

A LEVEL

Practice materials

LAW

H418

For first teaching in 2020

H418/04 Practice Paper and Mark Scheme



Oxford Cambridge and RSA

Practice Paper

A Level Law

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

Time allowed: 2 hours

You must have:

- the OCR 12-page Answer Booklet

INSTRUCTIONS

- Use black ink.
- Write your answer to each question in the Answer Booklet. The question numbers must be clearly shown.
- Fill in the boxes on the front of the Answer Booklet.
- Answer **four** questions in total:
Answer **one** question using examples from your full course of study in Section A.
Choose **one** Part in Section B. Answer the **three** questions for that part.

INFORMATION

- The total mark for this paper is **80**.
- The marks for each question are shown in brackets [].
- Quality of extended response will be assessed in questions marked with an asterisk (*).
- This document has **4** pages.

ADVICE

- Read each question carefully before you start your answer.

2**SECTION A****The nature of law**

Answer **one** question using examples from your full course of study.

1* 'The primary aim of any legal system is to achieve justice.'

Discuss the extent to which the law achieves justice.

[20]

2* Law has the power to influence and change society.'

Discuss the extent to which law does influence and change society.

[20]

SECTION B**Law of contract**

Choose **Part 1** or **Part 2**.

Part 1

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios **are** related.

Jonny has made a contract to buy a house from Phil. Jonny intends to use the house as an office for his building company. However, since making the contract Phil has become ill and does not want to move out of the house. Jonny has also made a contract with Robbie, a security guard, to guard a building site every night for the next six months. Since making the contract, Robbie has been offered another job and he no longer wishes to complete the contract with Jonny. Jonny has also made a contract with AB, a solar panel company. He has agreed that for two years he will order all his solar panels from them and they will not supply any of his competitors. However, since the contract was made Jonny has not needed any panels for his contracts. Jonny has just found out that AB are about to make a contract to supply one of his competitors.

Jonny makes a contract with Deeper, a tool hire company, to hire a special tool for drilling very deep holes. Jonny signs a lengthy document containing the terms of the contract. On the tenth page of the document there is a term which says that **'If a hirer is late in returning a tool, they agree to pay twice the total hire rate for every day they are late'**. This is an unusual and very harsh term. Jonny buys his bricks from B&M. Whenever he needs more bricks he places an order by telephone, B&M then deliver the bricks to a building site and Jonny signs a delivery note. The delivery note contains a term that **'B&M accept no liability for damaged bricks'**. Jonny used a public car park owned by XYZ when he was visiting one of his building sites. He paid when he entered the car park and received a ticket. The ticket had terms on the back which state **'XYZ accept no liability in the case of any damage caused to vehicles'**.

- 3 Advise whether Jonny will be able to obtain court orders to make Phil and Robbie carry out their contracts with him **and** whether he can obtain a court order to prevent AB from supplying his competitor. Assume each of the contracts is binding. **[20]**
- 4 Advise whether the terms in the scenario above have been incorporated into Jonny's contracts with Deeper, B&M **and** XYZ. **[20]**

Essay question on the law of contract

- 5* Discuss the problems that can arise when contracts are formed by exchange of letters or electronic communication **and** suggest ways in which the law in this area could be reformed. **[20]**

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Law of contract

Part 2

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Alfie owns a restaurant. His friend Bill is a musician. Bill enjoys playing his music in public so he asked Alfie whether he could play one evening in the restaurant. Alfie agreed. The evening was so successful that after Bill had finished playing, Alfie said he would pay Bill £300. Celine is an artist. After seeing an exhibition of her work, Alfie said he would love one of her pictures for his restaurant. Celine painted a picture for Alfie and he was so pleased that he said he would pay her £500. Darcie owns a business next to Alfie's restaurant and is unhappy with the smell that comes from the restaurant kitchen. Alfie promises Darcie a free party at the restaurant if she stops complaining and Darcie agrees.

Slipstream makes bicycles. Rolies has a six-month contract to supply Slipstream with special bicycle parts that only Rolies make. At the end of this period Rolies say that they will not renew the contract unless Slipstream makes a large payment towards the cost of Rolies' advertising campaign. Slipstream agrees because it cannot afford to lose the contract with Rolies. Slipstream also makes a one-year contract with Triffic for next day bicycle delivery for £50. Shortly after making the deal Triffic realises that it is making a loss, so it tells Slipstream that the price has to be increased to £100 or they will stop delivering. Slipstream cannot find another delivery company so feels it has no choice but to agree the higher rate. After six months have passed, Slipstream would like to reclaim the money it has paid towards Rolies' advertising campaign and the extra £50 per delivery it has been paying to Triffic.

