

**GCE**

**Law**

Unit **G155**: Law of Contract

Advanced GCE

**Mark Scheme for June 2015**

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 2015

These are the annotations, (including abbreviations), including those used in scoris, which are used when marking

Annotation	Meaning
	AO2+
	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	Sort of

## 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 \*<sub>1</sub> (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column\*<sub>2</sub>
- question specific guidance given in 'Guidance' column\*<sub>3</sub>
- the 'practice' scripts\*<sub>4</sub> provided in Scoris and accompanying commentaries

- \*<sub>1</sub> The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- \*<sub>2</sub> 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.
- \*<sub>3</sub> 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.
- \*<sub>4</sub> 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.

### Rubric

#### What to do for the questions the candidate has not answered?

The rubric for G153 instructs candidates to answer **three** questions; one from Section A, one from Section B and one from Section C. For the questions the candidate has not answered you should record NR (no response) in the mark column on the right-hand side of the screen. Do **not** record a 0.

#### What to do for the candidate who has not complied with the rubric either by answering more than three questions or by answering more or less Section A, B or C questions than is permitted?

*This is a very rare occurrence.*

Mark all questions the candidate has answered. Scoris will work out what the overall highest mark the candidate can achieve whilst conforming to the rubric. It will **not** 'violate' the rubric

**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 an 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.

## SECTION A

Question	Indicative Content	Mark	Guidance												
1*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain any or all of the following:</p> <ul style="list-style-type: none"> <li>• that consideration must have some value but that it need not be equal on each side, illustrate with reference to case such as <i>Thomas v Thomas</i></li> <li>• that anything requested by the other side can be seen as consideration if it imposes an obligation to produce something such as used sweet wrappers, illustrate with cases such as <i>Chappell v Nestle</i></li> <li>• that consideration must have some real and tangible value, illustrate with cases such as <i>White v Bluett</i>, <i>Hamer v Sidway</i></li> <li>• that performing a public duty is not seen as consideration unless the party goes beyond what is normally required, illustrate with cases such as <i>Collins v Godefroy</i>, <i>Glasbrook v Glamorgan</i>, <i>Ward v Byham</i></li> <li>• that performing a duty owed to a third party is seen as good consideration for a new promise, illustrate with cases such as <i>Shadwell v Shadwell</i>, <i>Pao On v Lau Yiu Long</i></li> <li>• that performance of an existing contractual duty is not seen as having value unless the performance goes beyond the original duty or gains some practical benefit to the promisor, illustrate with reference to cases such as <i>Stilk v Myrick</i>, <i>Hartley v Ponsonby</i>, <i>Williams v Roffey</i>, <i>Pao On v Lau Yiu Long</i></li> <li>• that something performed in the past is not seen as good consideration unless there was already an</li> </ul>	25	<table border="1" data-bbox="1279 347 1731 560"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Indicative Content	Mark	Guidance												
	<p>understanding that there would be payment, illustrate with reference to cases such as <i>Re McArdle</i>, <i>Stewart v Casey</i>, <i>Lampleigh v Braithwaite</i></p> <ul style="list-style-type: none"> <li>that part payment of a debt is not normally seen as good consideration but that there are exceptions to this rule, illustrate with reference to cases such as <i>D&amp;C Builders v Rees</i>, <i>Hirachand Punamchand v Temple</i>, <i>Re Selectmove</i></li> </ul> <p>Credit any other relevant case(s). Credit any other relevant point(s).</p>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Discuss any or all of the following:</p> <ul style="list-style-type: none"> <li>whether the requirement that some consideration is given, but that it need not be adequate, is a pragmatic response to the question of enforceability rather than a principled position.</li> <li>whether this position has been undermined by cases such as <i>Williams v Roffey</i></li> <li>whether cases such as <i>Chappell v Nestle</i> illustrate that consideration can be invented by the courts in circumstances where value came from the consequences, rather than the items demanded</li> <li>whether there is a real difference between cases such as <i>White v Bluett</i> and <i>Hamer v Sidway</i></li> <li>whether the courts have been creative with the requirement of consideration in order to benefit parties who are a part of the state in case such as <i>Glasbrook v Glamorgan</i></li> <li>whether cases such as <i>Ward v Byham</i> illustrate that a determined judge will always find something of value if they wish to enforce a contract</li> <li>whether the consequences rather than the act itself are</li> </ul>	20	<table border="1" data-bbox="1279 619 1731 834"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														



