

Mark Scheme for June 2010

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Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

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This mark scheme must be used in conjunction with the Advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all will receive no marks.

Section A

- 1 'The rules on acceptance and revocation of unilateral offers lack clarity. This means that when a dispute arises parties are unable to predict the outcome'.

Critically evaluate the accuracy of this statement.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers MAY:

Assessment Objective 1

(25)

Identify what is meant by a unilateral offer – being an offer that may be open to more than one person and which may be accepted by completion of certain conduct.

Identify the situations where a unilateral offer has been identified by the courts:

- Where a reward has been offered where certain criteria are satisfied, citing case such as *Carlill v Carbolic Smoke Ball Company*
- Where a party has made it clear that they will consider tenders that have been submitted by a set time limit, citing cases such as *Blackpool & Fylde Aero Club v Blackpool Borough Council*
- Where a party has made it clear that they will accept the highest non referential bid to make a purchase, citing cases such as *Harvela Investments v Royal Trust of Canada*.
- Where a notice to customers indicates a scheme of protection, citing cases such as *Bowerman v ABTA*

Explain the rules on acceptance of a unilateral offer:

- That the person accepting might need to have knowledge of the offer, citing cases such as *R v Clarke*, *Fitch v Snedaker*, *Gibbons v Proctor*, *Williams v Carwardine*.
- That the conduct that amounts to acceptance must begin before revocation
- That the acceptance need not be communicated to the offeree, and that performance of the required conduct is sufficient, citing cases such as *Carlill* above

Explain the rules on revocation of a unilateral offer:

- That the revocation must be communicated before the conduct amounting to acceptance begins, citing cases such as *Errington v Errington*
- That, in circumstances where it is unclear who may have seen the unilateral offer, it is probably sufficient to make the revocation as prominent as the offer, citing cases such as *Shuey v USA*

Assessment Objective 2**(20)**

- Discuss whether the circumstances where a unilateral offer have been identified by the courts have been predictable or merely a convenience to solve a difficult situation, cases such as *Blackpool* and *Harvela* might be discussed here. Discuss whether using unilateral offers in this way causes uncertainty in the law of contract, and whether justice for the parties involved in the case justifies this approach
- Discuss the reasons behind the decision of the court in *Carlill* for dismissing the arguments of the company that the advert was a mere puff – that the advert was worded to look like an offer, that money had been placed in the bank to make the advert look serious, that the courts were reluctant to allow a commercial claim, made for reward, to have no legal effect
- Discuss whether the rules on revocation can be vague, that it can be difficult to identify the point at which the conduct amounting to an acceptance begins and thus the point at which it becomes too late to revoke
- Discuss whether it would be sensible to adopt the American approach that a notice of revocation that is as prominent as the offer is a satisfactory revocation, whether this could lead to injustice for a party who has seen an offer and started to act upon it without knowledge of the purported revocation
- Discuss which approach to acceptance in ignorance of the offer is more satisfactory – it being an acceptance because the offeror has achieved the desired outcome, or it not being an acceptance because there can be no assent to an unknown offer.

Assessment objective 3**(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2 'The courts have little sympathy for a party who claims that they are unaware of the terms on which they have contracted'.

Discuss the extent to which it is true that any written statement of terms will be incorporated into a contract, in light of the statement above. [50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers MAY:

Assessment Objective 1

(25)

Explain the rules on incorporation of contract terms by:

- Notice, that the terms must be available before the contract is concluded, citing cases such as *Thornton v Shoe Lane Parking*, *Olley v Marlborough Court Hotel*
- Receipts, that a term included in a receipt cannot incorporate terms into a contract if the contract has already been completed, citing cases such as *Chapleton v Barry UDC*
- Tickets, that the ticket must have been available before the contract was completed, or else that the parties were reasonably expecting there to be contractual terms on the receipt, citing case such as *Parker v SE Railway*, *Thompson v London Midland and Scottish Railway*
- Course of dealings, that where business dealings have been regular and consistent a document containing printed terms may have contractual effect even if the terms were not available before the contract was concluded, citing cases such as *McCutcheon v MacBrayne*
- By signature, that signed terms are incorporated into a contract even if not read, and that the court is reluctant to apply the doctrine of non est factum in the absence of clear evidence of unusual circumstances and a document of a completely different nature, citing cases such as *L'Estrange v Graucob* and *Saunders v Anglia Building Society*
- That there are times when harsh or unusual terms may not be included into a contract without reasonable prominence being given, citing cases such as *Interfoto v Stiletto Visual Productions*, *Thornton v Shoe Lane Parking*

Assessment Objective 2**(20)**

- Discuss whether the rule that terms must be available before acceptance gives certainty to the parties, even though one party may not have seen the terms the other is still entitled to rely on them if they were reasonably available
- Discuss whether this term can be harsh and the extent to which the modification of the rule in relation to harsh or unusual terms is justified
- Discuss whether the rules relating to tickets are justified, that the likely presence of terms on a ticket can incorporate them into a contract without being seen by both parties, and whether the rules on tickets are sufficiently certain and clear as it could be said that the guidance in *Parker* is very complex
- Discuss whether the rules on incorporation by course of dealings are a sensible exception to the rule that the terms must have been available before the acceptance, and whether application of the rules to individual cases can be subjective and therefore lead to uncertainty
- Discuss whether the harsh rules regarding non est factum are justified, that a party may not be able to escape a contract that they have signed merely in circumstances where the nature of the agreement is not entirely different from what they were expecting, or when they were not entirely justified in relying on the word of the other person.
- Discuss whether the narrowness of the doctrine is justified for the protection of innocent third parties.