- 6 Advise whether Bill, Celine **and** Darcie have given good consideration to enforce the promises Alfie has made. [20]
- 7 Advise whether Slipstream can claim back the contribution to Rolies' advertising campaign, **and** whether it can reclaim the extra £50 it has paid Triffic for delivering each bicycle, on the basis of economic duress. [20]

Essay question on the law of contract

- 8* Discuss the problems that can arise when contracts are formed by exchange of letters or electronic communication **and** suggest ways in which the law in this area could be reformed. [20]

END OF QUESTION PAPER

OCR

Oxford Cambridge and RSA

Practice Paper 2022

A Level Law

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

SAMPLE MARK SCHEME

Duration: 2 hours

MAXIMUM MARK 80

This document consists of 26 pages

SUBJECT–SPECIFIC MARKING INSTRUCTIONS

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

When there are 2 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Consistently meets the criteria for this level	At top of level

When there are 3 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Meets the criteria but with some slight inconsistency	Middle of level
Consistently meets the criteria for this level	At top of level

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**Questions **1***, **2***

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.
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Section BQuestions **3**, **4**, **6** and **7**

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
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Questions **5*** and **8***

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
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Questions that have an asterisk (*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

Section A

1* 'The primary aim of any legal system is to achieve justice'. Discuss the extent to which the law achieves justice.

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

AO1 Indicative content

Answers **may** include:

- Definitions of justice (e.g. Chaim Perelman) and different types of justice: formal justice, substantive justice, distributive justice and corrective justice. Use examples from your full course of study
- Theories of law and justice e.g. Natural Law theories (Aristotle, Aquinas, Fuller) and Positivist theories (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law etc. Credit any other relevant theories
- Use examples of formal justice – legal institutions such as the police, courts, judiciary, juries, and appeals
- Use examples of substantive justice – legal rules e.g. fault and defences in criminal law, fault in tort law, rights and freedoms in the Human Rights Act and fairness in contract law
- Use examples of distributive justice - the fair allocation of resources e.g. wealth, power, rights, resources e.g. anti-discrimination laws, minimum wage and reallocation of wealth through taxation and the welfare state
- Use examples of corrective justice – sentencing in criminal law e.g. retribution and remedies in tort and contract

Credit any other relevant point(s).

AO3 Indicative content

Answers **may**:

Discuss the struggle to create a common definition of justice that is shared by all members of society

Discuss the varied theories of law and justice and the struggle to create justice in a society. Credit any other relevant evaluation of the theories of justice

Discuss the different types of justice with examples from the whole course of study:

- Formal justice – the struggles faced by the criminal justice system in the miscarriages of justice cases. The findings of the Runciman Commission and the Criminal Cases Review Commission. The Stephen Lawrence case and the findings of the McPherson Report. Criticisms could be made of the judiciary. Evaluation of the system of ‘trial by your peers’
- Substantive justice – discussion of any legal rule and whether it achieves justice
- Distributive justice – how the law struggles to create justice for everyone regardless of class, wealth, gender, race or disability. Discuss how this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence etc.
- Corrective justice – discussion of the high re-offending rates. Inequality of bargaining power in civil cases

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p>	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

2* 'Law has the power to influence and change society'. Discuss the extent to which law does influence and change society.

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

AO1 Indicative content

Answers **may**:

- Explain how laws shape social norms and behaviour yet society has the ability to influence the law through protests, riots, strikes and civil disobedience
- Explain the influence of the media, politics and changing social norms e.g. moral panics
- Explain how changes in the law can change society's views or morals e.g. the legalisation of homosexuality was extremely controversial in the 1960s but has significantly less opposition today
- Explain the relationship between law and society through informal social controls such as family, schools, religious organisations and peer groups (e.g. bystander intervention and citizen patrol groups); and formal social control mechanisms such as prisons, the judiciary and the police
- Explain theories such as conflict, consensus and labelling
- Describe the realist approach to law making
- Compare the right realism approach ('tough on crime', 'just deserts', retribution) to policy with left realism (use of rehabilitation and reducing social inequality)
- Include examples from the full course of study including sentencing policy, crime statistics, influences on parliament

Credit any other relevant point(s).

