

GCE

Law

Unit **G156**: Law of Contract Special Study

Advanced GCE

Mark Scheme for June 2014

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

© OCR 2014

Annotations

Annotation	Meaning
	Blank Page – this annotation must be used on all blank pages within an answer booklet (structured or unstructured) and on each page of an additional object where there is no candidate response.
	Q2 Synopticism
	Q2 AO2
	Q1&3 Critical Point Q2 Bald Case
	Q2&3 Conclusion
	ALL Not correct / Page checked for response
	Q1 Linked case Q2 Link to source
	ALL Not Relevant or Too vague Also no response or response achieves no credit
	ALL Repetition/or 'noted' where a case has already been used in the response
	Q2 Developed Case
	Q1 Analytical Point Q2 AO1 Q3 Applied Point

Subject-specific marking instructions

Before you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria *1 (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column*2
- question specific guidance given in 'Guidance' column*3
- the 'practice' scripts*4 provided in Scoris and accompanying commentaries

*1 The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.

*2 The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.

*3 Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.

*4 The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

Awarding Assessment Objectives 1 and 2

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided in point 10 of the above marking instructions, with the key point being that you start at the **middle*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, should receive no marks.

*** Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.**

Awarding Assessment Objective 3

AO3 marks are awarded based on the marks achieved for either AO1, AO2 or in some cases, the total of AO1 and AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

Blank pages and missed answers

Sometimes candidates will skip a few pages in their answer booklet and then continue their answer. To be sure you have not missed any candidate response when you come to mark the last question in the script you must check every page of the script and annotate any blank pages with the following annotation:



This will demonstrate that every page of a script has been checked.

You must also check any additional pages eg A, A1 etc, which the candidate has chosen to use. Before you begin marking, use the Linking Tool, to 'link' any additional page(s) to the relevant question(s) and mark the response as normal.

Question	Indicative Content	Mark	Guidance												
1*	<p>Potential answers may:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Explain the critical point (C) of the case: Judge Denning in the High Court suggested, <i>obiter</i>, that where a promise was made to accept part-payment of a debt with no further consideration and that promise was relied upon, the promise can be enforced in equity. This case effectively created the modern doctrine of promissory estoppel.</p> <p>Link this case with another relevant case (LNK) for development such as: <i>Hughes v Metropolitan Railway Co</i>, <i>Foakes v Beer</i>, <i>Pinnel's Case</i>, <i>Re Selectmove</i>, <i>Combe v Combe</i>, <i>Collier v P&M J Wright (Holdings) Ltd</i>, <i>Jorden v Money</i>, <i>D&C Builders v Rees</i></p> <p>Discuss the case analytically (✓), for example making points such as:</p> <p>AP1 This was a hugely controversial decision which arguably offended against a binding House of Lords precedent (<i>Foakes</i>) – exacerbated by ease of arguing PE. Credit that it does not actually offend against principles of precedent as PE is in equity not common law.</p> <p>AP2 The point of controversy was that the <i>dicta</i> in <i>High Trees</i> appeared to state that rights to payment were permanently destroyed not simply postponed. Denning asserted that it had not been discussed in <i>Foakes</i></p> <p>AP3 Denning argues that he is justified in potentially undermining <i>Foakes</i> because <i>Foakes</i> did not</p>	12	<table border="1" data-bbox="1279 280 1731 491"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11–12</td> </tr> <tr> <td>4</td> <td>9–10</td> </tr> <tr> <td>3</td> <td>7–8</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>CP – Max 3 marks Linked to the material point/ratio – 1 mark is available for that facts of the case but these are not essential to get full marks. An accurate source <u>and</u> line reference is adequate for the facts of the case to receive the one mark. Where given, the ratio of the case needs to be given an AO2 slant to get a mark</p> <p>AP – Max 6 marks for any Applied Point(s) These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks</p> <p>LC – Max 3 marks for a relevant, linked case The case must be linked for a particular point. Marks can be achieved as follows, for example: 1 mark for the name of the case, 1 mark for some development and 1 mark for a link to the question</p>	AO2 Levels	AO2 Marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3
AO2 Levels	AO2 Marks														
5	11–12														
4	9–10														
3	7–8														
2	4–6														
1	1–3														

