



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.

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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 **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.

06	Explain two characteristics of the common law as a source of law and provide an example to illustrate one of those characteristics.	[5 marks]
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Marks for this question: AO1 = 5

Levels of response mark scheme 5 marks – AO1 only	
Mark range	Description
4–5 Band 3	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.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
0	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.

07 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.

[5 marks]

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

Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)	
Mark range	Description
4–5 Band 3	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.
2–3 Band 2	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.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
0	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
<p>7–10 Band 3</p>	<p>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.</p>
<p>3–6 Band 2</p>	<p>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.</p>
<p>1–2 Band 1</p>	<p>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.</p>
<p>0</p>	<p>Nothing worthy of credit.</p>

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

Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)	
Mark range	Description
13–15 Band 5	<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>
10–12 Band 4	<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>
7–9 Band 3	<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>
4–6 Band 2	<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>
1–3 Band 1	<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>
0	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	<p>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 Shiretails in connection with the shirt.</p> <p style="text-align: right;">[30 marks]</p>
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)	
Mark range	Description
25–30 Band 5	<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>
19–24 Band 4	<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>
13–18 Band 3	<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>
7–12 Band 2	<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>
1–6 Band 1	<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>
0	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**, **Chapelton 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 Shirtails 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 Shirtails 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	<p>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.</p> <p>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.</p> <p style="text-align: right;">[30 marks]</p>
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
<p>25–30</p> <p>Band 5</p>	<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>
<p>19–24</p> <p>Band 4</p>	<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>
<p>13–18</p> <p>Band 3</p>	<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>7–12 Band 2</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>1–6 Band 1</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>0</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

- 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

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

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
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
Total	75	25	100
Total %	75	25	100