Question	Indicative Content	Mark	Guidance												
	<p>an explanation for the rule that an obligation owed to a third party can be seen as consideration to another party</p> <ul style="list-style-type: none"> <li>• whether there is a real differences between cases such as <i>Stilk v Myrick</i> and <i>Hartley v Ponsonby</i></li> <li>• whether the rules are flexible enough that a judge can easily find an understanding to pay for a task performed in the past</li> <li>• whether the rules concerning part payment of a debt have been developed to deal with particular circumstances and broader policy considerations, particularly in <i>Re Selectmove</i></li> <li>• the debate between leading academic writers; Atiyah who argues that consideration stems from there being 'good reasons' for the enforcement of certain contractual promises, compared to Treitel who supports the traditional benefit/detriment analysis of consideration</li> </ul> <p>Credit any other relevant point(s). Credit any appropriate conclusion.</p>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></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>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <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;">37–50</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark														
37–50	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

Question	Indicative Content	Mark	Guidance												
2*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain all or any of the following:</p> <ul style="list-style-type: none"> <li>• that mistake renders a contract void, which means that there never was a binding contract</li> <li>• that in unilateral mistake one party, often referred to as a rogue, knowingly misleads the other about an aspect of the contract. Usually this is either the rogue's identity or their attributes</li> <li>• that the cases in unilateral mistake often arise because the rogue has obtained goods from a seller and has resold the sold goods to a third party. The cases arise when the seller, who has not been paid, attempts to regain their goods from the buyer in an action in the tort of conversion</li> <li>• that the seller will be able to regain their goods if their contract with the rogue is void for mistake, in which case no title to the goods passed (candidates should be credited if they explain that the seller can also reclaim the goods if the contract is voidable for misrepresentation and the seller rescinded the contract before the rogue sold the goods on to the buyer)</li> <li>• that the contract will be void for mistake if the rogue passed themselves off as someone else and the contract was not face to face, illustrate with reference to cases such as <i>Cundy v Lindsay</i> and <i>Shogun Finance v Hudson</i></li> <li>• that the contract will not be void for mistake if the mistake is merely one of status or attributes, illustrate with reference to cases such as <i>Kings Norton Metal v Edridge Merrett</i></li> </ul>	25	<table border="1" data-bbox="1279 312 1731 525"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>7</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Cases on other areas on mistake, such as <i>Bell v Lever Brothers</i> on common mistake or <i>Raffles v Wichelhaus</i> on mutual mistake, will not be credited under AO1 but may form a part of AO2 if used to contrast the availability of claiming a</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Indicative Content	Mark	Guidance
	<ul style="list-style-type: none"> <li>• that the contract will not normally be void if the seller and rogue were face to face, illustrate with reference to cases such as <i>Phillips v Brooks</i>, <i>Lewis v Avery</i></li> <li>• that there is one face to face case where the contract was made void for mistake, <i>Ingrams v Little</i>, but this has not been followed in subsequent cases.</li> <li>• That a contract is unlikely to be made void unless the other party has taken reasonable steps to confirm the identity of the other party, <i>Midland Bank v Brown Shipley</i></li> <li>• that a contract can also be made void for unilateral mistake where only one party was mistaken as long as the party who gained was aware that the mistake had been made, illustrate with reference to cases such as <i>Hartog v Shields</i> and <i>Centrovincial Estates v Merchant Investors</i></li> <li>• that the principle in <i>Hartog v Shields</i> does not apply where the mistake is not a matter which becomes a term of the contract, illustrate with reference to cases such as <i>Statoil v Louis Dreyfus Energy</i>, <i>Smith v Hughes</i></li> <li>• that a document can be made void for unilateral mistake, referred to as non est factum, where it was fundamentally different to what the party thought they were signing and there were reasonable grounds to have signed the document. Illustrate with reference to cases such as <i>Saunders v Anglia Building Society</i> and <i>Foster v Mackinnon</i></li> </ul> <p>Credit any other relevant case(s). Credit any other relevant point(s).</p>		remedy under different areas of mistake.