Question	Indicative Content	Mark	Guidance										
	<p>sufficiently take account of the fusion of Law and Equity and the the Law Revision Committee also favoured his position. Credit fairness arguments.</p> <p>AP4 Denning’s <i>dicta</i> may undermine the protective function of <i>Foakes</i> in that PPD could be obtained by foul play. This is later dealt with in <i>D & C Builders</i> (a case which shows Denning’s commitment to the doctrine as he could have but did not use <i>Foakes</i>)</p> <p>AP5 Denning perhaps saw the danger of undermining the requirement for consideration in creating new rights – the entire discussion in <i>High Trees</i> seems to focus on promises to accept less – though there is no logical reason why reliance should not ever create causes of action. (This was later dealt with explicitly by Denning in <i>Combe v Combe</i>)</p> <p>AP6 Recent cases suggest that it may actually permanently destroy rights in certain cases (<i>Collier</i>) and thus would clearly undermine <i>Foakes</i></p> <p>AP7 Consider any other relevant analytical comment(s).</p>												
	<p>Assessment Objective 3 - Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO2 Marks</th> <th style="text-align: center;">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">10–12</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">7–9</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">4–6</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–3</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO2 Marks	AO3 Mark	10–12	4	7–9	3	4–6	2	1–3	1
AO2 Marks	AO3 Mark												
10–12	4												
7–9	3												
4–6	2												
1–3	1												

Question	Indicative Content	Mark	Guidance													
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Explain the rules on adequacy and sufficiency of consideration</p> <ul style="list-style-type: none"> • The basic rule is that consideration need not be adequate but must be sufficient (<i>Re McArdle, Chappell v Nestle, White v Bluett</i>) <ul style="list-style-type: none"> ○ <i>Ward v Byham</i> is notably inconsistent with this approach <p>Explain the basic rules regarding performance of a pre-existing contractual duty to provide goods or services</p> <ul style="list-style-type: none"> • The basic rule remains that simply performing a pre-existing contractual duty is not good consideration (<i>Stilk v Myrick</i>) as nothing of legal value is offered <ul style="list-style-type: none"> ○ Exception 1: where a party does more than they were originally contracted to do (<i>Hanson v Royden</i>) ○ Exception 2: where, before the promise to vary, the situation has changed so dramatically that the promisee was entitled to refuse to perform the original contract (<i>Hartley v Ponsonby</i>) ○ Exception 3: where the promisor gains a 'practical benefit' from the variation and that promise was not the result of duress (<i>Williams v Roffey, Pitt v PHH Asset Management, Adam Opel GmbH v Mitras Automotive UK Ltd, South Caribbean Trading v Trafigura Beheer BV</i>) <p>Explain the special rules regarding performance of a pre-existing contractual duty to pay money (part-payment of a</p>		<table border="1" data-bbox="1279 245 1729 459"> <thead> <tr> <th data-bbox="1279 245 1503 282">AO1 Levels</th> <th data-bbox="1503 245 1729 282">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 282 1503 319">5</td> <td data-bbox="1503 282 1729 319">14–16</td> </tr> <tr> <td data-bbox="1279 319 1503 355">4</td> <td data-bbox="1503 319 1729 355">11–13</td> </tr> <tr> <td data-bbox="1279 355 1503 392">3</td> <td data-bbox="1503 355 1729 392">8–10</td> </tr> <tr> <td data-bbox="1279 392 1503 429">2</td> <td data-bbox="1503 392 1729 429">5–7</td> </tr> <tr> <td data-bbox="1279 429 1503 459">1</td> <td data-bbox="1503 429 1729 459">1–4</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed* and without dealing with both the common law and equity. Responses are likely to use material both from within the pre-release materials (LNK) and from beyond the pre-release materials which have a specific link to the area of law.</p> <p>Level 4 Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed* and without dealing with both the common law and equity.</p> <p>Level 3</p>		AO1 Levels	AO1 Marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4
AO1 Levels	AO1 Marks															
5	14–16															
4	11–13															
3	8–10															
2	5–7															
1	1–4															

Question	Indicative Content	Mark	Guidance
	<p>debt)</p> <ul style="list-style-type: none"> • Simply paying part of a debt owed is not good consideration (<i>Pinnel's Case, Foakes v Beer</i>) as nothing of value is offered <ul style="list-style-type: none"> ○ Paying part of a debt owed in a slightly different manner is good consideration. This includes paying earlier, paying somewhere else, or paying in kind ○ As with other forms of consideration, the agreed alternative need not be adequate (<i>Chappell v Nestle</i>) but must be sufficient (<i>White v Bluett</i>) ○ The court will not allow a 'practical benefit' approach in these cases (<i>Re Selectmove</i>) ○ Accepting part-payment from a third party is good consideration ○ Accepting part-payment as part of a composition agreement is good consideration (<i>Hirachand Punamchand v Temple</i>) <p>Explain the equitable rules of promissory estoppel</p> <ul style="list-style-type: none"> • A contracting party who promises not to enforce a contractual right cannot later rely on that right if it would be inequitable to do so and the promisee has relied on the promise (<i>Hughes v Metropolitan Railway Co, Central London Property Trust Ltd v High Trees House Ltd</i>) <ul style="list-style-type: none"> ○ There must be a clear and unambiguous promise to enforce rights. Silence or failure to act will not usually be sufficient (<i>China-Pacific SA v Food Corp of India</i>) ○ There must be reliance on the promise (the closest equity gets to requiring 'value') ○ As an equitable doctrine, it is not available as of right and the promisee may not rely upon it if it would be inequitable to do so (<i>D & C</i> 		<p>Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed*.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without 2 relevant cases, neither of which are required to be developed.</p> <p>Level 1 Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p> <p>*Developed = case name + facts (minimal) or ratio (minimal)</p>