AO3 Indicative content

Answers **may**:

- Discuss how the law uses its power to influence and change social norms to reduce the instances of social unrest
- Discuss how the law reacts to civil disobedience e.g. increased police powers to deal with protestors, the harsh treatment of rioters
- Discuss examples of when society has managed to influence social change through protest e.g. gay rights, abolition of the poll tax
- Discuss the influence of the media in pushing the political agenda of the parties and/or the government
- Discuss the media as a tool to create a moral panic so that society will support changes in the law
- Discuss the changing moral values of a pluralist society
- Discuss how informal social control is achieved through socialisation to create social norms shared by groups and society as a whole
- Discuss the strengths and weaknesses of the consensus theory
- Discuss the strengths and weaknesses of the conflict theory
- Discuss the impact of labelling theory and its ability to create subcultures
- Discuss the strengths and weaknesses of the realist theories
- Discuss the strengths and weaknesses of right realism and left realism

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p>	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

Section B

3 Advise whether Jonny will be able to obtain court orders to make Phil and Robbie carry out their contracts with him **and** whether he can obtain a court order to prevent AB from supplying his competitor. Assume each of the contracts is binding.

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

AO1 Indicative content

Answers **may** include:

Outline situations where specific performance may be awarded:

- Where damages are inadequate, e.g. for unique property such as land
- Where damages would only be nominal, *Beswick v Beswick*

Outline situations where specific performance will not be awarded:

- In contracts for personal services or employment, s.236 of the Trade union and Labour Relations Act 1992. Although there is an exception where the relationship with the employer has not broken down, *Irani v Southampton AHA*
- In contracts which require monitoring of an ongoing obligation, *Ryan v Mutual Tontine*, *Coop Insurance v Argyll Stores*
- In vague contracts or one where the other party has only paid nominal consideration
- Where it would cause hardship, *Patel v Ali*
- Where the contract was obtained unfairly or through taking advantage of the other party's mistake, *Walters v Morgan*

Outline situations where an injunction may be awarded:

- **Prohibitory** injunctions prevent a future breach of contract, *Lauritzencool v Lady Navigation*, and **mandatory** injunctions force someone to do something

Outline situations where an injunction will not be awarded:

- Where it would be unfair to the defendant, *Shell v Lostock Garage*
- If the effect is to give SP where it would not normally be granted, e.g. an employment contract, *Page One Records v Britten*, *Warren v Mendy*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Jonny and Phil

- Identify that Jonny wishes to buy a property and that property is considered to be a unique item
- Identify that specific performance is usually available to enforce contracts for the sale of property
- Identify that the court will not award specific performance where it would cause undue hardship
- Identify that in this case the seller has become ill and it may be considered harsh to force him to leave the property
- Conclude that specific performance may not be awarded

Jonny and Robbie

- Identify that specific performance is not usually available to enforce personal contracts
- Identify that Robbie's contract is personal, he has agreed to provide security services himself
- Conclude that specific performance may not be awarded

Jonny and AB

- Identify that an injunction can be obtained to prevent a party from breaking a contract
- Identify that AB are planning to break their exclusive dealing contract which would normally allow Jonny to obtain an injunction
- Identify that in this case Jonny has not ordered any panels from AB since making the exclusive trading agreement
- Identify that it might be considered unfair on AB to prevent them supplying other companies
- Conclude that an injunction may not be awarded

Reach any sensible conclusion

Credit any other relevant point(s).

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

4 Advise whether the terms in the scenario above have been incorporated into Jonny's contracts with Deeper, B&M and XYZ.

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

AO1 Indicative content

Answers **may** include:

- For terms to be incorporated into a contract they must normally be made available before the offer is accepted, *Thornton v Shoe Lane Parking*, *Chapleton v Barry UDC*
- Tickets may incorporate terms if it is reasonable to expect that there is a reference to terms on the back, *Parker v SE Railway*
- Signing a contractual document incorporates terms contained within it even if they have not been read, *L'Estrange v Graucob*
- Signature will not incorporate terms if what is signed is not a contractual document, *Grogan v Robin Meredith*
- Particularly harsh or unusual terms must be brought to the other side's attention or made prominent, *Interfoto v Stiletto Visual Productions* including in commercial contracts *Kaye v Nu Skin UK*
- Terms may be incorporated by a course of dealings if they are regular and consistent, *Kendal v William Lillico*, *Allen Fabrications v ASD*
- Terms may be implied by custom as long as both parties are aware and that there was a common understanding of the terms to be used, *British Crane Hire v Ipswich Plant Hire*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Jonny and Deeper

