



Oxford Cambridge and RSA

**GCE**

**Law**

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

A Level

**Mark Scheme for June 2023**

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

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

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

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**MARKING INSTRUCTIONS**

## PREPARATION FOR MARKING

## RM ASSESSOR

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *RM Assessor Assessor Online Training*; *OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are posted on the RM Cambridge Assessment Support Portal <http://www.rm.com/support/ca>
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **number of required** standardisation responses.

YOU MUST MARK 10 PRACTICE AND 10 STANDARDISATION RESPONSES BEFORE YOU CAN BE APPROVED TO MARK LIVE SCRIPTS.

## MARKING

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

**Rubric Error Responses – Optional Questions**

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM assessor, which

will select the highest mark from those awarded. *(The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.)*

### Multiple Choice Question Responses

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

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

### Contradictory Responses

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

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

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

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

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

### Longer Answer Questions (requiring a developed response)

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

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there, then add a tick to confirm that the work has been seen.

## 7. Award No Response (NR) if:

- there is nothing written in the answer space

## Award Zero '0' if:

- anything is written in the answer space and is not worthy of credit (this includes text and symbols).

Team Leaders must confirm the correct use of the NR button with their markers before live marking commences and should check this when reviewing scripts.

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

If you have any questions or comments for your team leader, use the phone, the RM Assessor messaging system, or e-mail.

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

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















- To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- To determine the mark within the level**, consider the following:

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

## 11. Annotations

NOTE ADDITIONS TO THE ANNOTATIONS BELOW

**C** = case or other authority, or in Q1/Q2 key thinker**Con** = conclusion

Annotation	Meaning
	Very well developed point (WDP)
	Unclear
	Applied point
	Developed point (DP)
	Well developed point (WDP)
	Not answered question
	Not Relevant
	Point
	Repetition
	Sort of
	Point has been noted, but no credit has been given / blank page has been checked for response
	Correct
	Applied
	Spare 1

## 12. Subject Specific Marking Instructions

### Section A

1. 'The rule of law is seen as an essential principle within our legal system'. Discuss the extent to which you agree that the rule of law is central to our legal system.

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

#### AO1 Indicative content

Answers may include:

- Describe the rule of law according to Professor Dicey in 'An Introduction to the Study of the Law of the Constitution 1885':
  - No punishment without law
  - No man is above the law
  - Judicial decisions of the courts protect the rights of citizens
- Describe the origins of the rule of law from writers such as Aristotle and Plato
- Describe the influence that the rule of law had on other countries such as its influence on the American Bill of Rights 1791 and the French Declaration of the Rights of Man and the Citizen 1789
- Describe examples of cases where the rule of law was upheld or enforced - *Entick v Carrington*
- Explain modern concepts of the rule of law, showing its specific relevance to human rights, equality, fair trials and dispute resolution as explained by Tom Bingham in The Rule of Law
- Link to Articles 5 & 6 of the European Convention on Human Rights (ECHR)

Credit any other relevant point(s).

**AO3 Indicative content**

Answers **may** include:

- Discuss the importance of the rule of law:
  - No punishment without law – this links to the legal principle of *habeas corpus* which states that a person cannot be detained without the authorisation of a court. The Habeas Corpus Amendment Act 1679. Guantanamo Bay 2001-2009 where suspected terrorists were held without charge
  - No man is above the law – this provides a safeguard to prevent dictatorship and arbitrary use of power
  - The rule of law applies to all, regardless of class or wealth and includes the King/Queen (chapters 39 and 40 of the Magna Carta 1215)
  - The Bill of Rights 1689 contained rules that William of Orange was required to sign before he became King
  - Judicial decisions of the courts protect the rights of citizens – Dicey thought that judge-made law was the fairest system
  - The Act of Settlement 1701 protects the tenure of judges and ensures their independence from pressure when deciding cases
- Discuss the reasons why the rule of law is seen as fundamental in the English legal system
- Discuss whether the rule of law is still important today e.g. the detention of suspected terrorists, Article 5 ECHR etc
- Credit any recent relevant examples of the rule in practice such as *Miller v the Prime Minister*

Reach any sensible conclusion

Credit any other relevant point(s).



