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A-level

LAW

7162/3A

Paper 3A Contract

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Mark scheme

June 2023

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Version: 1.0 Final



2 3 6 A 7 1 6 2 / 3 A / M S

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 the effect of the Consumer Rights Act 2015 (CRA) on a contract for services.

[1 mark]

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

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

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

[1 mark]

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

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

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

[1 mark]

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

**B** The claimant sues the defendant.

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

[1 mark]

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

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

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

[1 mark]

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

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

<b>06</b>	Explain <b>two</b> ways in which the law tries to achieve judicial independence.	<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 **two** of the following:

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

Credit any other relevant point(s).

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

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

**[5 marks]**

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

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

**Indicative content**

**AO1**

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

**AO2**

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

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

<b>08</b>	Referring to the rules on agreement in formation of contract, advise Cora of any rights and remedies that she may have against Del.	<b>[10 marks]</b>
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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 offer (including invitation to treat) and acceptance in formation of contract.
- Outline explanation of counter offers, requests for information and termination of offers by lapse of time in formation of contract.
- Outline explanation of the remedy of damages for breach of contract.
- Reference to supporting case authority: for example, **Partridge v Crittenden**, **Hyde v Wrench**, **Stevenson v McLean**.

**AO2**

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

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

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

### **AO3**

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

Credit any other relevant point(s).



<b>09</b>	Examine the extent to which legal rules and moral rules are related. Discuss the extent to which rules in contract law reflect rules of morality.	<b>[15 marks]</b>
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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 definitions of legal rules (in simple terms, such as rules created by authority within a given jurisdiction, or by reference to theorists such as Austin) and of moral rules (for example as a set of expectations concerning behaviour which is right or wrong, as customary practices, as social manners, as rules based on religion, as beliefs, values, principles and standards of behaviour).
- Outline explanation of the relationship between legal rules and moral rules for instance by identifying similarities and differences.
- Identification of appropriate examples drawn from civil and/or criminal law to illustrate the relationship between legal rules and moral rules.
- Identification of material relating to the law of contract (in the form, for instance, of appropriate principles, examples and decided cases) to illustrate the extent to which the liability of one party to a contract to another party can be related to moral rules.

**AO3**

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

Credit any other relevant point(s).

**ICGs**

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

<b>10</b>	<p>Consider Fred’s rights and remedies against Ezra in connection with the shirt. Having regard to the flooding and the expected demolition of Greta’s house, consider the rights and remedies of Fred and Greta in connection with the contract for the design and creation of the garden.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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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 relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

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

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

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

**AO2**

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

### AO3

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

Credit any other relevant point(s).

### ICGs

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

<b>11</b>	<p>Consider the rights and remedies of Lewis against Karol in relation to the work <b>and</b> consider the rights and remedies of Lewis against NiceCook Ltd in relation to the barbecue.</p> <p>In respect of a consumer contract for the supply of goods, assess whether the Consumer Rights Act 2015 is successful in balancing the interests of traders and consumers.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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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>
<p><b>25–30</b></p> <p><b>Band 5</b></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><b>19–24</b></p> <p><b>Band 4</b></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><b>13–18</b></p> <p><b>Band 3</b></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><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**

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

**AO2**

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

**AO3**

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



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

Credit any other relevant point(s).

**ICGs**

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

**Assessment Objectives Grid**

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

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

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