- Identify that the terms of the contract are contained in the signed document and that signing a document normally indicates agreement with the terms of that contract, even if they have not been read by the person signing
- Identify that particularly harsh or unusual terms must be made prominent
- Identify that the harsh term in this case does not seem to have been made prominent as it is on the 10th page of the terms
- Conclude that the term which makes Jonny liable for late return of the tool has not been incorporated into the contract

Jonny and B&M

- Identify that in this case the contract was made on the phone and the terms are unlikely to have been available at that point
- Identify that the delivery note is not likely to be a contractual document, even though it was signed, because it came after the contract was made
- Identify that terms can be incorporated by a course of regular and consistent dealings
- Identify that in this case Jonny and B&M had been dealing together for a number of years and so Jonny could be expected to be aware of the terms of the contract, particularly as Jonny is acting in the course of a business
- Conclude that the terms on the delivery note have been incorporated into B&M's contract with Jonny
- Credit any discussion about whether the terms could have been implied if they are usual within that business

Jonny and XYZ

- Identify that terms must be available at the time of contracting
- Identify that the ticket was not given to Jonny until after the contract was made
- Conclude that terms on the back of the ticket would not be incorporated into XYZ's contract with Jonny

Reach any sensible conclusion

Credit any other relevant point(s).

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

- 5* Discuss the problems that can arise when contracts are formed by exchange of letters or electronic communication **and** suggest ways in which the law in this area could be reformed.

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

AO1 Indicative content

Answers **may** include:

Explain the postal rule

- That a letter of acceptance takes effect from the moment it is posted, *Adams v Lindsell*
- That if the letter is lost and never delivered this does not affect the validity of the acceptance, *Household Insurance v Grant*
- That once acceptance has been sent it probably cannot be 'overtaken' by revocation by faster means, although a persuasive *obiter* suggests otherwise *Countess of Dunmore*

Explain exceptions to the postal rule

- That the postal rule takes effect where it would be in the contemplation of the parties, *Henthorn v Fraser*
- That it will not take effect if it has been excluded by the parties, *Holwell Securities v Hughes*
- That it will not take effect where a mistake in posting is the fault of the offeree, *Getreid v Contimar*

Explain the rules for revocation

- That revocation must be communicated before acceptance *Byrne v Van Tienhoven*
- That revocation by instant means takes effect within usual business hours, *The Brimnes*

Explain the rules for acceptance by instant communication

- That a telex takes effect from the moment it arrives and the postal rule does not apply to instant forms of communication, *Entores v Miles Far East Corporation*
- That the exact time of acceptance depends on the expectation of the parties and sound business practice, *Brinkibon v Stahag Stahl, Thomas v BPE Solicitors*

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

Discuss problems with the postal rule

- That a party may be in a contract without knowing it
- That it can be difficult to know when revocation is still possible
- That it can be unclear when the postal rule has been excluded by implication, for example by giving a time limit for acceptance
- That it is outdated and not in tune with the speed expected of modern business communications
- That there is no clear authority on 'overtaking' a posted acceptance with a revocation sent by faster means
- That the rules for offer and acceptance are too formal and outdated and do not reflect current business practice

Discuss problems with acceptance by instant communications

- That it may not be clear to the offeree when the other party has received and seen the acceptance
- That the sound business practice rule can lead to subjective decisions by the judge and may lead to a lack of clarity in the law
- That the existing case law deals with contracts made by telex and this may not reflect modern communications by various forms of instant messaging

Suggest ways in which the law could be made clearer

- The postal rule could be abolished unless it has been explicitly adopted by the parties
- Standardised business hours could be adopted by the courts for communications sent out of hours, and these would apply unless the parties have expressly or impliedly excluded them
- The rules for communication could be codified which would give greater clarity for businesses
- Parliament could adopt the draft *Principles of European Contract Law* which would help to standardise UK contract law with that in other countries
- That the formal requirement for offer and acceptance should be replaced by a general requirement that there is clear agreement between the parties

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law. 	7–8	<ul style="list-style-type: none"> Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law. 	5–6	<ul style="list-style-type: none"> Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p>	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law. 	3–4	<ul style="list-style-type: none"> Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1–2	<ul style="list-style-type: none"> Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6 Advise whether Bill, Celine **and** Darcie have given good consideration to enforce the promises Alfie has made.