Question	Indicative Content	Mark	Guidance												
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Discuss any or all of the following:</p> <ul style="list-style-type: none"> <li>• reasons for the court favouring the buyer over the seller in rogue cases – that the seller has made an error of judgement in allowing an unknown party to take goods before payment whereas the buyer is not at fault</li> <li>• the decision to make the contract void in <i>Cundy v Lindsay</i>, that the mistake was understandable as the rogue has made himself look like another person who the seller would have been likely to trust</li> <li>• whether the decision in <i>Cundy v Lindsay</i> is consistent with other areas of mistake such as the decision in <i>Bell v Lever Brothers</i></li> <li>• similarities between the face to face cases and <i>Leaf v International Galleries</i>, that the person who is seeking to make the contract void is deemed to have contracted with the person or thing at face value</li> <li>• whether the decision in <i>Shogun Finance</i> is consistent with other decisions in mistake, that the garage dealt with the rogue was face to face and the innocent buyer has lost out due to a technicality of the kind of finance deal which was arranged by the rogue</li> <li>• whether the decision in <i>Ingrams v Little</i> has merit, that the sellers made it clear that they only intended to sell to the specific person who was identified in the documents, but that it is inconsistent with other decisions in this area</li> <li>• Discuss whether the Court of Appeal in <i>Lewis v Avery</i> were within their rights not to follow <i>Ingrams v Little</i>, that this could be seen as either the COA overruling itself or that the earlier decision was per incuriam</li> </ul>	20	<table border="1" data-bbox="1279 244 1731 459"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Indicative Content	Mark	Guidance												
	<ul style="list-style-type: none"> <li>• Discuss whether the decision in <i>Centrovincial Estates v Merchant Investors</i> adds certainty to contract law, that a contract may be void for mistake or binding depending on the state of awareness of the lessee</li> <li>• Discuss whether the decision in <i>Saunders v Anglia Building Society</i> is just or whether the overriding influence on the court was a policy of not making such decisions void</li> </ul> <p>Credit any other relevant point(s). Credit any appropriate conclusion.</p>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></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>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <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;">37–50</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark														
37–50	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

Question	Indicative Content	Mark	Guidance												
3*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain any or all of the following:</p> <ul style="list-style-type: none"> <li>when the court will find a unilateral offer – when the offeree is required to perform an action in order to accept and when the offeror indicates a willingness to be bound by a person who fulfils the required actions, illustrate with cases such as <i>Carlill v Carbolic Smoke Ball Company</i></li> <li>the different situations where the courts have used unilateral offers; adverts offering rewards <i>Carlill</i>, inviting competitive tenders <i>Blackpool and Fylde Aero Club v Blackpool Borough Council</i>, requirements of certain criteria in order to complete a contract <i>Daulia v Four Millbank Nominees</i>, offering a free gift to encourage sales <i>Esso v Commissioners for Customs and Excise</i>, auctions without reserve <i>Warlow v Harrison</i>, <i>Barry v Davies</i></li> <li>when the court will find a bilateral offer, where an unequivocal offer has been made to one person which requires agreement to accept, illustrate with reference to cases such as <i>Gibson v Manchester</i>, <i>Storer v Manchester</i>, <i>Taylor v Laird</i>, <i>Wilkie v London Passenger Transport</i></li> <li>when the court will find an invitation to treat, where information is given which may encourage another party to make a bilateral offer</li> <li>the different situations where the courts have used invitation to treat; giving information about a price <i>Harvey v Facey</i>, goods being placed in a shop <i>Fisher v Bell</i>, <i>Boots v PSGB</i>, adverts in a magazine <i>Partridge v Crittenden</i></li> </ul>	25	<table border="1" data-bbox="1279 284 1731 496"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Indicative Content	Mark	Guidance												
	<ul style="list-style-type: none"> <li>• credit mention of the situations where online sellers have mispriced goods which may cause confusion with consumers, make reference to situations involving Kodak, Argos and Tesco</li> <li>• other methods which have been used to solve disputes where an offer has not been clear such as the consensus ad idem approach, illustrate with cases such as <i>Trentham v Archital Luxfer</i></li> </ul> <p>Credit any other relevant case(s). Credit any other relevant point(s).</p>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Discuss any or all of the following:</p> <ul style="list-style-type: none"> <li>• whether the difference between a unilateral and bilateral offer is clear in general – that the tests are clear about whether the offer requires simple agreement or the fulfilment of actions in order to accept</li> <li>• the implications of finding a unilateral offer, that the offer may be open to more than one person to accept, that communication of acceptance is not required and that revocation may not be possible once conduct amounting to acceptance has begun</li> <li>• whether the courts' use of unilateral offers are clear, that the courts them in <i>Carlill</i> to include offers to the world and so they were not clear to the parties in that case, and that they are often used in order to achieve justice in a case even where the parties may not have anticipated a unilateral offer being made, as in <i>Blackpool and Fylde</i></li> <li>• whether the difference between adverts which are invitation to treat and those which are unilateral offers are clear, for example the difference between</li> </ul>	20	<table border="1" data-bbox="1279 655 1729 868"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17–20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13–16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9–12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5–8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Indicative Content	Mark	Guidance												
	<p>advertising goods for sale for a specific price which is probably an invitation to treat, and advertising a reward for returning a lost pet which is a unilateral offer, from a consumer point the difference may not be clear</p> <ul style="list-style-type: none"> <li>• whether the difference between a bilateral offer and invitation to treat is clear: <ul style="list-style-type: none"> <li>- That the difference between a simple word may define the difference and this is unlikely to be clear to non-lawyers, <i>Gibson v Manchester</i>, <i>Harvey v Facey</i></li> <li>- That there may be complex situations where there is both an invitation to treat and a unilateral offer, such as buy one get one free in a shop, which may not be easy to understand and where a party may not be fully aware of which one they are making</li> </ul> </li> <li>• the implications of a communication being an invitation to treat or an offer, that an invitation to treat is open to further negotiation and cannot be accepted</li> </ul> <p>Credit any other relevant point(s). Credit any appropriate conclusion.</p>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></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>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <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;">37–50</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark														
37–50	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														



