

**A-level**  
**LAW**  
**7162/3A**

Paper 3A Contract

---

**Mark scheme**

June 2020

---

Version: 1.0 Final Mark Scheme

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **false** statement about offer and acceptance in contract.

**[1 mark]**

**Marks for this question: AO1 = 1**

**A** An acceptance always has to be communicated.

**02** Select the **true** statement about formation of contract.

**[1 mark]**

**Marks for this question: AO1 = 1**

**D** Contracts can come into existence where only one party makes a promise.

**03** Select the **true** statement about judges in civil cases.

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** District judges try small claims cases in the County Court.

**04** Select the **false** statement about the independence of the judiciary.

**[1 mark]**

**Marks for this question: AO1 = 1**

**D** The Lord Chancellor is the only government minister allowed to influence the decision of a judge in a case.

**05** Delegated legislation in the form of statutory instruments is subject to various controls.  
Select the **true** statement about controls on statutory instruments.

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** Many statutory instruments become law unless Parliament votes to reject them within a specified time (usually 40 days) of being issued.

- 06** Explain **two** reasons why a large amount of law is made by delegated legislation. Use an example to illustrate one of your reasons.

**[5 marks]**

**Marks for this question: AO1 = 5**

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

Explanation of any **two** of the following:

- lack of Parliamentary time to deal with detailed rules, necessitating a method by which Parliament can lay down the policy and others can fill in the detail
- the need for expert knowledge on a very wide range of issues requiring consultation with interested and/or technically knowledgeable bodies and individuals (perhaps leading, also, to formal consultation requirements in the delegated legislation itself)
- the need for knowledge of local areas and specific issues that arise therein
- the need to respond quickly to emergency situations, in circumstances where Parliament would be too slow to respond

**and**

- an appropriate example to illustrate any one of the above.

**Note:** credit as **two** reasons answers which distinguish between the need for expert knowledge and the need specifically to build in formal consultation requirements.

**Note:** the answer requires:

- reason 1
- reason 2
- example
  - all 3 = max 5
  - any 2 = max 4
  - reason 1 = max 3
  - example only = max 2

Credit any other relevant point(s).

<b>07</b>	Ash bought the television. Suggest why Carol would probably have no rights against Bigmedia Store.	<b>[5 marks]</b>
-----------	--	------------------

**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

- Statement of the basic privity of contract rule: only parties to a contract (only those who supply consideration) obtain rights and incur duties.
- Statement recognising that there may be very limited exceptions to the rule: identification of any exception (the Contracts (Rights of Third Parties) Act 1999 may be most relevant if any doubt exists as to the absence of rights for Carol).

#### AO2

- Application to argue that, as the contract was made between Ash and Bigmedia Store, the privity rule would appear to exclude any claim to rights by Carol.
- Application to suggest that there is no evidence of any exception to the privity rule of which Carol could take advantage (possible reference to requirements of the Contracts (Rights of Third Parties) Act 1999).
- Use of a relevant case to assist explanation/application – eg **Tweddle v Atkinson**, **Dunlop v Selfridge**, **Beswick v Beswick**.

**Note:** Use of a case enhances explanation/application of any relevant element.

Credit any other relevant point(s).

<b>08</b>	Taking into account the rules on consideration and on economic duress, advise Felix as to whether he is entitled to claim the additional £1000.
	<b>[10 marks]</b>

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Identification and outline explanation of consideration as an element in the formation of contract.
- Identification and outline explanation of the elements of economic duress: meaning and remedies.

#### **AO2**

- Application of the rules on consideration to argue that Felix's purported consideration for Evan's promise to pay the additional £1000 was the performance of an act that he was already bound by contract with Evan to perform, so casting doubt on the enforceability of the promise, though not necessarily fatally in view of the change of approach to consideration in more recent years.
- Application of the rules on economic duress to argue that there is evidence of improper pressure by Felix on Evan in view of the circumstances surrounding Evan's desire to enter the competition and win the prize (possible financial issues), sufficient to suggest that Felix may not be able to persuade a court to enforce the promise (essentially, enabling Evan to rescind the contract to pay the additional sum of money).

**AO3**

- Analysis and evaluation of the requirement for sufficiency of consideration, with particular reference to consideration as the performance of an obligation already contractually owed to the promisor, referring to cases such as **Stilk v Myrick**, **Williams v Roffey Bros**.
- Analysis and evaluation of the rules on the meaning and effect of economic duress, referring to cases such as **Atlas Express v Kafco**, **Universe Tankships of Monrovia v ITWF**, **Pao on v Lau Yiu Long**, **CTN Cash and Carry v Gallagher**.

Credit any other relevant point(s).

ICG 1 = Consideration

ICG 2 = Economic Duress



<b>09</b>	<p>Traditionally, law operated in society to ensure freedom of contract.</p> <p>Examine the concept of freedom of contract. Discuss the extent to which the effect of the Consumer Rights Act 2015 on the contractual relationship between traders and consumers is in conflict with freedom of contract.</p> <p style="text-align: right;"><b>[15 marks]</b></p>
-----------	---

**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>10–12</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>7–9</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>4–6</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–3</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of Law and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>Minimal analysis and evaluation of legal concepts and issues.</p> <p>No chain of reasoning is attempted.</p>

<b>0</b>	Nothing worthy of credit.
----------	---------------------------

**Distribution of marks for substantive and non-substantive law:**

<b>Substantive</b>	<b>Non-substantive</b>	<b>Total marks</b>
5	10	15

**Indicative content****AO1**

- Basic explanation of the concept/doctrine of freedom of contract and its significance in terms of the role of law in society: the parties should be free to define and enter into any obligations they wish and the obligations should be enforceable at law.
- Basic explanation of the simple limits on the concept/doctrine: factors which bear on freedom, such as lack of capacity, misrepresentation/mistake, duress/undue influence.
- Basic explanation of the provisions of statutes such as the Consumer Rights Act 2015 in terms of implied terms and exclusion/limitation clauses.

**AO3**

- Analysis of the scope of the concept/doctrine revealing the range of matters to which it may apply: confined to a bargain between parties, and so excluding third parties from benefit; applicable to all the terms and remedies for breach.
- Analysis of the consequences of freedom of contract, drawing the distinction between the relatively limited range of formal instances which are recognised as inhibiting freedom and the inevitable imbalance of power between, say, business and commercial interests and individuals.
- Analysis of the mechanisms by which this power imbalance distorted freedom of contract: for example, the notion of the standard form contract in which terms are not negotiated between the parties but are offered on a 'take it or leave it' basis by one party to the other; the attempt to impose burdensome terms which, say, enabled one party to avoid or limit liability for breach.
- Evaluation of the extent to which freedom of contract between traders and consumers has been restricted by a statute such as the Consumer Rights Act 2015, for example by the imposition of implied terms and remedies for their breach and by the prohibition of exclusion or limitation of liability for breach.
- Conclusion perhaps to suggest that, in the case of traders and consumers, statutory intervention has significantly restricted freedom of contract in the interests of restoring a more appropriate balance of power between the parties, and recognising in all of the above the way that law may impact on relationships and commercial and other arrangements in society.

Credit any other relevant point(s).

ICG 1 = Freedom of Contract

ICG 2 = Consumer Rights Act 2015

- 10** Consider whether Maya was entitled to 'cancel' the contract with Nev. Consider the rights and duties of Maya and Oscar in consequence of the damage to the building, and what remedies may be available to each of them.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>19–24</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>13–18</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>7–12</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
<b>1–6</b> <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

## Indicative content

### AO1

- Identification and outline explanation of the elements of misrepresentation: meaning, kinds and remedies.
- Identification and outline explanation of the elements of termination of contract by frustration.
- Identification and outline explanation of the consequences of termination by frustration – Law Reform (Frustrated Contracts) Act 1943.
- Identification and outline explanation of fundamental breach and remedies.

