma has a final right to have a price reduction or to reject the goods if they are still unsatisfactory.
- Any refund to Emma may be reduced by a deduction for use, but not if the final right to reject is within 6 months of purchase.
- Credit an answer that there has been a breach of the terms implied into the contract by the Consumer Rights Act. Candidates can be credited for arguing that the music system is not of satisfactory quality, is not fit for purpose or is unlikely to be as described, however only one such line of argument can be credited.
- Credit a line of argument that installing the music system is a service and would be regulated under S.48-56 CRA. The remedies available would be requiring repeat performance (S.55), the right to a price reduction (S.56), a right to damages (S.54).

AO2 - Levels are accessed based on the completeness of the response.

A Level 4 excellent response will fully apply to all three situations, making good use of the facts in the scenario to reach a reasoned conclusion.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7-8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10-12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5-6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7-9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3-4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4-6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1-2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

8* As per question 5*

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1*or 2*	8	0	0	12	20
3 or 6	8	12	0	0	20
4 or 7	8	12	0	0	20
5* or 8*	8	0	12	0	20
Total	32	24	12	12	80

**AO2 elements 1a and 1b will be awarded jointly

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