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

2. *It is much harder for a multicultural society, reflecting a diversity of views, to arrive at a moral consensus.’ Discuss how effectively the legal system of England and Wales can adapt to changes in morality, in the light of the above statement.*

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

### AO1 Indicative content

Answers may include:

- Describe the difference between laws and morals - define legal rules e.g. John Salmond, John Austin, H. Hart or Karl Llewellyn and definitions of morals e.g. Durkheim or Philip Harris
- Describe the nature of moral values and how they change over time e.g. the changes in the law relating to gay rights
- Describe how different sections of society have different moral values (pluralism)
- Explain how the law enforces moral values e.g. examples of human rights, common law examples, statutory examples
- Explain the diversity of moral views in a pluralist society
- Use examples of controversial laws made by parliament and judges e.g. abolition of the death penalty, the decisions in *Re A*, *Re S*, *R v Brown*
- Explain how morality changes over time e.g. marital rape was not a crime until 1991
- Describe the main points of the Hart/Devlin debate using examples of laws supporting Devlin and laws which support Hart
- Describe the Fuller v Hart debate
- Refer to the theories of law and morals e.g. Natural Law theorists (Aristotle, Aquinas, Fuller) and Positivists (Bentham), including the overlap between law and morals, the divergence of laws and morals

Credit any other relevant point(s).

**AO3 Indicative content**

Answers may include:

- Discuss the difficulty of protecting moral values in a pluralist society and how the law keeps up with changing moral views
- Discuss how politicians may avoid passing controversial laws that will divide society
- Discuss how morality usually moves at a faster pace and the law struggles to keep up with the views of society
- Discuss the role of judges making moral decisions. Use examples where the judiciary have been criticised for being 'out of touch'
- Discuss the strengths and weaknesses of the views of Devlin and his desire for the law to uphold a common morality to ensure society does not disintegrate. Compare with the utilitarian approach of Hart and his desire for the law to respect personal autonomy
- Discuss the opposing views of Fuller and Hart
- Discuss the strengths and weaknesses of the natural law theorists and the positivists
- Discuss the difficulties of trying to enforce and protect morals using the law and conclude how well the law achieves this

Reach any sensible conclusion

Credit any other relevant point(s).

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

## Section B

- 3 Advise Sara whether Tom, Layla and Heidi have given good consideration for her promises. Do **not** discuss intention to create legal relations.

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

## AO1 Indicative content

Answers **may** include:

**Explain that consideration is required from each party in order to make a binding contract**

- Consideration must move from the promisee – *Tweddle v Atkinson*

**Explain that consideration must be sufficient:**

- Consideration must have some value but need not be equivalent on each side – *Thomas v Thomas*
- Consideration maybe anything requested by one of the parties – *Chappell v Nestlé*
- Consideration maybe going beyond an existing duty – *Ward v Byham*
- Giving up something that you have no right to do in the first place is unlikely to be seen as consideration – *White v Bluett*

**Explain the rules for past consideration:**

- Past consideration is not normally good consideration - *Re McArdle*
- There are exceptions to the rule in past consideration when the reward was always expected - *Stewart v Casey*
- There are exceptions to the rule if the promisee acted at the promisor's request - *Lampleigh v Braithwaite*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

**Tom has borrowed some money from Sara.**

- Identify that consideration must have sufficient value
- Identify that Tom does not have legal grounds to complain about how Sara spends her money, therefore giving up complaining does not have sufficient value
- Discuss whether not complaining moves from the promise (Tom)
  
- Credit any reference to the rule in Pinnel's case, that Tom already owes the money and only full payment, or other goods and services, will provide good consideration for this debt
  
- Conclude that Tom does not give good consideration when he stops complaining

**Layla drew a picture to send to Sara on her birthday.**

- Identify that Layla's consideration is past as she had already drawn the picture by the times Sara made her promise
- Identify that there are exceptions to the rule against past consideration
- Identify that Sara did not request the picture from Layla
- Identify that drawing a picture for your mother is not a situation which would normally be commercial
- Conclude that this does not come within the exceptions to past consideration
- Conclude that Layla has not given consideration for Sara's promise