### AO2

- Application of the rules on misrepresentation to argue that Nev's use of the photos was a misrepresentation on which Maya probably relied (in part) in entering into the contract.
- Application to argue that the misrepresentation was fraudulent as being a deliberate untruth on Nev's part.
- Application to argue that, in the absence of any barriers to rescission, Maya was entitled to rescind the contract (possible reference to a claim for damages for loss arising).
- Application of the rules on frustration to argue that the contract between Maya and Oscar for the replacement of some of the windows might be frustrated by a fundamental change in the circumstances making performance something wholly different in nature from that originally envisaged, even though the windows could still be installed – frustration of the common venture (note that destruction of the subject matter could be canvassed but, on the facts, was unlikely to be an explanation for frustration).
- Application to argue the possibility that Maya might be alleged to be at fault for the condition of the wiring in the building, so casting doubt on whether frustration would apply.
- Application of the provisions of the Law Reform (Frustrated Contracts) Act 1943 to suggest that, prima facie, Maya would be entitled to the return of the £8000 already paid and the remaining sum would cease to be payable. However, a court would have power to award Oscar up to £5000 in expenses out of the £8000, and also a further sum for any valuable benefit conferred on Maya by the work done but taking into account the effect of the frustrating event on that benefit.
- Application to argue alternatively that, if the contract was not frustrated because of Maya's fault in relation to the fire, then her refusal to allow Oscar to continue would be a fundamental breach entitling Oscar to damages based probably on his expectation loss.

### AO3

- Analysis and evaluation of the meaning of a (mis)representation and of the reliance requirement, referring to a case such as **Attwood v Small**.
- Analysis and evaluation of the meaning of 'fraudulent' in misrepresentation, referring to a case such as **Derry v Peek**, and of the remedy of rescission (possible analysis and evaluation of damages).
- Analysis and evaluation of the meaning and scope of termination by frustration, referring to cases such as **Taylor v Caldwell**, **Krell v Henry**, **Herne Bay Steamboat Co v Hutton**.
- Analysis and evaluation of possible limitation on frustration where the alleged frustrating event may be said to be self-induced, referring to a case such as **Maritime National Fish Ltd v Ocean Trawlers Ltd**.
- Analysis and evaluation of the provisions of the Law Reform (Frustrated Contracts) Act 1943 s1(1)-(3).
- Analysis and evaluation of fundamental breach and the remedies of termination and damages.

Credit any other relevant point(s).

ICG 1 = Misrepresentation

ICG 2 = Frustration

- 11** Consider whether Ivy has any rights in contract against Jax in connection with the fridge. Consider the rights and remedies of Jax against Kentstore in connection with the cupboards.

Assess what options are open to Jax to pay for any legal advice and representation that may be needed in his dispute with Kentstore.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10).</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b> <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b> <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

<b>Substantive</b>	<b>Non-substantive</b>	<b>Total marks</b>
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of agreement as an element in formation of contract.
- Identification and outline explanation of terms implied into a contract for the supply of goods in a trader/consumer relationship under the Consumer Rights Act 2015 – satisfactory quality (s9), fitness for purpose (s10), description (s11).
- Identification and outline explanation of remedies for breach of the above terms: short-term right to reject (s20); repair or replacement (s23); price reduction or final right to reject (s24); and of common law damages.
- Identification of various sources of funding for legal advice and representation: possible free sources, eg Internet, CAB, telephone helplines; own resources, insurance, conditional fees (absence of state funding).

**AO2**

- Application to the case of Ivy and Jax to argue that Jax made an offer to buy the fridge for £80, to which Ivy's response of "How about £95?" was probably a counter offer but could have been a request for further information.
- Application to argue that if Ivy's response was a counter offer, then it operated as a rejection of the £80 offer, which could not then be accepted later by Ivy; but that if Ivy's response was merely a request for further information then the offer persisted – unless it terminated by lapse of time – and could be accepted.

- Application to conclude that Ivy probably has no rights because there was no contract but, in the alternative, that (theoretically) she could sue for breach of contract. In either case, knowledge of Jax's subsequent purchase of a fridge would have no bearing on Ivy's rights.
- Application to the case of Jax and Kentstore to argue that it is possible that terms as to satisfactory quality (the weak cupboard), fitness for purpose (the weak cupboard, the oversize cupboards) and description (the oversize cupboards, the cupboards of different design) have all been broken.
- Application to argue that Jax could opt for, say, rejection of the whole set of cupboards, given the various errors in supply, but that it is more likely that he would choose the remedy of replacement of the specific cupboards, with removal and re-installation at Kentstore's expense.
- Application to argue that Jax may exercise the right to a price reduction in the event that the remedy of replacement falls short in some way (final rejection is an alternative, rather drastic, remedy) supplemented by any further claim for damages.

### AO3

- Analysis and evaluation of the rules on offer and acceptance, dealing in particular with the distinction between counter offers and requests for further information.
- Analysis and evaluation of the rules on the effect of a counter offer as rejection of an offer, and of other ways in which offers terminate, referring to cases such as **Hyde v Wrench** and **Stevenson v McLean**.
- Analysis and evaluation of the terms implied by the Consumer Rights Act 2015 into a trader/consumer contract for the supply of goods as to satisfactory quality, fitness for purpose, and description, incorporating (where relevant) case law from pre-existing legislation.
- Analysis and evaluation of the remedies for breach of the above (including, in particular, their interrelationships): the short-term right to reject; repair or replacement; price reduction or final right to reject; and, additionally, of the common law remedy of damages.
- Analysis and evaluation of the funding options in relation to the probable costs that would be incurred, suggesting that in the absence of sufficient personal funds or appropriate insurance, some form of conditional fee agreement may be appropriate if legal costs are recoverable.

Credit any other relevant point(s).

ICG 1 = Offer and Acceptance

ICG 2 = Consumer Protection Act 2015

ICG 3 = Legal Advice

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>



**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

**A-level**  
**LAW**  
**7162/3A**

Paper 3A Contract

---

**Mark scheme**

June 2021

---

**Version: 1.0 Final Mark Scheme**



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

#### **Copyright information**

AQA retains the copyright on all its publications. However, registered schools/colleges for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to schools/colleges to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Copyright © 2021 AQA and its licensors. All rights reserved.

## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **false** statement about various aspects of contractual remedies.

**[1 mark]**

**Marks for this question: AO1 = 1**

**A** An award of damages is the only remedy for an anticipatory breach of contract.

**02** Select the **true** statement about consideration in the law of contract.

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** Consideration cannot usually be something done by one party before a promise is made by the other party.

**03** Select the **false** statement about delegated legislation.

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** Delegated legislation is made by a person or body under powers given by the Government.

**04** Select the **false** statement about judges.

**[1 mark]**

**Marks for this question: AO1 = 1**

**D** Supreme Court judges can only be removed from office by the Prime Minister.

**05** Select the **true** statement about advice and funding in civil cases.

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** A conditional fee agreement may result in a successful claimant having to pay a significant amount of the damages to the claimant's solicitor.

**06** Explain **three** aspects of the rule of law.

**[5 marks]**

**Marks for this question: AO1 = 5**

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

Explanation of any **three** of the following:

- persons are subject to law rather than arbitrary exercise of power by individuals/institutions
- no individual/institution is above the law
- laws are clear and accessible
- there is equality before the law
- law is made and administered fairly by accessible processes
- all have access to legal processes for resolution of disputes
- rules and procedures ensure the independence of the judiciary.

