



Oxford Cambridge and RSA

GCE

Law

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

A Level

Mark Scheme for June 2022

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

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

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

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MARKING INSTRUCTIONS**PREPARATION FOR MARKING****RM Assessor**

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: RM Assessor Online Training; OCR Essential Guide to Marking.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are 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 RM50% 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 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:

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

11. Annotations

Annotation	Meaning
	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 courts of England and Wales are courts of law, not courts of morality'. Discuss the challenges faced by judges in separating law from morality.*

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.</p>
Additional guidance	<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:

- Definitions of legal rules - e.g. John Salmon, John Austin, Herbert (HLA) Hart or Karl Llewellyn
- Definitions of morals - e.g. Emile Durkheim or Philip Harris
- Characteristics of legal and moral rules in relation to their origins, enforcement, ability to change and develop, certainty, and application
- Explain theories of law and morals - e.g. Natural law theorists (Aristotle, Aquinas, Fuller) and Positivists (Bentham), the overlap between law and morals, the divergence of laws and morals
- The legal enforcement of moral values in Crime, Contract, Tort and Human rights law
- Controversial areas where law and morality often clash; outraging public decency, legalising cannabis for medical use, assisted suicide, the death penalty, body modification, sado-masochism and consent, necessity and homicide e.g. Brown, Wilson, Inglis, Gilderdale, Pretty, Nicklinson, Re A
- How morality changes over time - e.g. marital rape was not a crime until 1991
- The range of standards within a plural society making it very difficult or impossible for the law to please everyone

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

- Discuss the difficulty of judges reaching a moral consensus in a plural society
- Consider how politicians avoid passing controversial laws that will divide society and could change the way people vote
- Discuss the use of Private Members' Bills as a way to pass controversial laws without the political parties having to state their position
- Discuss with examples the difficulties faced by judges in trying to keep the law up to date with the views of society in an environment where morality usually moves at such a fast pace
- Discuss the role of judges making moral decisions when they come from a narrow social background
- Consider criticisms of the judiciary being 'out of touch'. Debates around sexuality and consent, drug legalisation and the assisted suicide debate
- Discuss the strengths and weaknesses of the views of Devlin's desire for the law to uphold a common morality to ensure society does not disintegrate
- Compare with the utilitarian approach of Hart and his view of the centrality of 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 challenges judges face in trying to keep morality separate from the law and conclude how effectively they do so

- Credit any other areas of law developed by the judiciary, credit statutory law only as it relates to an area of judge made law

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question.	7-8	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.	10-12
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question.	5-6	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.	7-9
Level 2	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.	3-4	Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion where required by the question. The information has some relevance and is presented with limited structure. The information is supported by limited evidence.	4-6
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1-2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. 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.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

2. 'Justice is a concept which is difficult to define but is easily identified in practical examples'. Discuss the meaning of justice in light of this statement.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.</p>
Additional guidance	<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:

1. Definitions of justice: Aristotle, Aquinas, Bentham, Mill, Marx, Perelman
2. Show how context affects the meaning of justice using examples from your full course of study
3. Theories of Law and Justice: Natural Law theories (Aristotle, Aquinas, Fuller) and Positivist theories (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law etc
4. Use examples of formal/procedural justice – legal institutions such as the police, courts, judiciary, juries, and appeals - e.g. the use of legal aid to make the law accessible and how this has been affected in practice by LASPO 2012
5. Use examples of substantive justice – legal rules - e.g. fault and defences in criminal law, fault in tort law, rights and freedoms in the Human Rights Act and fairness in contract law
6. Use examples of distributive justice - the fair allocation of resources - e.g. wealth, power, rights, resources - e.g. anti-discrimination laws, minimum wage and reallocation of wealth through taxation and the welfare state
7. Use examples of corrective justice - sentencing aims such as retribution in criminal law and remedies in tort and contract