**Sara owns an old and very valuable sports car.**

- Identify that consideration must be sufficient but does not have to be adequate
- Identify that £100 has real value and so is likely to be seen as sufficient
- Identify that the £100 moves from Heidi
- Conclude that Heidi does give sufficient consideration for the car

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> <li>Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law</li> </ul>	7-8	<ul style="list-style-type: none"> <li>Excellent application of legal rules to a given scenario</li> <li>Excellent presentation of a legal argument which is accurate, fully developed and detailed</li> <li>Fully appropriate legal terminology is used.</li> </ul>	10-12
Level 3	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.</li> </ul>	5-6	<ul style="list-style-type: none"> <li>Good application of legal rules to a given scenario.</li> <li>Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>Appropriate legal terminology is used.</li> </ul>	7-9
Level 2	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>The response may lack detail in places and is partially developed. There will be some reference to case law</li> </ul>	3-4	<ul style="list-style-type: none"> <li>Basic application of legal rules to a given scenario.</li> <li>Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>Some appropriate legal terminology is used.</li> </ul>	4-6
Level 1	<ul style="list-style-type: none"> <li>Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>The response will have minimal detail. Citation of case law is limited.</li> </ul>	1-2	<ul style="list-style-type: none"> <li>Limited application of legal rules to a given scenario.</li> <li>Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> <li>Minimal legal terminology is used.</li> </ul>	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

- 4 Advise whether the term about paying £1000 compensation, the promise to use organic seeds, and the terms on the back of the note are incorporated into Amir's contract with Rosa.

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

#### AO1 Indicative content

Answers **may** include:

#### Explain the rules for incorporation of terms

- Explain that terms must be prominent, clear and available at the time of contracting - *Thornton v Shoe Lane Parking*,
- Explain that any harsh or unusual terms must be made clear - *Interfoto v Stiletto Visual Programmes*, S.68 Consumer Rights Act 2015

#### Explain the rules for incorporation of pre-contractual statements as terms of the contract

- Explain that an oral statement can override written terms – *Curtis v Chemical Cleaning*
- Explain that a statement is more likely to be incorporated as a term if it is:
  - Of particular importance - *Bannerman v White*
  - Where the party making the statement has more knowledge - *Schawel v Reade*, *Oscar Chess v Williams*
  - Where there is a delay between the making of the statement and completing a contract *Routledge v McKay*

#### Explain the rules for incorporation of terms by course of dealings

- Explain that a term will be incorporated by course of dealings if its use is regular and consistent, even if it comes after acceptance - *Kendall v Lillico*
- Explain that this is less likely to be the case where one party acts as a consumer - *Hollier v Rambler Motors*
- Explain that this will be more likely if the parties are both in the same industry - *British Crane Hire v Ipswich Plant Hire*

Credit S.50 CRA that anything said by a trader about their service will be an implied term if it influences a consumer's decision to enter a contract

Credit any other relevant point(s)



AO2 Indicative content

Answers **may** include:

**£1000 compensation if Rosa stops using Amir.**

- Identify that terms must be clear and explicit, particularly terms which are harsh or unusual
- Identify the £1000 compensation term is probably both harsh and unusual
- Discuss whether the term has been made clear enough to Rosa
- Draw a reasonable conclusion on the facts

**Amir agreeing that all the seeds he used would be organic**

- Identify that pre-contractual statements may be regarded as terms if the statement was sufficiently important to the contracting parties
- Identify that in this case Rosa has made it clear that it is important to her that the seeds should be organic
- Conclude that the requirement that they are organic was a term of the contract

**The terms on the back of the note**

- Identify that the terms of the contract must be available to the parties before acceptance
- Identify that where a term comes after acceptance it may still be incorporated by a course of dealings if use of the terms has been regular and consistent
- Identify that in this situation the term comes after the work, and so after the contract has been made, but that its use appears to be consistent and regular
- Conclude that the terms on the note have probably been incorporated in Amir's contract