Credit any other relevant point(s).

**Answers which do not explain three aspects cannot achieve marks higher than band 2.**

<b>07</b>	Assume that a court has found Brianna to be in breach of contract. Suggest why the court would <b>not</b> make an order for specific performance against Brianna.  <b>[5 marks]</b>
-----------	---

**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Explanation that specific performance is a discretionary remedy instructing a party in breach of contract to perform obligations under the contract.
- Explanation that specific performance is not available where damages would be a suitable remedy.
- Explanation that specific performance is not available where the contract is for personal services.

#### **AO2**

- Application to argue that damages would probably be a suitable remedy.
- Application to argue that the contract is one for personal services.
- Application to suggest that, if not for the first reason, then certainly for the second, specific performance would not be awarded.
- Possible reference to an appropriate case, for example **Page One Records Ltd v Britton**.

**For Band 3, answers should explain the discretionary nature of the remedy and explain and apply at least one reason why the court would not order specific performance.**

**Reference to a case is not required but may enhance explanation and/or application.**

Credit any other relevant point(s).

<b>08</b>	Advise Dylan on whether he could succeed in claiming that the contract was frustrated and advise him of the legal consequences if the contract was found to be frustrated. <b>[10 marks]</b>
-----------	---

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation of the meaning of frustration, including limitations.
- Outline explanation of the kinds of frustrating events (or specific reference to unavailability of subject matter and/or frustration of the common venture) – **Taylor v Caldwell, Krell v Henry, Herne Bay Steamboat Company v Hutton**.
- Outline explanation of the provisions of the Law Reform (Frustrated Contracts) Act 1943.

#### **AO2**

- Application to argue that, prima facie, the storm made the essential subject matter of the contract unavailable.
- Application to argue that even if the food were to be provided in suitable accommodation, this would be something entirely different in kind from what the contract envisaged since the food was merely a subsidiary element of the whole experience (frustration of the common venture). Credit the reverse argument that the common venture has not been frustrated since the food is still available.
- Application to argue that the 1943 Act s1(2) will require the return of all sums paid by Dylan subject to a discretionary 'just' amount to be retained by Claire to meet any expenses incurred prior to the date of frustration.



- Application to argue that the 1943 Act s1(3) will give the court a discretion to award Claire a 'just sum' to recognise any valuable benefit conferred on Dylan by Claire's preparations for the event. However, it seems difficult to identify any benefit either in the arrangements for the tree climbing and zip-wire experiences or in the provision of food, neither of which will be enjoyed by Dylan and his party.

**AO3**

- Analysis and evaluation of the 'unavailability of the subject matter' issue or of the 'frustration of the common venture' issue.
- Analysis and evaluation of the requirements of the Law Reform (Frustrated Contracts) Act 1943 s1(2)-(3).

Credit any other relevant point(s).

ICG1 – Elements required to establish frustration

ICG2 – Consequences of frustration – Law Reform (Frustrated Contracts) Act 1943

<b>09</b>	Examine what is meant by ‘justice’ and discuss the extent to which the legal rules on privity of contract may achieve justice for everyone concerned.	<b>[15 marks]</b>
-----------	---	-------------------

**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic explanation of possible meanings of justice.
- Identification and basic explanation of various philosophical approaches to justice.
- Basic explanation of the rules on privity of contract (possible reference to cases such as **Dunlop Pneumatic Tyre Co Ltd v Selfridge, Beswick v Beswick**), including major exceptions such as is provided in the Contracts (Rights of Third Parties) Act 1999, as well as in cases such as **Jackson v Horizon Holidays Ltd**.

**AO3**

- Analysis of varying levels of complexity of approaches to the meaning of justice, from the simple 'fairness' approach to more sophisticated philosophical treatment, for example, distributive justice, utilitarianism, social justice, using examples from any area of law, whether civil or criminal. Perhaps particular reference to achieving justice in resolving disputes between private individuals and/or business organisations.
- Analysis of the rules on privity of contract to determine the basis for excluding from rights and obligations those who have not participated by the provision of consideration.
- Evaluation to determine whether the rules promote or obstruct justice (for example, is it just to seek to enable a person to take advantage of the benefits of agreements without bearing any responsibilities/obligations; is it just to exclude persons from benefits where contracts are known to be made on behalf of, though not by, particular persons and do the exceptions sufficiently account for this), relating this to the analysis of justice supplied in the initial examination of the concept.

Credit any other relevant point(s).

ICG1 – Nature and meaning of justice

ICG2 – Discussion of privity in the context of justice

<b>10</b>	<p>Consider the rights and remedies of Imani against Hisham in relation to the washing machine. Consider the rights and possible remedies of Imani and of Jadon against each other in connection with the agreement about work on the gutters.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
-----------	--

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of supply of goods and supply of services in a trader/consumer relationship under the Consumer Rights Act 2015.
- Identification and outline explanation of terms implied into a contract for supply of goods – satisfactory quality (s9) and fitness for purpose (s10); identification and outline explanation of terms implied into a contract for supply of services – service to be performed within a reasonable time (s52).
- Identification and outline explanation of remedies for breach of the 2015 Act implied terms (supply of goods) as to satisfactory quality and fitness for purpose – short term right to reject (s20 – note time limit of 30 days in s22), repair or replacement (s23), price reduction or final right to reject (s24).
- Identification and outline explanation of the incorporation of an exclusion clause into a contract and of its effect on the remedies available (s31).
- Identification and outline explanation of remedies for breach of the 2015 Act implied terms (supply of services) as to performance of service within a reasonable time – the right to a price reduction (s56).
- Identification and outline explanation of common law remedies for breach of the 2015 Act s52 implied term as to performance of service within a reasonable time – right to treat the contract as at an end and/or to sue for damages, including issues of remoteness of damage.
- Possible reference to cases such as **Rogers v Parish (Scarborough) Ltd, Bartlett v Sidney Marcus, Crowther v Shannon Motor Co, Grant v Australian Knitting Mills, Griffiths v Peter Conway Ltd, Chapelton v Barry Urban District Council, Thornton v Shoe Lane Parking Ltd.**

**AO2**

- Application to argue that the relationship between Hisham and Imani, and between Jadon and Imani, is that of trader/consumer and so governed by the provisions of the Consumer Rights Act 2015.
- Application to argue that the defects in the washing machine may amount to a breach of s9 and s10 but that the age and second-hand nature of the goods must be taken into account, together with issues of examination/inspection (s9) and reliance (s10).
- Application to argue that, if there are breaches of either term, Imani could exercise the short term right to reject or require repair or replacement, supported by subsequent rights (to a price reduction/final right to reject). The purported exclusion of liability by Hisham via the prominently displayed notices, though arguably incorporated as a term in the contract, would be rendered wholly ineffective by s31.
- Application to argue that the contract between Jadon and Imani does not appear to include an express term as to time, so that the Consumer Rights Act 2015 implies a term as to a reasonable time for completion, which may have been broken, given the weather issue (credit any alternative argument in favour of an express term which makes time 'of the essence').
- Application to argue that Jadon would assert that the time delay was, at worst, a non-fundamental (non-repudiatory) breach. In that case, the statute prescribes a remedy of a price reduction (implying that Jadon would be entitled to complete the work or treat any refusal by Imani to allow him to do so as a fundamental (repudiatory) breach by Imani, permitting him to treat the contract as at an end and to sue for damages).
- Application to argue, however, that, conversely, Imani would assert a fundamental (repudiatory) breach by Jadon of s52, entitling her to treat the contract as at an end and to claim damages including the cost of the damage to the conservatory (dependent on the application of the remoteness rules).