## SECTION B

Question	Indicative Content	Mark	Guidance												
4*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain any or all of the following:</p> <ul style="list-style-type: none"> <li>• that for terms to be incorporated into a contract they must normally be made available before the offer is accepted, make reference to cases such as <i>Roscorla v Thomas</i>, <i>Thornton v Shoe Lane Parking</i>, <i>Chapleton v Barry UDC</i> but compare the ticket cases <i>Parker v SE Railway</i></li> <li>• that signing a contractual document incorporates terms contained within it even if they have not been read, make reference to cases such as <i>L'Estrange v Graucob</i>, and that in business contracts it may be sufficient to make reference to terms available elsewhere <i>Rooney v Bournemouth</i></li> <li>• that signature will not incorporate terms if what is signed is not a contractual document, make reference to cases such as <i>Grogan v Robin Meredith</i></li> <li>• that particularly harsh or unusual terms must be brought to the other sides attention or made prominent, make reference to cases such as <i>Interfoto v Stiletto Visual Productions</i></li> <li>• that terms may be incorporated by course of dealings if they are regular and consistent, make reference to cases such as <i>Kendal v William Lillico</i>, <i>Allen Fabrications v ASD</i> and compare <i>Hollier v Rambler Motors</i> where terms were not implied by course of dealings in a consumer contract</li> <li>• that terms may be implied by custom as long as both parties are aware and that there was a common</li> </ul>	25	<table border="1" data-bbox="1279 347 1731 560"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Indicative Content	Mark	Guidance												
	<p>understanding of the terms to be used, make reference to cases such as <i>British Crane Hire v Ipswich Plant Hire</i></p> <ul style="list-style-type: none"> <li>that an oral statement can be incorporated into a contract if the statement was important enough, was made by a party with greater access to the true picture and was made close in time to completion of the final contract, make reference to cases such as <i>Bannerman v White</i>, <i>Schawel v Reade</i>, <i>Routledge v McKay</i></li> <li>but an oral statement can also override written terms <i>Curtis v Chemical Dry Cleaning Company</i></li> </ul> <p>Credit any other relevant case(s). Credit any other relevant point(s).</p>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Lucy and Dripz</b></p> <ul style="list-style-type: none"> <li>Discuss whether it matters that Lucy has never read the terms on the delivery note, conclude that it probably doesn't</li> <li>Discuss whether the terms on the back of the delivery note are incorporated by signing, conclude not as it is not a contractual document being a delivery note and not an order form</li> <li>Discuss whether the term could be incorporated by course of dealing, conclude it probably could as the orders have been placed on a regular basis for 5 years and the process for signing the delivery note is regular and consistent</li> <li>Conclude that the terms on the delivery note are incorporated into the contract between Lucy and Dripz</li> </ul>	20	<table border="1" data-bbox="1279 759 1731 970"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases. At level 5 candidates are likely to have discussed the effect of the term being unusual (Dripz), the potential for incorporation by course of dealings (Dripz) and the potential for incorporation by oral statement (Paste-it)</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Indicative Content	Mark	Guidance
	<p><b>Lucy and Strokes</b></p> <ul style="list-style-type: none"> <li>• Discuss whether the terms have been made available before Lucy made her contract with Strokes, conclude that they were as she had to tick the box before she completed the contract</li> <li>• Discuss whether asking Lucy to tick the box was sufficient to include the terms in the contract with Strokes, conclude that this probably wasn't enough as the terms were unusual and so greater steps should have been taken to bring them to her attention.</li> <li>• Conclude that the terms were not included in her contract with Strokes.</li> </ul> <p><b>Lucy and Paste-it</b></p> <ul style="list-style-type: none"> <li>• Discuss whether the oral statements made by Alex could be incorporated into Lucy's contract with Paste-it</li> <li>• Discuss who is more likely to be in a position to know the truth about the products, conclude that this is Alex</li> <li>• Discuss whether the statements were important enough to be seen as a term of the contract, conclude that they seem to have persuaded Lucy into the contract and so they probably are</li> <li>• Discuss whether enough time has passed for the statement to no longer be seen as a term, conclude that four weeks is a long time and so the statements may not be seen as a term</li> <li>• Draw any reasonable conclusion from applying these tests as to whether the term was included in the contract</li> <li>• NB do not credit any discussion about misrepresentation in this question as candidates are specifically directed to incorporation of terms</li> </ul> <p>Credit any other relevant point(s). Reach a sensible conclusion.</p>		<p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>