Question	Indicative Content	Mark	Guidance												
	<p><i>Builders v Rees</i>)</p> <ul style="list-style-type: none"> ○ It is generally seen as neutralising existing rights for a period of time, it does not extinguish future rights (<i>Tool Metal Manufacturing Co Ltd v Tungsten Electrical Co Ltd</i>) ○ Recent <i>dicta</i> support the idea that promissory estoppel can permanently extinguish rights in part-payment of debt cases (<i>Collier v P&M J Wright (Holdings) Ltd</i>) – seemingly undermining <i>Foakes v Beer</i> ○ It cannot create new rights or extend existing rights; it is a shield not a sword (<i>Combe v Combe, Baird Textile Holdings Ltd v Marks & Spencer plc</i>) <p>Credit reference to the 1937 proposals of the Law Revision Committee. Credit any other relevant point.</p>														
	<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Discuss:</p> <ul style="list-style-type: none"> • Courts do not demand ‘market value’ (adequate consideration) in any transaction <ul style="list-style-type: none"> ○ The fact that the courts will not enquire into the adequacy of consideration is a reflection of the fundamentally <i>laissez faire</i> approach of the courts. Parties are given the power and responsibility to arrive at whatever bargain they see fit • The fact that, despite not being concerned with adequacy of consideration, the courts still require some consideration is inevitable if the doctrine of consideration is to exist at all. 	14	<table border="1" data-bbox="1279 890 1731 1102"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13–14</td> </tr> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion* with some synoptic content.</p> <p>Level 4 Responses are unlikely to achieve level 4 without good</p>	AO2 Levels	AO2 Marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
AO2 Levels	AO2 Marks														
5	13–14														
4	10–12														
3	7–9														
2	4–6														
1	1–3														

Question	Indicative Content	Mark	Guidance
	<ul style="list-style-type: none"> ○ It is notable that other jurisdictions operate very effectively without requiring any consideration at all • There is a limit to what the courts will accept as consideration. This is often explained as being the distinction between something of economic value, however small, and something of merely sentimental or emotional value <ul style="list-style-type: none"> ○ It is notable that even the cases where something trivial was found to be good consideration, the judges may have taken that approach because the intention behind requiring the trivial consideration was commercial advantage (see <i>Chappell</i> for example) • The other traditional limit on 'value' is that the consideration must give a <i>legal</i> benefit, in other words, merely performing a pre-existing contractual duty cannot be good consideration. <ul style="list-style-type: none"> ○ This is a rule which has attracted much criticism as agreements leading to genuine practical benefit were not traditionally enforceable • The two older exceptions to the traditional rule seem sensible and show genuine 'value', the recent exception in <i>Williams</i> is more doctrinally controversial and yet has met with support from judges and businessmen • The rules on part-payment of debt appear to insist on 'value' beyond practical benefit and yet in reality the value required is only 'sufficient' consideration so in reality very little value is actually required • Promissory estoppel is also relevant to this question as it is another way in which the courts can choose to enforce an agreement to vary a contract. Here the 		<p>analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p>Level 3 Responses are unlikely to achieve level 3 without adequate analytical evaluation of the relevant areas of law and limited focus on the quote.</p> <p>Level 2 Responses are unlikely to achieve level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>Level 1 Responses are unlikely to achieve level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (NB conclusion does not need to appear at end).</p>

Question	Indicative Content	Mark	Guidance										
	<p>courts do not demand 'value' in any economic sense</p> <ul style="list-style-type: none"> ○ the fact that they demand reliance suggests that there is something of value which <i>is</i> demanded – even though it has not been made fully clear whether or not the reliance has to be detrimental • Is the concept of value an elastic one which allows the courts to pick and choose which agreements they want to enforce? • It is interesting to note that the 1937 Law Revision Committee proposals did not include removing consideration altogether though they did suggest that performance of pre-existing duties should always be good consideration • Civilian jurisdictions do not require any value at all as they do not have the concept of consideration <p>Reach any sensible conclusion.</p> <p>Credit any other relevant comment.</p>												
	<p>Assessment Objective 3 - Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">AO1 + AO2 Marks</th> <th style="text-align: center;">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">24–30</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">17–23</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">9–16</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–8</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	24–30	4	17–23	3	9–16	2	1–8	1
AO1 + AO2 Marks	AO3 Mark												
24–30	4												
17–23	3												
9–16	2												
1–8	1												