**AO3**

- Analysis and evaluation of the terms under the Consumer Rights Act 2015, s9 and s10 as to satisfactory quality and fitness for purpose, possibly incorporating (where relevant) case law from pre-existing legislation (as indicated in AO1) and paying particular attention to the provisions of s9(2)–(4) and s10(4).
- Analysis and evaluation of the Consumer Rights Act 2015 remedies of repair or replacement, price reduction or final right to reject and, in particular, of their interrelationships.
- Analysis and evaluation of the implied term (Consumer Rights Act 2015) as to time for performance, including its status as an innominate term (credit an alternative analysis of an express term involving time as of the essence).
- Analysis and evaluation of the remedies available under the common law (treating the contract as at an end and damages) and statute (s56 price reduction) for breach of the implied term as to performance within a reasonable time under the Consumer Rights Act 2015, including remoteness of damage (**Hadley v Baxendale, Victoria Laundry Ltd v Newman Industries Ltd, H Parsons (Livestock) Ltd v Uttley Ingham & Co Ltd**).

Credit any other relevant point(s).

ICG1 – S9 and S10 of the CRA 2015

ICG2 – Remedies under the CRA 2015 and effect of the exclusion clause

ICG3 – The contract relating to services and possible remedies for breach

- 11** Consider whether Naz and Owen have any rights and remedies against Mark in connection with the sale of the car. Consider Rosie's rights and remedies against Mark in connection with the payment to do work on the roof.

Assess the contribution of sources of law to the rules which you have explained and applied in considering the dispute between Mark and Rosie.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

<b>Substantive</b>	<b>Non-substantive</b>	<b>Total marks</b>
23	7	30

**Indicative content**

**AO1**

- Outline explanation of the rules on offer and acceptance, looking at the meaning of offers and distinguishing between acceptance and counter offer and between counter offer and requests for further information.
- Possible (not required for max marks) outline explanation of the rules on intention to create legal relations.
- Outline explanation of the remedy of damages for breach.
- Reference to relevant cases such as **Hyde v Wrench**, **Harvey v Facey**, **Stevenson v McLean**.
- Outline explanation of the meaning of misrepresentation.
- Outline explanation of kinds of misrepresentation (fraudulent, negligent, innocent).
- Outline explanation of the remedies for misrepresentation (damages and rescission).
- Reference to relevant cases such as **Attwood v Small**, **Derry v Peek**.
- Identification and outline explanation of the sources of law in misrepresentation as being common law and statute.

**AO2**

- Application to argue that the message from Mark was an offer to sell his car for £8000 which could be accepted by Naz or Owen.



- Application to argue that Naz's response was a counter offer which terminated the offer made to her by Mark but that Owen's response may have been either a counter offer (with the same effect) or a request for further information (so not terminating the offer).
- Application to conclude that Naz would have no rights and remedies but that Owen would have formed a contract by accepting the offer in his second response if his first response was merely a request for further information.
- Application to conclude that, if there was a contract between Mark and Owen, Owen would be able to recover damages representing the difference between the market price (say, £9000) and the agreed price of £8000.
- Possible application to argue that, though friends, Naz and Owen were perhaps far from bargaining in a conventional social setting akin to a domestic relationship. Consequently, given the nature of the item (the car) and its cost, there would be a strong argument for suggesting either that the relationship was more akin to commercial than domestic/social or, at any rate, that any presumption against an intention to create legal relations could be rebutted.
- Application to argue that Mark's statement was a representation which was false.
- Application to argue that, given that Rosie made the agreement and paid the money before engaging a surveyor, she clearly relied on Mark's assurance (supported by Mark's status as the tradesman/expert) that roof work needed doing, so that Rosie was induced to enter the contract on that basis.
- Application to argue that the statement was made fraudulently or, at the very least, negligently (either suffices) – either Mark had no belief in its truth/knew perfectly well that it was untrue or he had no reasonable grounds for believing it to be true.
- Application to argue that, either at common law or under statute (Misrepresentation Act 1967), Rosie would be able to seek rescission of the contract and recover her £500.

### AO3

- Analysis and evaluation of the distinctions between acceptance, counter offer and request for further information – further analysis of, eg **Hyde v Wrench**, **Harvey v Facey**, **Stevenson v McLean**.
- Analysis and evaluation of the impact of the above on the formation of an agreement.
- Analysis and evaluation of the requirement in misrepresentation that the false statement must induce the victim to enter into the contract – further analysis of, eg **Attwood v Small**.
- Analysis and evaluation of fraudulent and negligent misrepresentation – further analysis of, eg **Derry v Peek**, Misrepresentation Act 1967 s2(1).
- Analysis of the scope of common law and statutory rules within the framework of the rules on misrepresentation.
- Evaluation of the respective contributions of the two sources, perhaps reaching an assessment that the rules are overwhelmingly founded on common law but that they have been crucially modified by the 1967 Act in respect of the categories and consequences of non-fraudulent misrepresentation.

Credit any other relevant point(s).

ICG1 – Issues relating to formation of contract

ICG2 – Misrepresentation

ICG3 – Sources of Law

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

---

**A-level**  
**LAW**  
**7162/3A**

Paper 3A Contract

---

**Mark scheme**

June 2022

---

Version: 1.0 Final Mark Scheme



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

#### **Copyright information**

AQA retains the copyright on all its publications. However, registered schools/colleges for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to schools/colleges to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Copyright © 2022 AQA and its licensors. All rights reserved.

## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **true** statement about misrepresentation in the Law of Contract.

**[1 mark]**

**Marks for this question: AO1 = 1**

**A** A false statement can be misrepresentation even if it is not the only factor which induces the claimant to make the contract.

**02** Select the **false** statement about the rules of contract.

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** A party's performance of a contract will be a breach only if it was negligent.

**03** Select the **false** statement about the rule of law.

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** Public officials should be given maximum freedom to make decisions affecting the legal rights of citizens.

**04** Select the **true** statement about the independence of the judiciary.

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** Judges in superior courts cannot easily be removed from office.

**05** Select the **false** statement about delegated legislation.

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** It is generally well-publicised.

<b>06</b>	Explain <b>two</b> characteristics of the common law as a source of law and provide an example to illustrate <b>one</b> of those characteristics.	<b>[5 marks]</b>
-----------	---	------------------

**Marks for this question: AO1 = 5**

	<b>Levels of response mark scheme 5 marks – AO1 only</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

Explanation of any **two** characteristics and use of **one** supporting example:

- common law has been made by judges, when making and following decisions in cases (may contrast with statutes)
- common law is subservient to statute law by which it can be abolished or amended
- as the foundation of common law, precedent operates on the basis of stare decisis in relation to key elements in a judgment and employs a hierarchy of courts
- common law represents rules based on decisions that have been developed over a period of time and have traditionally been the basis of important areas of law
- common law deals with actual, concrete instances and so is practical in its application and reach
- common law is limited in scope by the (relatively) narrow issues raised in individual cases and so is not particularly suitable in achieving large scale change or reform in the law
- common law applies retrospectively to incidents which have already occurred or issues which have already arisen
- common law, since it is based on precedent, promotes predictability and, perhaps, confidence in interpretation and application to future cases
- suitable examples to illustrate any of the above – for example, significant areas of criminal law (such as unlawful homicide) continue to be based on common law; significant areas of tort, such as negligence, are based on common law; the requirements for a valid contract rely on common law; in some areas, rules of common law have been completely replaced by statute (for example, defences to murder, occupier's liability in tort, consumer protection in contract).

Credit any other relevant point(s).