Question	Indicative Content	Mark	Guidance												
	<p><b>Assessment Objective 3 - Communication and presentation</b></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>	5	<table border="1" data-bbox="1279 245 1731 491"> <thead> <tr> <th data-bbox="1279 245 1503 316">AO1 + AO2 Marks</th> <th data-bbox="1503 245 1731 316">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 316 1503 354">37–50</td> <td data-bbox="1503 316 1731 354">5</td> </tr> <tr> <td data-bbox="1279 354 1503 392">28–36</td> <td data-bbox="1503 354 1731 392">4</td> </tr> <tr> <td data-bbox="1279 392 1503 430">19–27</td> <td data-bbox="1503 392 1731 430">3</td> </tr> <tr> <td data-bbox="1279 430 1503 469">10–18</td> <td data-bbox="1503 430 1731 469">2</td> </tr> <tr> <td data-bbox="1279 469 1503 491">1–9</td> <td data-bbox="1503 469 1731 491">1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark														
37–50	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

Question	Indicative Content	Mark	Guidance												
5*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain all or any of the following:</p> <ul style="list-style-type: none"> <li>• the nature of a term in restraint of trade, a term by which one party agrees to limit or restrict his ability to carry on his trade, business or profession, make reference to cases such as <i>Nordenfeld v Maxim Nordenfeld</i></li> <li>• the general prohibition on terms to restrain trade, make reference to cases such as <i>British Reinforced Concrete v Schleff</i></li> <li>• that any restraint must be generally reasonable between the parties and that this may take into account the element of negotiation and advice that was received, make reference to cases such as <i>Proactive Sport Management v Rooney</i></li> <li>• that there must be a legitimate interest to protect such as business investment, specialist knowledge or client details, make reference to cases such as <i>Nordenfeld, Forster v Suggett, Hanover Insurance v Schapiro</i></li> <li>• that the restraint must be reasonable in respect of time, make reference to cases such as <i>Home Counties Dairies v Skilton, Fitch v Dewes</i> and that the insertion of break clauses may make a term more reasonable <i>Esso v Harper's Garage, Alec Lobb v Total Oil</i></li> <li>• that the restraint must be reasonable in respect of distance, make reference to cases such as <i>Fitch v Dewes, Mason v Provident Clothing</i></li> <li>• that the restraint must be reasonable in terms of what is included, make reference to cases such as <i>Mont v Mills, Home Counties Dairies v Skilton</i></li> </ul>	25	<table border="1" data-bbox="1279 284 1731 496"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Indicative Content	Mark	Guidance												
	<ul style="list-style-type: none"> <li>• that a term is more likely to be seen as reasonable if a financial incentive has been provided <i>Allied Dunbar v Wiesenger</i></li> <li>• that the restraint must be reasonable in the interests of the parties and in the interests of the public</li> <li>• the effect of a term being found to be unreasonably in restraint of trade; it will be unenforceable although in some cases it may be blue-pencilled to have an offending part removed, make reference to cases such as <i>Goldsoll v Goldman</i></li> <li>• that the courts may in some circumstances interpret a term narrowly in order to make it reasonable, <i>Home Counties Dairies v Skilton, Lyne Pirkis v Jones</i></li> <li>• that there is no general implied term in restraint of competition make reference to cases such as <i>Facenda Chicken v Fowler</i></li> </ul> <p>Credit any other relevant case(s). Credit any other relevant point(s).</p>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Luther and Andrea</b></p> <ul style="list-style-type: none"> <li>• Discuss whether Luther has any legitimate interest in restraining Andrea from setting up next door, conclude that there is because in buying the business he will have paid for the goodwill representing Andrea's existing customer base</li> <li>• Discuss whether Andrea has any term in the contract which prevents her from setting up a new business next to Luther, conclude that there is no express term and that the courts are unlikely to imply such a term</li> </ul>	20	<table border="1" data-bbox="1279 935 1731 1147"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without: <b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases. For level 5 candidates are likely to have identified the correct answer for Andrea (that there is no ROT clause) and have a</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Indicative Content	Mark	Guidance
	<ul style="list-style-type: none"> <li>• Conclude that Luther will not be able to restrain Andrea from trading next door and taking back her old customers</li> </ul> <p><b>Luther and Emily</b></p> <ul style="list-style-type: none"> <li>• Discuss whether Luther has a legitimate interest in restraining Emily from working in the beauty industry after he has bought the salon, conclude that legitimate interest is probably restricted to the hairdressing business. Credit any reference to the fact he paid.</li> <li>• Discuss whether the duration of 10 miles and 2 years is a reasonable restraint, credit any reasonable conclusion which makes reference to the nature of the beauty industry and the play off between time and distance</li> <li>• Discuss whether ‘the beauty industry’ is too broad and would prevent Emily from earning a living</li> <li>• Discuss whether the term can be interpreted in such a way as to restrain Emily from working in a retail environment, conclude that this is probably not a reasonable interpretation of the term as it has nothing to do with the business that was sold</li> <li>• Credit a discussion about whether the expression ‘beauty industry’ could be blue pencilled, conclude that it can’t as the term would then not make sense</li> <li>• Conclude that Emily can’t be restrained from working in the department store</li> </ul> <p><b>Luther and Glamz</b></p> <ul style="list-style-type: none"> <li>• Discuss whether Glamz has a legitimate interest to make Luther sell their products, conclude that there is because Glamz has invested in the salon and they are entitled to protect that investment</li> </ul>		<p>developed discussion of both scope and distance of the ROT term in Emily’s case.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>