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> <li>Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law</li> </ul>	7-8	<ul style="list-style-type: none"> <li>Excellent application of legal rules to a given scenario</li> <li>Excellent presentation of a legal argument which is accurate, fully developed and detailed</li> <li>Fully appropriate legal terminology is used.</li> </ul>	10-12
Level 3	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.</li> </ul>	5-6	<ul style="list-style-type: none"> <li>Good application of legal rules to a given scenario.</li> <li>Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>Appropriate legal terminology is used.</li> </ul>	7-9
Level 2	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>The response may lack detail in places and is partially developed. There will be some reference to case law</li> </ul>	3-4	<ul style="list-style-type: none"> <li>Basic application of legal rules to a given scenario.</li> <li>Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>Some appropriate legal terminology is used.</li> </ul>	4-6
Level 1	<ul style="list-style-type: none"> <li>Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>The response will have minimal detail. Citation of case law is limited.</li> </ul>	1-2	<ul style="list-style-type: none"> <li>Limited application of legal rules to a given scenario.</li> <li>Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> <li>Minimal legal terminology is used.</li> </ul>	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

5\* *The rules of offer and acceptance can cause confusion and parties may not be clear at what point a binding agreement has been formed. Discuss the extent to which you agree with this statement.*

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

#### AO1 Indicative content

Answers **may** include:

Candidates may select any material from the topic of offer and acceptance, this may include but is not limited to:

#### **Explain invitation to treat and different kinds of offer:**

- That giving information about the price of goods will be seen as an invitation to treat – *Fisher v Bell, Harvey v Facey, Boots v Pharmaceutical Society of Great Britain*
- A bilateral offer may be found where an unequivocal offer has been made to one person which requires agreement to accept
- A unilateral offer may be made to more than one person and requires conduct to accept - *Carlill v Carbolic Smoke Ball Company*

#### **Explain the rules for acceptance:**

- That anything other than an unconditional offer will be seen as a counter offer, but that this can be distinguished from a mere question – *Hyde v Wrench, Stevenson v Mclean*
- Acceptance must be communicated - *Felthouse v Bindley*
- Acceptance may be by conduct - *Brogden v Metropolitan Railway*
- Where acceptance is required to be made in a certain way it will generally be sufficient if it is made in any other way which does not disadvantage the offeror - *Manchester Diocesan Council v Commercial and General Investments*
- A postal acceptance will be effective on posting unless the offer was made by instant means - *Adams v Lindsell, Quenerduaine v Cole*
- An acceptance made by instant means takes effect on arrival, subject to sound business practice - *Brinkibon v Stahag Stahl*
- Acceptance of a unilateral offer will be by performance of specified conduct - *Carlill v Carbolic Smoke Ball Company*

#### **Explain the rules for revocation:**

- Revocation must be before acceptance is communicated - *Byrne v Van Tienhoven*

- Revocation may be carried out by a reliable third party - *Dickinson v Dodds*
- A promise not to revoke an offer is not binding unless consideration has been given to keep the offer open - *Dickinson v Dodds*
- Revocation of a unilateral offer must be before acceptance commences - *Errington v Errington and Woods*

Credit any other relevant point(s).

#### AO3 Indicative content

Candidates **may** discuss any topic within offer and acceptance in answering this question, the following points are indications of topics which may be relevant but any other points may be credited. None of these points are mandatory:

- Discuss whether the rules of invitation to treat are sufficiently clearly defined to identify the difference between an invitation to treat and an offer, whether online or in a shop
- Discuss whether the circumstances in which the postal rule applies are clearly defined
- Discuss whether the point of posting, in cases where the postal rule does apply, will be clear to both parties
- Discuss whether the exceptions to the postal rule are clearly defined
- Discuss whether the point at which instant communications are effective, using the sound business practice rule, will be clear to the parties
- Discuss the challenges arising with acceptance of unilateral offers not having to be communicated to the offeror
- Discuss whether the circumstances under which performance will amount to acceptance are sufficiently clear to the parties in when they apply and when the acceptance will be effective
- Discuss whether the difference between a counter-offer and a mere enquiry are sufficiently clear