Question	Indicative Content	Mark	Guidance																		
3	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define the relevant rules and use any relevant cases as authorities for those rules.</p>	10	<table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1 Marks</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>7–8</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>5–6</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>3–4</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–2</td> <td>1–4</td> </tr> </tbody> </table>	Mark Levels	AO1 Marks	AO2 Marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4
Mark Levels	AO1 Marks	AO2 Marks																			
5	9–10	17–20																			
4	7–8	13–16																			
3	5–6	9–12																			
2	3–4	5–8																			
1	1–2	1–4																			
	<p>Assessment Objective 2 – Analysis, Evaluation and Application</p> <p>In the case of (a):</p> <p>CP Identify that there is pre-existing contractual duty to pay money and part-payment of debt is being sought. For PPD to succeed, something extra must be offered (<i>Pinnel’s Case, Foakes v Beer</i>)</p> <p>AP1 In this case, nothing extra has been offered</p> <p>AP2 It is arguable that Ian has received the practical benefit of being sure that he will receive at least some money on time however the courts will not allow practical benefit to be argued in PPD situations (Re <i>Selectmove</i>)</p> <p>AP3 No enforceable promise under common law</p> <p>AP4 Promissory estoppel could be argued if there has been a clear promise, a reliance on that promise and it would be inequitable to enforce it (<i>High Trees, Collier</i>)</p> <p>AP5 These conditions have been met in this case. Credit discussion of <i>DC Builders</i> and ‘clean hands’ – accept arguments that it is inequitable in this case as he has the cash</p> <p>CON Conclude that equity is likely to estop Ian from claiming back the £20</p>	20	<p>Marks should be awarded as follows (per part question):</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> </tr> <tr> <td>4</td> <td>7–8</td> </tr> <tr> <td>3</td> <td>5–6</td> </tr> <tr> <td>2</td> <td>3–4</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p>NB A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> • Max 3 marks for the critical point (CP) • Max 6 marks for applied points (AP) • Max 1 mark for a logical conclusion*/assessment of the most likely outcome in terms of liability (CON) <p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a conclusion*.</p> <p>Responses are unlikely to achieve level 5 if the conclusion* is incorrect <u>and</u> contradicted by the reason offered.</p>	Mark Levels	(a), (b) or (c)	5	9–10	4	7–8	3	5–6	2	3–4	1	1–2						
Mark Levels	(a), (b) or (c)																				
5	9–10																				
4	7–8																				
3	5–6																				
2	3–4																				
1	1–2																				
	<p>In the case of (b):</p> <p>CP Identify that the agreement with George is an ‘increasing pact’ and must be supported by consideration. Simply performing a pre-existing contractual duty is not good consideration (<i>Stilk v Myrick</i>)</p>																				

		<p>AP1 Show that there is an exception to this rule when circumstances have changed so much that a party may refuse to perform their original obligations (<i>Hartley v Ponsonby</i>)</p> <p>AP2 Show that losing 50% of the team satisfies that requirement</p> <p>AP3 Show that 'practical benefit' can also be argued in these situations (<i>Williams v Roffey</i>) though this may be blocked due to duress</p> <p>AP4 Show that not having to wait for another team would count as a practical benefit in this case</p> <p>AP5 Show that as there is good consideration for the promise, Fiona will not need equity to come to her rescue (also credit candidates who note that the equitable doctrine of promissory estoppel cannot be used to extend rights as it is a shield not a sword (<i>Combe v Combe</i>) though this is not required for full marks)</p> <p>CON Conclude that the agreement with George would be enforceable</p>		<p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).</p>
		<p>In the case of (c):</p> <p>CP Identify that there is pre-existing contractual duty to pay money and part-payment of debt is being sought. For PPD to succeed, something extra must be offered (<i>Pinnel's Case, Foakes v Beer</i>)</p> <p>AP1 Show that in this case, nothing extra has been offered</p> <p>AP2 Show that, even if it could be argued, there is no practical benefit here</p> <p>AP3 Show that no enforceable agreement will be found at common law</p> <p>AP4 Show that promissory estoppel could be argued if there has been a clear promise, a reliance on that promise and it would be inequitable to enforce it (<i>High Trees, Collier</i>)</p> <p>AP5 Show that these conditions have been met with regard to the 50% reduction in rent</p> <p>CON Conclude that equity is likely to estop Evan from claiming back the rent lost in that three month period.</p>		

APPENDIX 1 – 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 Responses 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 Responses at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate Responses will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate Responses will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate Responses will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

OCR (Oxford Cambridge and RSA Examinations)
1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

Education and Learning

Telephone: 01223 553998

Facsimile: 01223 552627

Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office; 1 Hills Road, Cambridge, CB1 2EU
Registered Company Number: 3484466
OCR is an exempt Charity

OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553

© OCR 2014