Question	Indicative Content	Mark	Guidance												
	<ul style="list-style-type: none"> <li>• Discuss whether the period of 10 years is reasonable; conclude that it probably is as the sum of money invested is quite large. Credit any discussion that it would be more likely to be seen as reasonable if there was a break clause inserted or some facility for Luther to pay off the money early and end the tie-in</li> <li>• Discuss whether Luther can argue that the tie-in should end as Glamz products are too expensive for Luther's salon and having a detrimental effect, conclude that he probably wouldn't be able to argue this unless he can show that the restraint was unreasonable to protect Glamz interests</li> <li>• Conclude that Glamz will be entitled to enforce the restraint against Luther</li> </ul> <p>Credit any other relevant point(s). Reach a sensible conclusion.</p>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></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>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <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;">37–50</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark														
37–50	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														



Question	Indicative Content	Mark	Guidance												
6*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain any or all of the following:</p> <ul style="list-style-type: none"> <li>• that undue influence is an equitable doctrine which makes a contract voidable and allows a party unfairly influenced to end the contract</li> <li>• that where there is evidence of improper pressure this can amount to Class 1 (actual) undue influence, make reference to cases such as <i>BCCI v Aboody</i>, <i>Williams v Bayley</i></li> <li>• that where there is actual undue influence the courts do not require a bad deal in order to make the contract voidable, make reference to cases such as <i>CIBC Mortgages v Pitt</i>, <i>UCB Corporate Services v Williams</i></li> <li>• the situations where a presumption of undue influence will arise through relationships recognised in law such as doctor and lawyer sometimes called class 2A undue influence, make reference to cases such as <i>Allcard v Skinner</i></li> <li>• the situations where a presumption of undue influence will arise through relationships which have developed into trust and reliance, sometimes called class 2B, make reference to cases such as <i>Lloyds Bank v Bundy</i>, <i>Goldsworthy v Brickell</i></li> <li>• the requirement of ‘a transaction that requires explanation’, formerly known as a manifest disadvantage, citing cases such as <i>Nat West Bank v Morgan</i>, <i>Watson v Huber</i>, <i>Turkey v Awadh</i></li> <li>• that the presumption of undue influence can be rebutted where it is shown that full advice was given by an independent solicitor, make reference to cases such</li> </ul>	25	<table border="1" data-bbox="1279 284 1731 496"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least <b>5</b> relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least <b>3</b> relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Indicative Content	Mark	Guidance
	<p>as <i>Wadlow v Samuel (Seal)</i></p> <ul style="list-style-type: none"> <li>• the cases involving undue influence and third party's, where a lender will be deemed to have constructive notice of a parties undue influence, make reference to cases such as <i>Royal Bank Scotland v Etridge</i>, <i>Barclays Bank v O'Brien</i>.</li> <li>• the criteria that must be applied when examining whether a bank is under constructive notice of undue influence: <ul style="list-style-type: none"> <li>○ that the bank is placed on enquiry where the relationship is married or unmarried and in other situations such as parent and child, <i>Lancashire Loans v Black</i></li> <li>○ that the bank will not be put on notice if the loan is for the parties joint benefit</li> <li>○ that the bank will not be put on notice where one partner agrees to use assets other than their home as surety</li> </ul> </li> <li>• the standards that are required in order to avoid the bank being placed on constructive notice: <ul style="list-style-type: none"> <li>○ the bank needs to reassure itself that both parties have freely agreed to the property being used as security</li> <li>○ advice should go beyond merely pointing out the consequences of not paying and should discuss the level of risk and the partner's ability to pay the loan.</li> </ul> </li> </ul> <p>Credit any other relevant case(s). Credit any other relevant point(s).</p>		