**Answers which do not explain two aspects cannot achieve marks higher than band 2, even if an eg is provided for one characteristic.**

**Answers which do not provide an example cannot achieve maximum marks.**



<b>07</b>	With regard to intention to create legal relations in contract, suggest why a court might decide that Kara was not obliged to buy the car for Leah.
	<b>[5 marks]</b>

**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Explanation that one of the elements required for a valid contract is an intention to create legal relations.
- Explanation that there is a rebuttable presumption against such an intention in agreements made in a domestic/social setting.
- Possible reference to/use of a case such as **Balfour v Balfour**, **Jones v Padavatton**.

#### **AO2**

- Application to argue that the relationship of aunt and niece probably characterises the agreement as being of a domestic/social nature.
- Application to argue that there would be a strong presumption against an intention to create legal relations.
- Application to suggest that, in the absence of any convincing evidence in rebuttal, a court might well decide that there was no intention to create legal relations, so that no contract was created.

**Reference to a case is not required but may enhance explanation and/or application.**

Credit any other relevant point(s).

- 08** Assume that there was an intention to create legal relations between Matt and Nirmal. With regard to the issue of consideration, advise Matt on whether he has any rights and remedies against Nirmal in connection with the repairs to the wall of his house.

**[10 marks]**

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)
Mark range	Description
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

- Explanation of the meaning of, and requirement for, consideration as one of the elements of a valid contract.
- Outline explanation of the remedy of damages (credit possible reference to specific performance).
- Reference to, and use of, cases such as **Currie v Misa**, **Dunlop Pneumatic Tyre Co Ltd v Selfridge**, **Thomas v Thomas**.

## AO2

- Application to argue that Matt would seek to show that he had provided consideration for Nirmal's promise to repair his wall by fixing the electrical installation in Nirmal's house, and that the consideration would be 'adequate' even if the value of work promised by Nirmal was disproportionately high in relation to the value of the work done by Matt.
- Application to argue that, prima facie, the electrical work done by Matt on Nirmal's house could not be regarded as consideration for the subsequent promise by Nirmal to Matt to repair the wall of his house because it was carried out prior to that promise and without regard to any such promise ('past' consideration).
- Application to argue, however, that, in view of previous dealings between Matt and Nirmal, it might be possible to argue that there was an implicit request by Nirmal to Matt to do such electrical work, supported by an implied understanding that the work would be 'paid for' in some form and, consequently, that the promise to repair the wall of Matt's house rendered the implied promise concrete and detailed.
- Application to suggest that damages amounting to the cost of labour for the repair could be awarded (the labour element of the £700 quoted by other builders); credit possible suggestion that specific performance would not be available because damages would be satisfactory and/or personal services would be involved.

## AO3

- Analysis and evaluation of the adequacy and sufficiency notions in consideration, developing, in particular, the 'past' consideration issue.
- Analysis and evaluation of the remedy of damages (and, possibly, of specific performance).
- Reference to, and use of, relevant cases: for example, **Chappell v Nestle Co Ltd**, **Re Casey's Patents**, **Lampleigh v Brathwait**.

Credit any other relevant point(s).

- 09** Examine the suggestion that the law has an important role to play in balancing conflicting interests. Discuss the extent to which this role is evident in the context of the Law of Contract.

**[15 marks]**

**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic explanation of the concept of law as operating to balance conflicting interests.
- Simple illustration drawn from any area(s) of law.
- Identification of the interests involved in contract – generally private/individual but perhaps with some public or social component, possible reference to groups such as business, trader, consumer.
- Possible reference to the views of theorists, for example Jhering, Pound.
- Identification of appropriate areas of the law and supporting legal authority to illustrate specifically an assessment of the extent to which rules of law in contract may play a role in balancing conflicting interests.

**AO3**

- Analysis of the meaning and kinds of interests that may be in conflict in issues that arise in law, as identified above under AO1.
- Analysis of the mechanisms by which law may seek to balance interests, including substantive and procedural rules of law, and access to justice.
- Possible evaluation of the extent to which law may have succeeded in achieving an appropriate balance between interests in selected areas, which may not be specific to contract but will be relevant to the process of balancing conflicting interests as a whole.
- Analysis of the rules in any area(s) of contract, to attempt to demonstrate how and where a balance may have been struck between different interests.
- Evaluation of the extent to which attempts to balance conflicting interests are evident in interpretation and application of rules of law in contract.
- Credible conclusions based upon the analysis and evaluation presented above.

Credit any other relevant point(s).

**ICGs**

1. Examination of the concept of balancing of conflicting interests.
2. Evaluation of the role of the law in balancing conflicting interests in the context of the law of contract.

- 10** Consider whether Paul has any rights and remedies against Ola in connection with his efforts to introduce her to a seller of the particular kind of watch. Consider what rights and remedies Paul has against Shirtsails in connection with the shirt.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>19–24</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>13–18</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>7–12</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
<b>1–6</b> <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the rules on formation of contract concerning offer and acceptance in unilateral contracts, including termination of offers by revocation.
- Identification and outline explanation of the remedy (damages) for possible breach of the main/collateral contract.
- Identification and outline explanation of supply of goods in a trader/consumer relationship under the Consumer Rights Act 2015.
- Identification and outline explanation of terms implied into a contract for supply of goods – satisfactory quality (s9), fitness for purpose (s10) and description (s11).
- Identification and outline explanation of remedies for breach of the 2015 Act implied terms (supply of goods) as to satisfactory quality and fitness for purpose – short-term right to reject (s20 – note time limit of 30 days in s22), repair or replacement (s23), price reduction or final right to reject (s24).
- Identification and outline explanation of the incorporation of an exclusion clause into a contract and of its effect on the remedies available (s31).
- Reference to, and use of, relevant case law: for example, **Carlill v Carbolic Smoke Ball Co**, **Dickinson v Dodds**, **Errington v Errington and Woods**, **Grant v Australian Knitting Mills**, **Chapleton v Barry Urban District Council**.

**AO2**

- Application to argue that the form of contract proposed between Ola and Paul was unilateral, in that Paul's acceptance of Ola's offer depended upon Paul succeeding in introducing a seller, not in making a promise to do so.
- Application to argue that, since an offer may be terminated by its revocation by the offeror, communicated to the offeree, albeit by a reliable third party, prima facie Ola withdrew the offer before acceptance by virtue of communication by Ola's partner, Raheem.
- Application to argue, however, that, since it may not be possible to revoke an offer leading to a unilateral contract once the offeree has embarked on performance, Paul may have a remedy, which would be the expected profit on the agreement. This may be achieved by regarding the contract as complete or by construing a collateral contract the damages for breach of which comprise the expected profit from the main contract.
- Application to argue that the relationship between Shirts and Paul is that of trader/consumer and so governed by the provisions of the Consumer Rights Act 2015, so that the defects in the shirt may amount to a breach of ss9-11, and taking into account the cost of the shirt and the fact that it is a first wash, and issues of reliance and description.
- Application to argue that, if there are breaches in either case of either term, Paul could exercise the short-term right to reject or require replacement, supported by subsequent rights (to a price reduction/final right to reject).
- Application to argue that the purported term excluding liability by Shirts via the receipt, even if validly incorporated (doubtful) as a term in the contract, would be rendered wholly ineffective by s31.

### AO3

- Analysis and evaluation of formation of contract in unilateral contracts, with particular reference to issues of acceptance and revocation of offers.
- Analysis and evaluation of the terms under the Consumer Rights Act 2015, ss9-11 as to satisfactory quality, fitness for purpose and description, incorporating (where relevant) case law from pre-existing legislation and paying particular attention to the provisions of s9(2) - (4) and s10(1).
- Analysis and evaluation of the Consumer Rights Act 2015 remedies of short-term right to reject, replacement, price reduction or final right to reject and, in particular, of their interrelationships.
- Analysis and evaluation of the potential common law remedy of damages.
- Reference to, and use of, relevant cases: further analysis and evaluation of case listed above and, for example, **Lambert v Lewis**, **Griffiths v Peter Conway Ltd**, **Thornton v Shoe Lane Parking Ltd**.