Link made to contract law theory relevant to the focus of the question.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> <li>Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law</li> </ul>	7-8	<ul style="list-style-type: none"> <li>Excellent analysis and evaluation of a wide range of legal rules and principles.</li> <li>The response is wide ranging and has a well sustained focus on the question.</li> <li>The key points are fully discussed and fully developed to reach a valid conclusion.</li> </ul> <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10-12
Level 3	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.</li> </ul>	5-6	<ul style="list-style-type: none"> <li>Good analysis and evaluation of a range of legal rules and principles.</li> <li>The response has a mainly consistent focus on the question.</li> <li>Most of the key points are well discussed and well developed to reach a valid conclusion.</li> </ul> <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p>	7-9
Level 2	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>The response may lack detail in places and is partially developed. There will be some reference to case law</li> </ul>	3-4	<ul style="list-style-type: none"> <li>Basic analysis and evaluation of legal rules and principles.</li> <li>The response is partially focused on the question.</li> <li>Some of the key points are discussed and partially developed to reach a basic conclusion.</li> </ul> <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4-6
Level 1	<ul style="list-style-type: none"> <li>Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>The response will have minimal detail. Citation of case law is limited.</li> </ul>	1-2	<ul style="list-style-type: none"> <li>Limited analysis of legal rules and principles.</li> <li>The response has limited focus on the question.</li> <li>Discussion of any key points is minimal.</li> </ul> <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

- 6 Advise whether Ben's failure to disclose information to Yoshi, Rishi and the insurance company will allow them to rescind their contracts for misrepresentation.

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

#### AO1 Indicative content

Answers **may** include:

#### **Explain what is meant by a false statement of fact that induces entry to the contract**

- That misrepresentation is concerned with false statements of fact
- That failure to disclose material facts is not normally considered to be a false statement - *Fletcher v Krell*
- That a statement which becomes false through a change of circumstances since being made, will be seen as a misrepresentation - *With v O'Flanagan*
- That the false statement must be relevant in inducing them into the contract, but does not have to be the only reason for entering the contract - *Edgington v Fitzmaurice*
- That insurance contracts are contracts of utmost good faith and there is a duty to disclose all relevant facts relating to liability – *IMG v Simmonds, Lambert v Coop Insurance*

#### **Explain the operation of the Consumer Insurance (Disclosure and Representations) Act 2012**

- That if the consumer did not realise they should have disclosed information, the insurance is still valid but any pay-out is reduced by the amount the insurance company undercharged
- That if the consumer has deliberately lied, the insurance company can avoid the contract and keep any instalments paid

Credit the **Consumer Protection from Unfair Trading Regulations 2008** – these allow a consumer to unwind an unfair contract

Credit S.10 **Consumer Rights Act 2015** and the implied term that goods are fit for any purpose made known by the buyer

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

**Ben's non-disclosure about the accident and repair.**

- Identify that a seller is not under a general duty to disclose relevant facts
- Identify that an exception to this rule is where a statement has been made which has become untrue before the contract is completed
- Identify that the statement was relevant in inducing Yoshi into the contract
- Identify that, in this case, the accident and repair came after Ben's statement but before Yoshi completed the purchase
- Identify that Ben did have a duty to disclose the accident
- Conclude that Ben has made a misrepresentation to Yoshi and Yoshi will be able to rescind the contract

**Ben's non-disclosure to Rishi.**

- Identify that a seller is not under a general duty to disclose relevant facts
- Conclude that Ben has not made a misrepresentation to Rishi and Rishi will not be able to rescind the contract
- Credit any reference to the Consumer Protection from Unfair Trading Regulations 2008 which give remedies to a consumer if the trader has not acted fairly or made full disclosure – Rishi would be able to unwind the contract which is effectively a statutory version of rescission
- Credit any reference to the Consumer Rights Act 2015 which would allow Rishi to end the contract for breach of S.10, that the car was not fit for the purpose he made known at the time of contracting

**Ben's non-disclosure to the insurance company.**

- Identify that insurance contracts are usually contracts of utmost good faith and there is a duty of full disclosure
  - Identify that the Consumer Insurance (Disclosure and Representations) Act 2012 limits the liability of consumers who innocently fail to disclose relevant facts
  - Identify that this will only help Ben if he did not realise that he should have disclosed his theft conviction, but not if he deliberately concealed it
  - Credit any discussion that as Ben is in the car trade he may not be seen as a consumer
  - Come to a reasonable conclusion on the facts
- In any of the three scenarios, credit any discussion of any limits to the right of rescission such as lapse of time or affirmation