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

AO1 Indicative content

Answers **may** include:

Explain the requirement for good consideration

- Explain that consideration must be sufficient but need not be adequate, *Chappel v Nestle*
- Explain that consideration can be giving something up, *Callisher v Bischoffsheim*, *Hamer v Sidway*
- Explain that consideration must have real value, *White v Bluett*

Explain the rules on past consideration

- Explain that consideration must be a promise for the future, *Re McArdle*, *Roscorla v Thomas*
- Explain the exceptions to past consideration:
 - where the act has been requested by the other party, *Lampleigh v Braithwaite*
 - where it would be expected because the promise was of a commercial nature, *Re Casey's Patents*
 - that it would be good consideration if it was not past, *Pao On v Lau Yiu Long*

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Alfie and Bill

- Identify that there was no contract made in order to pay Bill for playing in the restaurant
- Identify that when Alfie offered to pay Bill for playing, Bill's consideration was past
- Consider whether there was an expectation that Bill would be paid for the concert, and in making the promise Bill was merely quantifying a relevant sum
- Identify that Bill was not playing at Alfie's request and that he is not a professional musician who would expect to be paid
- Conclude that Bill has not provided good consideration

Alfie and Celine

- Identify that when Alfie promised to pay Celine her consideration was past
- Identify that Alfie asked Celine for a painting and that Celine is a professional artist
- Identify that this comes within the exceptions to the rule on past consideration
- Conclude that Celine has given good consideration for Alfie's promise

Alfie and Darcie

- Identify that Darcie must give consideration in order to enforce the promise and that giving something up can be good consideration
- Consider whether giving up complaining about the smell is good consideration, she probably has a right to complain about the smell and so she is giving up something of value
- Conclude that Darcie has given good consideration

Reach any sensible conclusion

Credit any other relevant point(s).

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

- 7 Advise whether Slipstream can claim back the contribution to Rolies' advertising campaign, **and** whether it can reclaim the extra £50 it has paid Triffic for delivering each bicycle, on the basis of economic duress.

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

AO1 Indicative content

Answers **may**:

- Explain the consequences of economic duress on a contract, that it becomes voidable
- Explain that in order to claim economic duress there must be an unlawful threat, that this can be to breach a contract *Atlas Express v Kafco*, or to commit a tort *Universal Tankships v ITWF*
- Explain that ordinary commercial pressure will not amount to an unlawful threat or to duress. This could be a threat not to renew a contract or to let a company go bankrupt: *The Siboen and Sibotre, CTN Cash and Carry v Gallagher*, or merely an indication that a party is unable to continue with a contract *William v Roffey*
- Explain that the threat must have vitiated the consent of the other party and left them with no realistic alternative but to comply with the threat *Atlas Express, Pao On v Lau Yiu Long*
- Explain that the party seeking to claim duress must have protested at the time and must not hesitate in taking legal action to avoid the contract *Pao On, The Atlantic Baron, DSND Subsea*
- Explain that the right to end a contract for duress may be lost through lapse of time, *The Atlantic Baron*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Slipstream and Rolies

- Identify that Rolies' threat leaves Slipstream with no alternative as there are no other suppliers of these goods
- Identify that this will only amount to economic duress if Rolies' threat was illegitimate
- Identify that the threat was not to renew the contract and that this is a legitimate threat as it would not amount to breach
- Conclude that Slipstream will not be entitled to claim back their payment on the basis of duress

Slipstream and Triffic

- Consider whether Triffic's threat is illegitimate
- Identify that a threat to breach an ongoing contract is an illegitimate threat which can form the basis of a claim in duress
- Consider whether Slipstream have been left with no realistic alternative but to agree to the demand to pay more
- Identify that they will not be able to arrange an alternative delivery service at such short notice and so they have no choice but to agree the payment
- Consider whether Slipstream have done enough to protest or make it clear to Triffic that they are not happy with the increase
- Identify that time has elapsed since Triffic made the threat and so this will prevent a claim of duress as they did not protest at the time or take immediate action to avoid the payment
- Conclude that Slipstream will not be entitled to claim back their payments on the basis of duress

Reach any sensible conclusion

Credit any other relevant point(s).

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

- 8* Discuss the problems that can arise when contracts are formed by exchange of letters or electronic communication **and** suggest ways in which the law in this area could be reformed.

As per Question 5

Assessment Objectives Grid

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

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

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