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

1. Discuss the struggle to create a common definition of justice that is shared by all members of society. Perelman's view in De la Justice that this is not in fact possible because justice is a subjective idea
2. Discuss the varied theories of law and justice and the struggle to create justice in a society
3. **Discuss examples of procedural justice**
 - The struggles faced by the criminal justice system in the miscarriage of justice cases: Birmingham Six, Guildford Four, and more recently the Post Office workers case and the Horizon computer system
 - The findings of the Runciman Commission and the Criminal Cases Review Commission
 - The Stephen Lawrence case and the findings of the McPherson Report
 - Evaluation of the system of 'trial by your peers'
4. **Discuss examples of substantive justice**
 - Discussion of any legal rule and whether it achieves justice - e.g. M'Naghten rules on insanity, Majewski rules on intoxication
5. **Discuss examples of distributive justice**
 - How the law struggles to create justice for everyone regardless of class, wealth, gender, race or disability. Discuss how this can lead to inequality - e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence, BLM movement
6. **Discuss examples of corrective justice**
 - Discussion of the high re-offending rates.
 - Inequality of bargaining power in civil cases

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question.	7-8	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.	10-12
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question.	5-6	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.	7-9
Level 2	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.	3-4	Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion where required by the question. The information has some relevance and is presented with limited structure. The information is supported by limited evidence.	4-6
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1-2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. 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.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

- 3 Advise whether Kareem must pay the £100 to Fine Parking **and** whether the terms on Dent Parking's ticket will prevent Kareem from suing them for compensation.

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:

Common law protection

- Explain that terms must be prominent, clear and available at the time of contracting - Thornton v Shoe Lane Parking, Interfoto v Stiletto Visual Programmes
- Explain that once a document has been signed the terms are likely to be incorporated - L'Estrange v Graucob
- Explain that the *contra proferentem* rule prevents terms being given a wide meaning - White v John Warrick

Consumer Rights Act 2015 (CRA)

- Explain that under s.62 unfair terms do not bind a consumer
- Explain that under s.62(4) a term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer
- Explain that under s.65 liability for death or personal injury cannot be excluded
- Explain that Schedule 2 contains a list of terms which are to be regarded as unfair

- Credit an explanation of s.49 - that services are to be performed with reasonable care and skill

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Kareem and Fine Parking

- Discuss whether the term has been properly incorporated - it probably was when he ticked the box on the app
- Consider whether the words used are clear and unambiguous enough to cover the claimed £100 - they would appear to meet this requirement
- Consider whether the term would be considered unfair under s.62 of the CRA - in this case they could be said to increase the trader's rights disproportionately
- Consider whether they would be deemed to be against the grey list of terms in the CRA which disallows disproportionate charges
- Consider cases which have considered parking penalty charges - in *Beavis v ParkingEye*, the UK Supreme Court considered that a similar penalty charge *was* fair

Kareem and Dent Parking

- Consider whether the term has been properly incorporated. In this case the term was on the back of the ticket which he could not see until he had made a contract when he entered the car park
- Consider whether the term on the ticket is clear enough to protect Dent Parking. The term is quite general and does not cover negligence or specifically the collapse of the wall, therefore it is unlikely to be clear enough to protect Dent Parking
- Consider the effect of the CRA:
 - under s.65 a term cannot exclude liability for personal injury, therefore Kareem will be able to claim for his injuries
 - under s.62 the term will be considered unfair as it removes the customer's rights without good reason and without giving anything back to them. In this case the term is unlikely to protect Dent Parking
 - this could be seen to be a breach of a term on the grey list in Part 1 of Schedule 2 – binding the consumer to terms which they are not able to become acquainted with before making the contract
 - Credit that this could also be considered to be a breach of s.49 which requires that services are performed with reasonable care and skill

In both cases, reach any sensible conclusion

** An alternative conclusion can be credited if there are clear reasons given

- This could be considered to be a breach of s.49 which requires that services are performed with reasonable care and skill
- This could be seen to be a breach of a term on the grey list in Schedule 2 – binding the consumer to terms which they are not able to become acquainted with before making the contract

Credit any other relevant point(s).

Credit any other relevant point(s).

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

4 Advise whether each of the communications between Nina and James, Nina and Mia **and** Nina and Beth constitute a binding offer and acceptance.

