

GCE

Law

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

Advanced GCE

Mark Scheme for June 2017

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

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

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

Annotation	Meaning of annotation
	Critical Point (Q1/Q3), Developed Case (Q2)
	Analytical/Applied Point 1 etc (Q1/Q3), L5 = Synopticism in Q2
	Linked Case (Q1), Link to Source (Q2)
	Bald Case (Q1), Conclusion (Q3)
	AO2 point (Q2)
	AO1 point not linked to an authority
	Conclusion (Q2&3)
	Irrelevant
	Repetition
	Incorrect

Q	Answer/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: this was a case concerning the mistaken sale of a nephew's horse at auction when he had already intended to accept a sale to his uncle; it is the central authority for the general rule that silence cannot constitute acceptance; the general rule applied in <i>Felthouse</i> can be justified on the grounds that it would be unjust to allow someone to put someone to the time and trouble of having to actively reject an offer in order to avoid being entrapped into a contract.</p> <p>Link this case with another relevant case (LNK) for development such as: <i>Entores v Miles Far East Corporation</i>; <i>Brinkibon v Stahag Stahl</i>; <i>The Hannah Blumenthal</i>; <i>Cie Francaise d'Importation et de Distribution SA v Deutsche Continental Handelgesellschaft</i>; <i>Vitol SA v Norelf Ltd</i>; <i>Weatherby v Banham</i>; <i>Taylor v Allon</i>; <i>Robophone Facilities v Blank</i>; <i>Household Fire Insurance v Grant</i>; <i>Brogden v Metropolitan Railway Co</i>; <i>G Percy Trentham Ltd v Archital Luxfer Ltd</i></p> <p>Discuss the case analytically (A), for example making points such as:</p> <p>A1. It can be argued that in this case the uncle waived the need for acceptance and the nephew clearly intended to accept the offer so the result could be seen as wrong or unjust – there was no entrapment here. The fact that the nephew and uncle both clearly intended to have concluded a contract shows that this rule can serve to frustrate the intentions of the parties rather than support them. This surely offends against basic principles of <i>laissez faire</i>.</p>	12	<table border="1" data-bbox="1283 245 1675 459"> <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>Marks should be awarded as follows:</p> <ul style="list-style-type: none"> • Max 3 marks for the Critical Point (CP) • Max 6 points for Analytical Points (AP) • Max 3 points for a relevant Linked Case (LNK) <p>CP – Linked to the material point/ratio – 1 mark is available for the facts of the case but these are not essential to get full marks. An accurate source and line reference is adequate for the facts of the case to receive the one mark.</p> <p>AP – 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>LNK – 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> <p>Level 5</p> <p>Candidates are unlikely to achieve L5 without discussing the CP, without using a linked case for the purpose of showing development and without making two analytical points.</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														
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1	1-3														

Q	Answer/Indicative content	Mark	Guidance
	<p>A2. There are other situations in which silence does seem to be acceptable – if goods are sent to someone unsolicited, then the consumption or use of those goods will be seen as acceptance even though it hasn't been communicated – so should the court have created an exception in <i>Felthouse</i>? Unsolicited Goods and Services Act.</p> <p>A3. Despite the objections raised above, the courts have remained clear that even if both parties intended to agree, communication of the acceptance is essential for the sake of clarity and certainty (<i>Robophone Facilities v Blank</i>). If no clear communication was required, the offeree could speculate against the offeror – saying that he had accepted the contract if it turned out that it seemed to be a good one, and saying that he had not accepted it if it turned out that it seemed to be a bad one.</p> <p>A4. The decision in <i>Felthouse</i> was appealed and upheld by the Exchequer Chamber – but mainly on the grounds that the then requirements of the Statute of Frauds had not been met and therefore there could not be a contract. Some reference to the lack of communication was also made, however.</p> <p>A5. Despite the objections raised above, the courts have remained clear that even if both parties intended to agree, communication of the acceptance is essential for the sake of clarity and certainty (<i>Robophone Facilities v Blank</i>).</p> <p>A6. The arbitration cases were based on very specific facts and no court in those cases sought to question the correctness of the basic principle seen in <i>Felthouse</i>.</p> <p>A7. Any other analytical point.</p>		
	Assessment Objective 3 Communication and Presentation	4	

Q	Answer/Indicative content	Mark	Guidance	
	Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.		AO2 Marks	AO3 Mark
			10-12	4
			7-9	3
			4-6	2
			1-3	1

