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A-level

LAW

7162/3A

Paper 3A Contract

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Mark scheme

June 2021

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Version: 1.0 Final Mark Scheme



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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.

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## 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.

<b>06</b>	Explain <b>three</b> aspects of the rule of law.	<b>[5 marks]</b>
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**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 **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>
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**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. <p style="text-align: right;"><b>[10 marks]</b></p>
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**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>
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**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:**

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>	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.	<b>[30 marks]</b>
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**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 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

<b>11</b>	<p>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.</p> <p>Assess the contribution of sources of law to the rules which you have explained and applied in considering the dispute between Mark and Rosie.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**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> <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. There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. There is limited analysis and evaluation of legal concepts and issues. 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> <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. There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. There is minimal analysis and evaluation of legal concepts and issues. 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>
<p><b>0</b></p>	<p>Nothing worthy of credit.</p>

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

Substantive	Non-substantive	Total marks
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>