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 when the court will find a bilateral offer:

- Where an unequivocal offer has been made to one person which requires agreement to accept
- That giving information about the price of goods will not be seen as an offer – Harvey v Facey

Explain the rules for acceptance of a bilateral offer:

- 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

Explain the rules for revocation of a bilateral offer:

- 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

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Nina and James

- Consider whether James has made an offer to Nina , he said that he could not accept below £3000, this does not contain a promise which Nina could accept and so is likely to be seen as an invitation to treat
- Consider that Nina might have made an offer to James when she said she would buy the horse, but James has not accepted this
- Conclude that Nina does not have a binding contract with James

Nina and Mia

- Consider that Mia made a bilateral offer to Nina and promised to keep that offer open until Friday
- Consider that Nina did not provide consideration for the promise to keep the offer open, therefore Mia would have been free to revoke her offer
- Consider that when Nina was aware that the goat had been sold to someone else this was likely to be seen as an effective revocation
- Consider that therefore Nina was not able to accept the offer when she emailed Mia
- Conclude that Nina and Mia do not have a binding contract

Nina and Beth

- Consider that Beth's offer specified the required method of acceptance, this being notification in person
- Consider that Beth has not made this method imperative, therefore Nina can accept by any other method which does not disadvantage Beth
- Consider whether Nina's text message was as effective as notification in person
- Conclude that as the text message is instant it is likely to be seen as being as effective as notification in person, so Nina and Beth do have a binding contract

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

5* Discuss the extent to which the courts take a consistent approach to the requirement of consideration.

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 can discuss any areas from the topic of consideration. The following are possible areas but other areas can be credited. Candidates do not need to cover all the areas discussed below for full marks.

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

- Explain that consideration must have sufficient value but need not be adequate - Thomas v Thomas, Chappell v Nestle
- Explain that consideration must be real and certain - White v Bluett
- Explain that consideration must move from the promisee - Tweddle v Atkinson
- Explain that performance of an existing contractual duty does not normally amount to consideration unless performance goes beyond that obligation - Stilk v Myrick, Hartley v Ponsonby
- Explain that good consideration will be shown for a subsequent promise if continuing the work allows the promisor to avoid a specific detriment - Williams v Roffey Bros
- Explain that performance of a public duty does not normally amount to good consideration - Collins v Godefroy, however exceeding a public duty does amount to good consideration for a promise of payment - Glasbrook v Glamorgan, Ward v Byham

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).

AO3 Indicative content

Candidates **may** discuss any topic within consideration 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

- Consider whether the rules on sufficiency of consideration are consistent
 - Some decisions may be seen as policy-driven, for example ensuring that customers are not made false promises in *Chapell v Nestle*
 - or in a reluctance to enforce a family agreement in *White v Bluett*
- Consider whether the rules on pre-existing obligation amounting to consideration are consistent
 - While there was a clear difference between *Stilk v Myrick* and *Hartley v Ponsonby*, there was no clear consideration given in *Williams v Roffey* and this case can be seen as driven by the policy of holding larger companies to their promises
 - Consider whether the decision in *Glassbrook v Glamorgan* can be explained by the police having done more, or by the courts favouring the police
- Consider whether the rules on past consideration are consistent
 - The requirement that a reward should have been in the contemplation of the parties may be subjective and hard to gauge
- Credit any links made to the theory of contract law which is relevant to the focus of the question

Credit any other relevant point(s).

	AO1	Mark	AO3	Mark
Level 4	<ul style="list-style-type: none"> 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 case law 	7-8	<ul style="list-style-type: none"> Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <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"> 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 case law. 	5-6	<ul style="list-style-type: none"> Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <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"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law 	3-4	<ul style="list-style-type: none"> Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <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"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <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 Zac's termination of the contracts with Grabit and Busy B would be lawful on the basis of economic duress.