2*	<p>Potential answers MAY:</p> <p>Assessment Objective 1 - Knowledge and Understanding</p> <ul style="list-style-type: none"> • Explain the basic rule that acceptance must be communicated (<i>Entores v Miles Far East Corporation</i>) • Explain that the basic rule does not apply to unilateral contracts (<i>Carlill v Carbolic Smoke Ball Co</i>) • Explain that communication of acceptance can take place in writing, orally or by conduct (<i>Brogden v Metropolitan Rly Co</i>) • Explain that generally silence will not amount to a communication of acceptance (<i>Felthouse v Bindley, Brinkibon v Stahag Stahl, Robophone Facilities v Blank</i>) but that that rule is not absolute (<i>Vitol SA v Norelf Ltd</i>) and examples can be found of silence being held to be acceptance (<i>The Hannah Blumenthal; Weatherby v Banham</i>) • Explain that the most significant exception to the requirement of communication of acceptance is the Postal Rule under which the acceptance takes place on posting rather than on receipt (<i>Adams v Lindsell</i>) • Explain that the Postal Rule only applies if it is reasonable to use the post and that this is not limited to cases in which the offer was sent by post (<i>Henthorn v Fraser</i>) • Explain that the Postal Rule still applies even if the letter is delayed or lost in the post (<i>Household Fire and Accident Insurance Co v Grant</i>) • Explain that the Postal Rule will not apply if the letter is delayed or lost because of the fault of the offeree (<i>LJ Korbetis v Transgrain Shipping BV</i>) • Explain that it is possible for the offeror to stipulate a particular method of acceptance and that that can prevent the application of the Postal Rule (<i>Holwell Securities Ltd v Hughes</i>) • Explain that the Postal Rule does not apply to instantaneous methods of communication such as fax, telex or email (<i>Entores, Brinkibon, Thomas v BPE Solicitors</i>) though the receipt, and therefore acceptance, is likely to be found as happening within reasonable business hours (<i>Thomas v BPE Solicitors</i>) • Explain that a revocation of an offer must be communicated to the offeree (<i>Byrne v Van Tienhoven</i>) 	16	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO1 Levels</th> <th style="text-align: center;">AO1 marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">14-16</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">11-13</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">8-10</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5-7</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">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*. 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</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														

<ul style="list-style-type: none"> • Explain that revocation may be communicated by a third party provided that the third party could reasonably be expected to be authoritative (<i>Dickinson v Dodds</i>) • Explain that delivery of a revocation may be effective even if no-one reads it (<i>The Brimnes</i>) • Explain that the Postal Rule will prevent a revocation being effective if it is communicated after an acceptance has been posted (<i>Re Imperial Land Co of Marseilles</i>) <p>Credit any other relevant point(s).</p>	<p>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*</p> <p>Level 3</p> <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</p> <p>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</p>
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		<p>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>												
	<p>Assessment Objective 2 - Analysis, Evaluation and Application</p> <p>Points may include:</p> <ul style="list-style-type: none"> • Discussion of the basic requirement of communication of acceptance being entirely justified on the grounds of certainty and clarity • Discussion that the rules on communication of acceptance in unilateral contracts are justified because if the rules were otherwise it would profoundly limit the ability to make a genuine unilateral offer to the world • Discussion of the importance of silence not amounting to acceptance – if it did, then people would be entrapped into contracts if they didn't take positive steps to avoid them • Discussion of the justifications for the postal rule: <ul style="list-style-type: none"> ○ It reflects a 'meeting of the minds' between the parties – this is not a sound justification 	<p>14</p> <table border="1" data-bbox="1615 951 2011 1161"> <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>Stretch and Challenge and synoptic consideration can be demonstrated by candidates who appreciate the overarching theme in developing the particular area of law being studied. This includes</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													
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<p>because there isn't a single moment where both parties are definitely in agreement: the offeror may have changed their mind by the time the offeree posts their letter</p> <ul style="list-style-type: none"> ○ It places the risk of things being lost or delayed on the offeror and this is justified because the offeror had the chance to insist that the Postal Rule did not apply and can therefore be said to have accepted the risk – this does not take account of the fact that the offeror may have no control over the terms, such as when a consumer orders something based on an advertisement (invitation to treat) ○ It draws a line in the endless chain of communication that would theoretically be needed as each party sent their agreement to the most recent letter – this argument simply serves to justify a line being drawn; it does not specify <i>where</i> the line should be drawn (i.e. it would be just as plausible to say that acceptance took place on receipt) ○ It is a necessary rule to deal with the problem of an offer being revoked after acceptance has been posted but before it has been received. This is a common problem and other major legal systems have adopted a similar solution. This is a sound justification ○ It is economically efficient because it allows the offeree to start performing as soon as acceptance is sent (the rule does not slow down the offeror because they could not start performing until the acceptance arrived anyway). This is a sound justification ○ The two sound justifications do not apply to modern systems of communication: 1) there is no real delay in the 'posting' of email acceptances so there is no real window of time in which the revocation problem can appear; 2) If an offeree wants to get started on performance, they can very quickly check that their acceptance has arrived, indeed modern email systems will usually quickly alert you if an email has not been delivered successfully <ul style="list-style-type: none"> • Discuss that the requirement of communication of revocation is entirely justified on the grounds of clarity and predictability. • Discuss that allowing a plausible third party to communicate revocation is entirely practical – though does require a judgement to be made regarding the plausibility of the third party. • Discuss the fact that as a matter of policy, <i>The Brimnes</i>, is probably correct as the revoking party cannot be responsible for the inaction of the offeree. • Discuss 	<p>the role of the judges, the role of Parliament, the Law Commission, potential avenues for reform or the influence of policy in decision-making where relevant.</p> <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 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 adequate 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>
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	<p>the fact that it is the requirement of communication of revocation that is at the heart of the Postal Rule's significant undermining of the offeror's position. Arguments regarding the Postal Rule detailed above should be credited if they are formulated appropriately to target the communication of revocation.</p> <p>Credit any other relevant point</p>		<p>Level 1</p> <p>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 the answer (NB conclusion does not need to appear at end).</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"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>24-30</td> <td>4</td> </tr> <tr> <td>17-23</td> <td>3</td> </tr> <tr> <td>9-16</td> <td>2</td> </tr> <tr> <td>1-8</td> <td>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												