Credit any other relevant point(s).

### ICGs

1. Rights and remedies of Paul v Ola in relation to the offer and acceptance issues.
2. Rights and remedies of Paul v Shirtails in relation to the purchase of the shirt.



- 11** Consider the rights and remedies of Tess against Vic in connection with the contract for delivery of the sports magazine. Consider the rights and remedies of Tess and Will in connection with the contract to attend the Punchball events.

Assess the extent to which justice may have been achieved by application of the rules concerning the rights and remedies of Tess and Will against each other.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of supply of services in a trader/consumer relationship under the Consumer Rights Act 2015 and of terms implied into a contract for supply of services – service to be performed with reasonable care and skill (s49); service to be performed within a reasonable time (s52).
- Identification and outline explanation of remedies for breach of the 2015 Act implied terms (supply of services) as to performance of service with reasonable care and skill (the right to require repeat performance (s55), the right to a price reduction (s56)), and within a reasonable time (the right to a price reduction).
- Possible additional or alternative identification and outline explanation of express terms as to timely performance and of the nature of such terms as condition, warranty or innominate term.
- Identification and outline explanation of preserved common law remedies for breach of the 2015 Act implied terms and of those common law remedies as remedies for breach of express terms – the right to treat the contract as at an end and/or to sue for damages.
- Outline explanation of the meaning of frustration, including limitations on a claim of frustration.
- Outline explanation of the provisions of the Law Reform (Frustrated Contracts) Act 1943.
- Outline explanation of the concept of justice.
- Reference to, and use of, relevant cases: for example, **Thake v Maurice, Denny, Mott and Dickson Ltd v Fraser and Co. Ltd.**

**AO2**

- Application to argue that the contract between Vic and Tess is a trader/consumer contract governed by the Consumer Rights Act 2015 and that the delays in delivery of the sports magazine appear to be breaches of both the terms as to performance with reasonable care and skill (errors in the delivery list) and within a reasonable time.
- Application to suggest that the most appropriate statutory remedy would be a price reduction. However, a more suitable approach, if Tess were so inclined, might be to argue that the persistent failures in delivery in the first 8 weeks were so serious as to amount to a fundamental (repudiatory) breach entitling Tess to treat the contract as at an end and recover the £60 paid, subject to a proportionate deduction for deliveries made (moderated, itself, by a price reduction for breach of the statutory terms).
- Possible alternative or additional application to argue that the delays in delivery amount to a fundamental (repudiatory) breach or to a non-fundamental (non-repudiatory) breach of an express term as to time giving rise to a common law remedy either of treating the contract as at an end and claiming damages or claiming damages only, subject in either instance to any appropriate deduction for part-performance rendered.
- Application to argue that the new legislation made performance of the contract between Tess and Will illegal and so, prima facie, operated to frustrate the contract but application to argue that, alternatively, the contract was not frustrated because the risk of legislation was foreseeable.
- Application to argue that the 1943 Act s1(2) will require the return of the £400 paid by Tess subject to a discretionary 'just' amount to be retained by Will from that £400 to meet any expenses incurred prior to the date of frustration (specifically, in connection with preparation for, and presentation of, the two events attended by Tess).
- Application to argue that the 1943 Act s1(3) will give the court a discretion to award Will a 'just sum' (not confined to the £400 that Tess paid) to recognise any valuable benefit conferred on Tess by Will's preparations for, and presentation of, the events, taking into account any sum retained by Will (and so paid by Tess) in respect of Will's expenses under s1(2).
- Possible application to argue that, alternatively, if there is no frustration, Will will be in breach for not providing the events, entitling Tess to treat the contract as at an end and to sue for recovery of a substantial proportion of sums paid and possibly some damages.

**AO3**

- Analysis and evaluation of the remedies available under the Consumer Rights Act 2015 and common law for breach of the implied terms as to performance with reasonable care and skill and within a reasonable time.
- Possible additional or alternative analysis and evaluation of express terms as to time, and of remedies for breach thereof.
- Analysis and evaluation of the illegality issue in frustration and of the requirement that the event must not have been a foreseeable risk.
- Analysis and evaluation of the requirements of the Law Reform (Frustrated Contracts) Act 1943 s1(2)-(3).
- Analysis and evaluation of the concept of justice in the context of frustration of contract, perhaps suggesting that justice consists in recognising and acting appropriately on the 'unexpected' (?) circumstances to restore the parties to their original positions, so far as possible (referring to what amounts to frustration and/or to the operation of the provisions of the Law Reform (Frustrated Contracts) Act 1943 s1(2)-(3) and/or an assessment of the extent to which the discretion permitted to the judge enables justice to be achieved).
- Reference to, and use of, relevant cases: further analysis and evaluation of cases listed above and, for example, **Amalgamated Investment and Property Co. Ltd v John Walker and Sons Ltd**, **Armchair Answercall v People in Mind**, **BP Exploration v Hunt (No 2)**.

(Continued)

Credit any other relevant point(s).

**ICGs**

1. Rights and remedies of Tess v Vic in connection with the delivery of the sports magazine.
2. Rights and remedies of Tess and Will in connection with the Punchball events.
3. Justice in the context of the rights and remedies of Tess and Will (as above in ICG 2).

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

---

**A-level**  
**LAW**  
**7162/3A**

Paper 3A Contract

---

**Mark scheme**

June 2023

---

Version: 1.0 Final



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

#### **Copyright information**

AQA retains the copyright on all its publications. However, registered schools/colleges for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to schools/colleges to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Copyright © 2023 AQA and its licensors. All rights reserved.



## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **false** statement about the effect of the Consumer Rights Act 2015 (CRA) on a contract for services.

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** The CRA imposes a term requiring performance of the service with absolute care and skill.

**02** Select the **true** statement about a term which attempts to exclude or limit liability for breach of the 'satisfactory quality' requirement in a consumer contract for supply of goods (Consumer Rights Act 2015 s9).

**[1 mark]**

**Marks for this question: AO1 = 1**

**D** Liability cannot be excluded or limited.

**03** Which of the following **best** describes what happens in an action for breach of contract?

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** The claimant sues the defendant.

**04** Which of the following **best** describes where the rules of contract law can be found?

**[1 mark]**

**Marks for this question: AO1 = 1**

**D** Partly in common law and partly in statute law.

**05** In the context of a statutory instrument (a form of delegated legislation), what does the term 'ultra vires' mean?

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** The statutory instrument has gone beyond the powers granted by Parliament to make laws.

**06** Explain **two** ways in which the law tries to achieve judicial independence.

**[5 marks]**

**Marks for this question: AO1 = 5**

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

Explanation of any **two** of the following:

- security of tenure for superior judges (inferior judges may be mentioned but this is not necessary) – Senior Courts Act 1981, Constitutional Reform Act 2005 (power to remove in the hands of the monarch on petition by both Houses of Parliament) – independent office to investigate complaints
- appointment of judges contributing to securing independence
- financial security related to arrangements for determining and paying judicial salaries (including prohibition on reducing salaries and on any performance-related element)
- immunity from suit – immunity from criminal and civil actions in relation to acts carried out in performance of judicial function, including immunity from actions in defamation; **Sirros v Moore**
- freedom from interference by the executive and separation from legislative law-making (separation of powers) – Constitutional Reform Act 2005 s3
- prohibition on participation in cases where a judge may have a personal or other special interest – In **Re Pinochet**.