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 consequences of economic duress on a contract - that it becomes voidable:

- Explain that economic duress is pressure which goes beyond the usual rough and tumble of business dealings - Interfoto v Stiletto Visual Programmes
- Explain that to claim economic duress there must be an unlawful threat, that this can be to breach a contract - Atlas Express v Kafco
- Explain that ordinary commercial pressure will not amount to an unlawful threat or to duress. This could be a threat not to renew a contract or to let a company go bankrupt - The Siboen and Sibotre, CTN Cash and Carry v Gallagher or merely an indication that a party is unable to continue with a contract - Williams v Roffey
- Explain that a legitimate threat made in bad faith can be the basis for a claim in duress Progress Bulk Carriers Ltd v Tube City, Times Travel (UK) Limited v Pakistan International Airlines Corporation
- Explain that the threat must have vitiated the consent of the other party and left them with no realistic alternative but to comply with the demand Atlas Express v Kafko, Pao On v Lau yiu Long
- Explain that the party seeking to claim economic duress must have protested at the time and must not hesitate in taking legal action to avoid the contract – Pao On, The Atlantic Baron, DSND Subsea v Petroleum Geo-Services
- Explain that if a party seeks legal advice before complying with a threat they may be seen as having taken a business decision and be unable to claim duress - Pao On v Lau Yiu Long
- Explain that the right to end a contract for duress may be lost through lapse of time - The Atlantic Baron

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Zac and Grabit

- Consider whether Grabit have made an illegitimate threat. They have threatened not to place any future orders and this is unlikely to be considered illegitimate
- Consider whether Grabit's demand could be seen as being in bad faith. If it was aware that Zac had no alternative, it might be seen as bad faith
- Consider whether Zac was left with any alternative, as Zac could not afford to lose Grabit as a customer so he had no alternative
- Consider any other factors. In this case, Zac's delay in complaining might undermine any claim of economic duress
- Come to any reasoned conclusion

Zac and Busy B

- Consider whether Busy B have made an improper threat. It has raised its prices in breach of contract and this is likely to be seen as improper
- Consider whether Zac was left with any realistic alternative. Since Busy B was the only suitable supplier, Zac was left with no alternative but to pay the increased price
- Consider any other factors. In this case Zac did protest and this would make it easier to claim economic duress, however the lapse of time might prevent a claim
- Come to any reasoned conclusion

Credit any other relevant point(s).

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

7 Advise what remedies Sarah may be able to claim from Boozers **and** Trad Jazz, assuming that both are found to be in breach of contract.

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 damages can be claimed for financial losses that result from non-performance and this can include loss of profits and any physical damage or harm - Bence Graphics International Ltd v Fasson UK Ltd
- Explain that damages can be claimed for reliance expenditure - Anglia Television Ltd v Reed
- Explain that the parties should take reasonable steps to mitigate losses - Pilkington v Wood
- Explain that if mitigation removes or could have removed any actual loss suffered, there can be no claim for damages - British Westinghouse Electric v Underground Electric
- Explain that the losses suffered must have been those which would arise naturally or would have been within the contemplation of the parties - Hadley v Baxendale
- Explain that any unusual losses must have been within the contemplation of the parties - Victoria Laundry v Newman, but that the parties are expected to contemplate the normal losses that would have been suffered by a business - The Heron II

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Sarah and Boozers

- Consider that Boozers are in breach of contract and may be liable to pay compensatory damages for failure to supply the champagne
- Consider that Sarah is under a duty to mitigate, and has done so by buying the champagne from Poppers
- Conclude that as the champagne was cheaper from Poppers, Sarah has not lost any money and will not have a claim for damages against Boozers
- Draw a reasonable conclusion on the facts

Sarah and Trad Jazz

- Consider that Sara will be entitled to claim expectation losses for loss of bargain, not getting the 20 piece band she had booked.
- Consider that, as Sarah has paid money for the stage, Trad Jazz are also liable to pay reliance damages for their breach
- Consider whether renting the stage would have been in the reasonable contemplation of both parties. In this case it is likely to be so as the original 20 musicians was such a large number
- Consider that Sara is unlikely to be able to claim damages for disappointment against Trad Jazz as the main aim of Sara's contract was commercial rather than for pleasure
- Consider whether hiring Musica was in the reasonable contemplation of Trad Jazz. If Trad Jazz knew they were going to be filmed they may be liable to pay compensatory damages, otherwise it probably was not in their contemplation
- Draw a reasonable conclusion on the facts

Credit any other relevant point(s).

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

8* As per Question 5*

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