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
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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>C Identify that Yasmin's first email to Parminder was a counter-offer which killed the original offer (<i>Hyde v Wrench</i>)</p> <p>L1 Identify that the email to Yasmin is an offer</p> <p>L2 Identify that the second email purporting to accept the original offer is actually a new offer and not an acceptance</p> <p>L3 Identify that insisting that the contract will be formed unless Parminder acts to state otherwise is an attempt to make his silence operate as acceptance. Identify that silence cannot be acceptance (<i>Felthouse v Bindley</i>).</p> <p>L4 Identify the rule is that acceptance must be communicated. Email is an instantaneous means of communication therefore must be received (receipt rule) (<i>Entores</i>)</p> <p>CON Conclude that no effective offer and acceptance will be found</p>	20	<p>Marks should be awarded (per scenario) as follows:</p> <table border="1"> <thead> <tr> <th>Marks 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>	Marks Levels	(a), (b) or (c)	5	9-10	4	7-8	3	5-6	2	3-4	1	1-2						
Marks 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>C Identify that acceptance must be communicated but that where acceptance is posted, it takes effect on posting and not on receipt (dispatch rule) (<i>Adams v Lindsell, Household Fire Insurance v Grant</i>)</p> <p>L1 Identify that the first letter through Dan's door was an offer</p> <p>L2 Identify that Dan's reply appears to be unequivocal acceptance – mirror image (<i>Hyde v Wrench</i>)</p> <p>L3 Identify that the Postal Rule will only apply if post is a reasonable method of reply (<i>Henthorn v Fraser</i>). Posting is a reasonable method in this case. Dan's posting this letter will amount to acceptance (dispatch rule) (<i>Adams v Lindsell</i>)</p> <p>L4 Dan's posting this letter will amount to acceptance (dispatch rule) (<i>Adams v Lindsell</i>)</p> <p>L5 Identify that Jordaine's attempt at revocation will fail because it has taken place after acceptance (<i>Re Imperial Land Co of Marseilles, Byrne v Van Tienhoven</i>)</p> <p>CON Conclude that effective offer and acceptance will be found</p>		
	<p>In the case of (c):</p> <p>C Identify that email acceptance takes place on receipt and not on posting because it is an instantaneous method of communication (<i>Entores, Brinkibon, Thomas v BPE Solicitors</i>)</p> <p>L1 Identify that Priya's first email to Will was an offer</p> <p>L2 Identify that Will's question about payment was a request for information and not a counter offer (<i>Stevenson, Jacques v McLean, Hyde v Wrench</i>)</p>		

	<p>L3 Identify that Will's Friday morning email was an acceptance</p> <p>L4 Identify that receipt of email acceptances will be assumed to have taken place in normal business hours (<i>Thomas v BPE Solicitors</i>)</p> <p>L5 Identify that in this case Will's acceptance was sent in normal business hours and therefore would be effective at that point</p> <p>L6 Identify that Priya's attempt at revocation will fail because it has taken place after acceptance (<i>Re Imperial Land Co of Marseilles, Byrne v Van Tienhoven</i>)</p> <p>CON Conclude that effective offer and acceptance will be found</p>		
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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 candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

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

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