Credit any other relevant point(s).				
	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> <li>Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law</li> </ul>	7-8	<ul style="list-style-type: none"> <li>Excellent application of legal rules to a given scenario</li> <li>Excellent presentation of a legal argument which is accurate, fully developed and detailed</li> <li>Fully appropriate legal terminology is used.</li> </ul>	10-12
Level 3	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.</li> </ul>	5-6	<ul style="list-style-type: none"> <li>Good application of legal rules to a given scenario.</li> <li>Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>Appropriate legal terminology is used.</li> </ul>	7-9
Level 2	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>The response may lack detail in places and is partially developed. There will be some reference to case law</li> </ul>	3-4	<ul style="list-style-type: none"> <li>Basic application of legal rules to a given scenario.</li> <li>Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>Some appropriate legal terminology is used.</li> </ul>	4-6
Level 1	<ul style="list-style-type: none"> <li>Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>The response will have minimal detail. Citation of case law is limited.</li> </ul>	1-2	<ul style="list-style-type: none"> <li>Limited application of legal rules to a given scenario.</li> <li>Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> <li>Minimal legal terminology is used.</li> </ul>	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0



7 Advise whether Dev's contracts with Sam, Boom and Yana are frustrated.

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

AO1 Indicative content

Answers **may** include:

**Explain the ways in which a contract may be frustrated**

- Where performance has become impossible - *Nichol and Knight v Ashton Eldridge, Taylor v Caldwell*
- Where there has been a radical change of circumstances, where performance of the contract would amount to something very different to what was originally anticipated - *Krell v Henry, Herne Bay v Hutton, Davis Contractors v Fareham UDC*

**Explain the circumstances where the courts will decide that frustration will not apply**

- Where performance would be possible but more difficult or expensive than originally anticipated - *Tsakiroglou v Noble Thorl*
- Where the potentially frustrating event was anticipated by the parties - *Amalgamated Investments v John Walker*
- Where the impossibility of performance was due to the fault of one of the parties - *Maritime National v Ocean Trawlers, Super Servant 2*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

**The contract to transport a large machine for Sam**

- Identify that a party will not be able to claim frustration if their inability to perform is self-induced
- Identify that having a choice about performance is seen by the court are self-induced
- Identify that Dev could use Lorry 2 for Sam's contract but has chosen to use it for other contracts
- Conclude that Dev's contract with Sam will not be frustrated

**The contract with Boom to transport their equipment**

- Identify that the contract with boom can still be performed but it has become pointless as the festival has been cancelled
- Identify that a radical change of circumstances must have been unforeseen and must make the contract quite different to what was anticipated
- Identify that in this case the contract was made based on the existence of a festival which is no longer going ahead
- Conclude that the contract will be frustrated

**The contract with Yana and the bridge**

- Identify that a contract will not be frustrated merely because it has become unprofitable
- Identify that in Dev's contract with Yana it is still possible to deliver the goods and that the alternative route is not substantially different to what was originally anticipated
- Conclude that the contract with Yana will not be frustrated

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law</li> </ul>	7-8	<ul style="list-style-type: none"> <li>• Excellent application of legal rules to a given scenario</li> <li>• Excellent presentation of a legal argument which is accurate, fully developed and detailed</li> <li>• Fully appropriate legal terminology is used.</li> </ul>	10-12
Level 3	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.</li> </ul>	5-6	<ul style="list-style-type: none"> <li>• Good application of legal rules to a given scenario.</li> <li>• Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>• Appropriate legal terminology is used.</li> </ul>	7-9
Level 2	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response may lack detail in places and is partially developed. There will be some reference to case law</li> </ul>	3-4	<ul style="list-style-type: none"> <li>• Basic application of legal rules to a given scenario.</li> <li>• Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>• Some appropriate legal terminology is used.</li> </ul>	4-6
Level 1	<ul style="list-style-type: none"> <li>• Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response will have minimal detail. Citation of case law is limited.</li> </ul>	1-2	<ul style="list-style-type: none"> <li>• Limited application of legal rules to a given scenario.</li> <li>• Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> <li>• Minimal legal terminology is used.</li> </ul>	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

8\* As per Question 5\*

## Assessment Objectives Grid

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

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

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