Credit any other relevant point(s).

**Note: max. 3 for good explanation of one way only.**

- 07** Taking into account the rules on anticipatory breach of contract, suggest why a court will probably include the £500 in an award of damages to Belle.

**[5 marks]**

**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Statement of the meaning and effect of an anticipatory breach – when a party indicates a refusal to perform in advance of time for performance, entitling the other party to treat the contract as ended and sue for damages or to continue to expect performance.
- Statement that if the innocent party continues to expect performance, that party may be entitled to incur expense associated with performance, notwithstanding the standard rules on mitigation (which do not yet apply because no breach has yet occurred).

#### **AO2**

- Application to suggest that Asif committed an anticipatory breach by giving advance notice to Belle of refusal to perform.
- Application to argue that Belle did not treat the contract as ended but continued to expect performance.
- Application to suggest that, despite the standard rules on mitigation, Belle may well be entitled to claim damages to include the expense that she incurred following the notice given to her by Asif that he did not intend to perform.

Credit any other relevant point(s), including use of any case to assist explanation/application (for example: **Hochster v De La Tour**, **White and Carter (Councils) Ltd v McGregor**).

<b>08</b>	Referring to the rules on agreement in formation of contract, advise Cora of any rights and remedies that she may have against Del.
	<b>[10 marks]</b>

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation of offer (including invitation to treat) and acceptance in formation of contract.
- Outline explanation of counter offers, requests for information and termination of offers by lapse of time in formation of contract.
- Outline explanation of the remedy of damages for breach of contract.
- Reference to supporting case authority: for example, **Partridge v Crittenden**, **Hyde v Wrench**, **Stevenson v McLean**.

#### **AO2**

- Application to suggest that Cora's advertisement was an invitation to treat:  
If Del's response was an offer, Cora could accept it but may have lost the right to do so, either because her initial response was a rejection, or because her subsequent clear attempt to accept was defeated by lapse of time.  
If Del's response was a continuation of negotiations (request for more information), then Cora's initial reply maintained the negotiations but her purported 'acceptance' could at best be treated as an offer which Del rejected.
- Alternative (equally creditworthy) application to suggest that Cora's advertisement was an offer:

If Del's response was a counter offer, it would be a rejection of the original offer, though Cora could accept Del's counter offer but may have lost the right to do so, either because her initial response was a rejection, or, if not, because her subsequent clear attempt to accept was defeated by lapse of time. If Del's response was a continuation of negotiations (request for more information), then Cora's offer remained in existence but was not accepted by Del, and Cora's subsequent purported 'acceptance' could amount only to another offer which, again, was not accepted by Del.

- Application to suggest that, if a contract could be established, then Del would be required to pay damages amounting to the difference (if any) between the price agreed (£1000) and any lesser sum for which Cora could sell the two items.

### AO3

- Analysis and evaluation of the requirement for agreement in contract by way of offer (distinguished from invitation to treat) and acceptance.
- Analysis and evaluation of the nature and effect of counter offers, requests for further information, and of termination of an offer by lapse of time.
- Further use of case authority, including cases referred to above, and, for example, **Carlill v Carbolic Smoke Ball Co**, **Harvey v Facey**, **Ramsgate Victoria Hotel Co. Ltd v Montefiore**.

Credit any other relevant point(s).

<b>09</b>	Examine the extent to which legal rules and moral rules are related. Discuss the extent to which rules in contract law reflect rules of morality.
	<b>[15 marks]</b>

**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic definitions of legal rules (in simple terms, such as rules created by authority within a given jurisdiction, or by reference to theorists such as Austin) and of moral rules (for example as a set of expectations concerning behaviour which is right or wrong, as customary practices, as social manners, as rules based on religion, as beliefs, values, principles and standards of behaviour).
- Outline explanation of the relationship between legal rules and moral rules for instance by identifying similarities and differences.
- Identification of appropriate examples drawn from civil and/or criminal law to illustrate the relationship between legal rules and moral rules.
- Identification of material relating to the law of contract (in the form, for instance, of appropriate principles, examples and decided cases) to illustrate the extent to which the liability of one party to a contract to another party can be related to moral rules.

**AO3**

- Analysis of similarities and overlap between legal and moral rules, developed through illustration; for instance what is illegal is often also immoral, rules of law can influence the morality of society and vice versa and the notion that to break the law is of itself immoral.
- Analysis of differences between legal and moral rules, developed through illustration; for instance the sources of legal and moral rules, the consequences on infringing legal and moral rules and the idea that legal rules are subject to rules of recognition, change and adjudication.
- Analysis of appropriate examples to illustrate the differences and the possible relationship between moral rules and legal rules.
- Analysis of relevant legal rules drawn from contract law, for example the notion that a contract represents an enforceable agreement, the rules governing vitiating factors (misrepresentation and economic duress), the discharge of a contract, rules protecting consumers and remedies for breach of contract both legal and equitable.
- Evaluation of relevant rules of contract law: for example the idea that a properly formed contract is enforceable reflects that morality requires a promise to be kept (possible reference to frustration when the moral imperative to keep a promise may be reduced), the rules on misrepresentation reflect the moral obligation to tell the truth (possible reference to the different types of misrepresentation), economic duress recognises that it is immoral to subject another to illegitimate pressure, the rules on consumer protection and exemption clauses recognise a moral obligation to treat all equally, contractual remedies demonstrate that it is moral to put right a wrong.

Credit any other relevant point(s).

**ICGs**

1. The relationship between law and morality.
2. The extent to which rules in contract law reflect rules of morality.



<b>10</b>	<p>Consider Fred's rights and remedies against Ezra in connection with the shirt. Having regard to the flooding and the expected demolition of Greta's house, consider the rights and remedies of Fred and Greta in connection with the contract for the design and creation of the garden.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
-----------	---

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the elements of misrepresentation: meaning (distinction from term); kinds (fraudulent, negligent, innocent); remedies (damages and rescission).
- (Possible) Identification and outline explanation of express terms in a contract: nature (condition, warranty, innominate); effect of breach (treating contract as at an end, damages).
- Reference to supporting case and other authority: for example, **Spice Girls Ltd v Aprilia World Service BV**, **Derry v Peek**, Misrepresentation Act 1967 s2(1), **Couchman v Hill**, **Oscar Chess v Williams**.
- Possible identification of a contract for services.
- Identification and outline explanation of the doctrine of frustration: meaning of frustration, including limitations; kinds of frustrating events (or specific reference to frustration of the common venture).
- Identification and outline explanation of the consequences of frustration of the contract and of a fundamental breach.
- Reference to supporting case and other authority: for example, **Krell v Henry**, **Herne Bay Steamboat Company v Hutton**, Law Reform (Frustrated Contracts) Act 1943 s1(1)–(3).

**AO2**

- Application to suggest that Ezra's statement was a representation which was false, was relied on by Fred, and was made, perhaps, either innocently or negligently, though certainly not fraudulently.
- Application to suggest that, whether the victim of innocent or negligent misrepresentation, Fred's primary remedy would be rescission of the contract, and so recovery of his £80 on return of the shirt.
- *Credit* an alternative or additional application to suggest that the discussion between Ezra and Fred could have created an express term that the shirt would be made of cotton, that its actual material was a breach sufficiently serious to entitle Fred to treat the contract as at an end and to recover the £80.
- Application to suggest that, prima facie, the damage to the house by flooding, though it did not in itself make it impossible to create the garden, nevertheless would make the performance something entirely different from that which the contract envisaged (frustration of the common venture). Credit the reverse argument that the common venture has not been frustrated since only the house was damaged.
- Application to argue that the 1943 Act s1(2) will require the return of all sums paid by Greta subject to a discretionary 'just' amount to be retained by Fred to meet any expenses incurred prior to the date of frustration.
- Application to argue that the 1943 Act s1(3) will give the court a discretion to award Fred a 'just sum' to recognise any valuable benefit conferred on Greta by Fred's preparations for the event. However, it seems difficult to identify the precise benefit if the house is demolished and the garden cannot be enjoyed.
- Application to suggest that, if the contract is not frustrated but Greta refuses to go ahead, Fred could treat the contract as at an end (a repudiatory/fundamental breach by Greta) and sue for damages representing his loss of profit.