Question	Indicative Content	Mark	Guidance												
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Esme and Farida</b></p> <ul style="list-style-type: none"> <li>• Discuss whether a presumption of undue influence can arise between Esme and Farida, conclude that it can on the basis of evidence of a relationship of trust and reliance</li> <li>• Discuss whether this is a deal which requires further explanation, conclude that it is as it obviously benefits the party who has given the advice and that there is an element of risk in investing in a newly started business</li> <li>• Discuss whether Farida has done anything to rebut the presumption of undue influence, conclude that she has not</li> <li>• Conclude that Esme will be entitled to rescind the contract and reclaim her money from Farida</li> </ul> <p><b>Esme and Beth</b></p> <ul style="list-style-type: none"> <li>• Discuss whether Beth's statement that Esme will have bad luck can be seen as actual undue influence, conclude that it probably can as it had the effect of making Esme act against her best interests</li> <li>• Discuss whether the nature of the deal has any bearing on whether Esme can claim undue influence, conclude that as this would be a claim of actual undue influence Esme would not have to show that it was a bad deal</li> <li>• Conclude that Esme can reclaim her money from Beth</li> </ul> <p><b>Esme and the bank</b></p> <ul style="list-style-type: none"> <li>• Discuss whether the deal could put the bank on constructive notice of possible undue influence against Esme by William, conclude that it could as there is likely to be a relationship of trust and that the deal is not for their joint benefit</li> </ul>	20	<table border="1" data-bbox="1279 244 1731 459"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Indicative Content	Mark	Guidance												
	<ul style="list-style-type: none"> <li>• Discuss whether the bank has done enough to avoid being placed on constructive notice, conclude that they probably have as they required Esme to see a solicitor.</li> <li>• Credit any discussion that it is not clear whether the solicitor has looked at the deal and Esme's financial position in enough detail</li> <li>• Conclude that Esme will not be able to resist the possession order against the house</li> </ul> <p>Credit any other relevant point(s). Reach a sensible conclusion.</p>														
	<p><b>Assessment Objective 3 - Communication and presentation</b></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>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <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;">37–50</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark														
37–50	5														
28–36	4														
19–27	3														
10–18	2														
1–9	1														

## SECTION C

Question	Indicative Content	Mark	Guidance												
7	<b>Assessment Objective 2 - Analysis, evaluation and application</b>		<table border="1" data-bbox="1279 316 1731 523"> <thead> <tr> <th data-bbox="1279 316 1503 347">AO2 Levels</th> <th data-bbox="1503 316 1731 347">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 347 1503 379">5</td> <td data-bbox="1503 347 1731 379">5</td> </tr> <tr> <td data-bbox="1279 379 1503 411">4</td> <td data-bbox="1503 379 1731 411">4</td> </tr> <tr> <td data-bbox="1279 411 1503 443">3</td> <td data-bbox="1503 411 1731 443">3</td> </tr> <tr> <td data-bbox="1279 443 1503 475">2</td> <td data-bbox="1503 443 1731 475">2</td> </tr> <tr> <td data-bbox="1279 475 1503 523">1</td> <td data-bbox="1503 475 1731 523">1</td> </tr> </tbody> </table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
AO2 Levels	AO2 Marks														
5	5														
4	4														
3	3														
2	2														
1	1														
(a)	<p>P1 Reason that the contract must be performed in its entirety in order for Damien to claim payment</p> <p>P2 Reason that it may be possible for Damien to claim that the contract is severable</p> <p>P2a Reason that it may be possible for Damien to claim part performance</p> <p>P3 Reason that in this case the price for the entire contract suggests that it is not severable</p> <p>P3a Reason that for this to be available Franck must have agreed to pay for part performance</p> <p>P4 Reason that Damien would not be able to claim payment for completing just the walls</p> <p>P4a Reason that in this case Franck has not agreed for Damien to finish early and so building the walls will not discharge the contract</p> <p>P5 Conclude that the statement is accurate</p>	5													
(b)	<p>P1 Reason that Damien would normally have to complete the whole contract in order to claim payment</p> <p>P2 Reason that it may be possible for Damien to claim that the contract has been substantially performed if all that remains to be done is a non-repudiatory breach of contract (Credit discussion of this as a minor defect)</p> <p>P3 Reason that a small amount of trim would amount to a non-repudiatory breach</p>	5													