### AO3

- Analysis and evaluation of the difference between a representation and a term.
- Analysis and evaluation of innocent and negligent misrepresentation and the remedies available for each.
- Analysis and evaluation of the nature of express terms and the remedies for breach.
- Analysis and evaluation of termination of a contract by reason of 'frustration of the common venture'.
- Analysis and evaluation of the requirements of the Law Reform (Frustrated Contracts) Act 1943 s1(2)–(3).
- Use of supporting authority by way of further development of the cases and other authority cited above and, also, for example, **Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd**, **Poussard v Spiers and Pond**, **Bettini v Guy**, **Taylor v Caldwell**, **BP Exploration Co. (Libya) Ltd v Hunt (No. 2)**.

Credit any other relevant point(s).

### ICGs

1. Fred's rights and remedies against Ezra, based on misrepresentation or, alternatively or additionally, on breach of an express term as to the material from which the shirt was made.
2. The respective rights and remedies of Fred and Greta based on frustration (with a consideration of breach if frustration is rejected).

<b>11</b>	<p>Consider the rights and remedies of Lewis against Karol in relation to the work <b>and</b> consider the rights and remedies of Lewis against NiceCook Ltd in relation to the barbecue.</p> <p>In respect of a consumer contract for the supply of goods, assess whether the Consumer Rights Act 2015 is successful in balancing the interests of traders and consumers.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
-----------	--

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

<b>Substantive</b>	<b>Non-substantive</b>	<b>Total marks</b>
23	7	30

**Indicative content**

**AO1**

- Consideration: identification and outline explanation of the rules on consideration with particular reference to the rule on adequacy of consideration.
- Intention: identification and outline explanation of the rules on intention to create legal relations with particular reference to the presumptions relating to business/commercial and social/domestic agreements.
- Privity: identification and outline explanation of the doctrine of privity of contract.
- Consumer rights: identification and outline explanation of the trader/consumer relationship in a contract for the supply of goods governed by the Consumer Rights Act 2015.
- Consumer rights: identification and outline explanation of terms implied into such a contract, with particular reference to the implied terms of satisfactory quality (s.9 CRA 2015) and fitness for purpose (s.10 CRA 2015).
- Consumer rights: identification and outline explanation of the consumer remedies available under the CRA 2015 for breach of one of the terms implied by that Act: short term right to reject (s.20) (subject to a time limit of 30 days: s.22), repair or replacement (s.23), price reduction or final right to reject (s.24) (noting that the consumer can take advantage of the six-month rebuttable presumption at s.19(14)-(15)). Possible further remedy in the form of common law damages.
- Balancing conflicting interests: identification and brief explanation of the role of law in society in balancing conflicting interests of different parties.

**AO2**

- Consideration: application of the rules on consideration to suggest that both Karol and Lewis contributed valid consideration in the form of items or services that possessed some economic value even if the value between significant garden work and a £10 gift voucher was mismatched.
- Intention: application of the rules on intention to create legal relations to examine whether Karol and Lewis intended to create a legal relationship. Application of the presumption relating to business/commercial agreements to suggest, given that Karol was trading, that an intention did exist. Alternative application of the presumption relating to social/domestic agreements to suggest, given their apparent friendship and given the low value that Karol was happy to accept, that an intention did not exist. If the former, application to suggest that there was a binding contract between the two parties and that Karol was in breach, allowing Lewis to claim for damages on an expectation basis. If the latter, application to suggest that there was no binding contract between the two parties and therefore that Lewis has no remedy.
- Privity of contract: application to argue that Lewis is able to make a claim against NiceCook, even in the absence of privity of contract, as he is likely to satisfy the requirements of the Contracts (Rights of Third Parties) Act 1999 as he was expressly identified by name and the contract purported to confer a benefit on him.
- Consumer rights: application to argue that the relationship between NiceCook and Lewis is that of a trader and consumer and that therefore the provisions of the Consumer Rights Act 2015 apply. Application further to argue that the defects in the barbecue may amount to a breach of the terms implied by s.9 and s.10 CRA 2015. **Note:** though it is desirable to consider *fitness for purpose* separately under s.10, it is fully creditworthy to deal with fitness for purpose under s.9 as an aspect of satisfactory quality because, in this instance, the requirements of both sections as to fitness for purpose are co-extensive since the evidence suggests that Mandy (Lewis) does not propose to use the barbecue for any purpose other than the common purposes for which barbecues are used.
- Consumer rights: application to argue that Lewis is unlikely to be able to use the remedy of the short term right to reject (because of the time delay indicated by the reference to 'two months' in the scenario). Application further to argue that he can choose a repair or a replacement of the barbecue and then probably exercise the final right to reject if that choice proves unsatisfactory. Lewis would be entitled to rely on the rebuttable presumption that a defect occurring in the first six months was there at the outset unless NiceCook can prove otherwise. Possible further remedy of common law damages in respect of the ruined food.

**AO3**

- Consideration: analysis and evaluation of the rules on adequacy of consideration with reference to appropriate case law, eg **Chappell v Nestlé**, **Thomas v Thomas**, **Mountford v Scott**.
- Intention: analysis and evaluation of the rules on intention to create legal relations with reference to appropriate case law, eg **Edwards v Skyways Ltd**, **Balfour v Balfour**, **Simpkins v Pays**.
- Privity: analysis and evaluation of the role of the doctrine of privity with reference to the Contracts (Rights of Third Parties) Act 1999 and with reference to appropriate case law, eg **Tweddle v Atkinson** and **Dunlop Rubber v Selfridge**.
- Consumer rights: analysis and evaluation of the implied terms as to satisfactory quality and fitness for purpose incorporating (where relevant) case law from pre-existing legislation, eg **Rogers v Parish**.
- Consumer rights: analysis and evaluation of the remedies of short term right to reject, repair or replacement, price reduction or final right to reject, as well as a common law right to damages.
- Balancing conflicting interests: evaluation of the role that law plays in balancing interests in society in the case of a consumer contract for the supply of goods. For instance brief analysis of the types of interest that may be in conflict (public against private, one individual against another); brief analysis of the interests that may be in conflict in the instance of a consumer contract for the supply of goods (the trader's commercial interest, the consumer's interest in goods that are safe and fit for purpose, society's interest in a thriving economy where there is a proper choice of goods at competitive prices); examination of the problem of inequality of bargaining power (a large company is much more economically powerful and able to set the terms of a contract than a consumer); analysis of methods

used by the Consumer Rights Act 2015 to protect consumers and balance their interests (minimum standards, consumer remedies, controls on exemption clauses).

Credit any other relevant point(s).

### **ICGs**

1. The rights and remedies of Lewis against Karol having regard to the formation of contract issues (consideration/intent to create legal relations) **AND** the privity issue concerning Mandy/Lewis and NiceCook.
2. The rights and remedies of Lewis against NiceCook Ltd in relation to the barbecue, based on terms as to quality and fitness for purpose imposed by the Consumer Rights Act 2015 (but excluding the privity issue).
3. Assessment of whether the Consumer Rights Act 2015 is successful in balancing the interests of traders and consumers.

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>



**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>