Question	Indicative Content	Mark	Guidance
	<p>P4 Reason that Damien would be able to claim payment for the work minus an allowance for completing the trim</p> <p>P5 Conclude that the statement is inaccurate.</p>		
(c)	<p>P1 Reason that Hannah's contract is with Damien and Franck is not privy to that contract</p> <p>P2 Reason that Franck can sue Hannah under her contract with Damien using the Contract (Rights of Third Parties) Act if the contract purports to benefit him</p> <p>P3 Reason that in this case the contract between Damien and Hannah is unlikely to name or make reference to Franck and so purport to give him a benefit</p> <p>P4 Reason that Franck will not be able to sue Hannah if she does not complete the work properly</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	
(d)	<p>P1 Reason that Franck will be able to sue Damien as soon as it becomes clear that he will not be able to complete the contract in time</p> <p>P2 Reason that Franck has made it clear that the work must be complete by 1<sup>st</sup> October for the party</p> <p>P3 Reason that if Damien has not started the work by 1<sup>st</sup> September he will not be able to finish it by the stated date for completion</p> <p>P4 Reason Franck will be able to sue him on 1<sup>st</sup> September</p> <p>P5 Conclude that the statement is accurate.</p>	5	

Question		Indicative Content	Mark	Guidance												
8		<b>Assessment Objective 2 - Analysis, evaluation and application</b>		<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
AO2 Levels	AO2 Marks															
5	5															
4	4															
3	3															
2	2															
1	1															
	(a)	<p>P1 Reason that term a in Abundi's contract amounts to an exclusion clause</p> <p>P2 Reason that term a is subject to the requirement of reasonableness under S.2(2) Unfair Contract Terms Act</p> <p>P3 Reason that Abundi, as the larger company, have done nothing to make the term reasonable</p> <p>P4 Reason that Abundi will be liable for financial loss caused to Zelda</p> <p>P5 Conclude that the statement is inaccurate.</p>	5													
	(b)	<p>P1 Reason that term b in Abundi's contract is an exclusion clause which is regulated by the</p> <p>P2 Reason that Abundi's term is trying to exclude liability for death or personal injury</p> <p>P3 Reason that Abundi's term is made void by the Unfair Contract Terms Act</p> <p>P4 Reason that Abundi cannot exclude liability for the injury caused to the worker</p> <p>P5 Conclude that the statement is inaccurate.</p>	5													
	(c)	<p>P1 Reason that under the Sale of Goods Act it will be an implied term in Abundi's contract with Zelda that the bridge is fit for purpose</p> <p>P2 Reason that the contract between Abundi and Zelda is a business contract</p> <p>P3 Reason that term c is an attempt to exclude the terms implied by the Sale of Goods Act</p> <p>P4 Reason that that the Unfair Contract Terms Act makes such exclusion clauses subject to the requirement of reasonableness</p>	5													

Question		Indicative Content	Mark	Guidance
		P5 Conclude that the statement is inaccurate.		
	(d)	<p>P1 Reason that term d is an attempt to exclude liability for non performance of Abundi's contract</p> <p>P2 Reason that this is subject to the requirement of reasonableness under the Unfair Contract Terms Act if the contract is on one party's standard terms of business</p> <p>P3 Reason that the contract was made on Abundi's standard terms of contract</p> <p>P4 Reason that the term is unlikely to be seen as reasonable as it is being imposed and nothing is being given back to Zelda</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	



**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](mailto:general.qualifications@ocr.org.uk)

[www.ocr.org.uk](http://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 2015