Assessment Objective 3**(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 3 Discuss the view that the criteria for claiming economic duress are clear but they give a large amount of discretion to the judge in the way that they are applied.

[50]

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Mark Levels	AO3
Level 4	5
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Level 1	1-2

Potential answers MAY:

Assessment Objective 1

(25)

- 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*, *D&C Builders v Rees*, or to commit a tort *Universal Tankships v ITWF*, however ordinary commercial pressure will not amount to an unlawful threat or to duress *The Siboen and Sibotre*, *CTN Cash and Carry v Gallagher*
- Explain that the threat must have vitiated the consent of the other side and left the other party with no realistic alternative *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*
- Explain that duress is less likely to be found where a party has had access to legal advice before taking action *Pao On*, *DSND Subsea*

Assessment Objective 2**(20)**

- Discuss the extent to which the idea of an illegitimate threat is certain, that the cases are clear that a threat of breach of contract will be seen as illegitimate but a threat not to continue to contract is not seen as illegitimate
- Discuss whether the outcome in *Universal Tankships* was justified, that the threat can be seen as strike action which would have been lawful, and that there seems to have been a strong political context for the decision, and also that the decision was a 3:2 decision of the HOL, indicating a lack of clear agreement amongst the judiciary
- Discuss whether the decision in *Siboen and Sibotre* was justified, that the threat to liquidate a company in order to avoid an inconvenient contract was seen as a legitimate business technique
- Discuss the rules on the effect of the threat on the other side leading to coercion, that the rules seem to favour smaller parties to a contract, comparing *Williams v Roffey* and *Atlas Express*, and that this could be seen as a subjective attitude to fairness within a contract rather than a principled approach
- Discuss whether the alternative course of action suggested in *Pao On* was reasonable, and that commencing a case for specific performance would have been a lengthy and expensive process and the remedy sought will still be discretionary
- Discuss whether the other factors identified by Lord Scarman in *Pao On* are realistic, that a party is unlikely to protest strongly in circumstances where they see themselves as having little choice but to comply with a threat.

Assessment objective 3**(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

Section B

- 4 Dan booked and paid for a course in surfing after seeing an advert in a magazine. The course was to take place at High Roller Beach. There is a beach with that name five miles from his home. When he arrived for the course there was no-one there. In fact, the course was being held at another High Roller Beach 100 miles away. Dan could not get to the other beach in time and did not receive any surfing tuition.

Dan also bought a camera from a local shop for £400. He mentioned that he wanted to use it for high speed action shots. The sales person was aware that it was not suitable for this but said nothing.

Dan also made a contract on the internet for a flight to Australia. The flights were available for £100 but this was a mistake; the price should have been £1000. Although he was sent an email confirming the booking, later on he received an email informing him that there had been a mistake and that he could not have the flight.

Advise whether Dan is entitled to his money back from the surfing course, to his money back for the camera, and to the flight for £100. [50]

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Level 5	21-25	17-20
Level 4	16-20	13-16
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Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers MAY:

Assessment Objective 1**(25)**

- Explain the rules of offer and acceptance in relationship to contracts made on the internet, that the goods on the webpage are likely to be seen as an invitation to treat, that the customer makes a bilateral offer which is open to acceptance or rejection by the company. Cite relevant authorities such as *Partridge v Crittenden*, *Harvey v Facey*, *Brinkibon v Stahag Stahl*
- Discuss the rules on unilateral mistake, that if one party is aware of the mistake made by the other in offering things for a price that is too low that they are not entitled to accept, *Hartog v Colin and Shields*, but that if they are unaware of the mistake the contract remains binding, *Centrovincial Estates v Merchant Investors Insurance*
- Explain the rules on mutual mistake, that a contract may be void if a mistake is about something fundamentally different to what the parties thought and that the mistake was due to exceptional circumstances and made on reasonable grounds, *Tamplin v James*, *Raffles v Wichelhaus*
- Explain the rules on misrepresentation, that a false statement of fact must be made and that there is no general duty to disclose facts unless the contract relates to matters such as insurance
- Explain the provisions of the Sale of Goods Act relating to goods being fit for purpose (S.14(3)), that where a consumer makes known a particular use for which the goods are being bought, there is an implied term that the goods are fit for that purpose
- Explain that it must be reasonable to rely on the skill and judgment of the seller
- Explain that the consumer must have actually relied on the skill and judgment of the seller
- Explain that a breach of the implied terms is a breach of a condition and thus repudiatory.

Assessment Objective 2**(20)****The surfing course**

- Identify that this is a situation of mutual mistake
- Discuss whether the mistake here is fundamental – is High Roller Beach 100 miles away fundamentally different to high Roller Beach 5 miles away
- Discuss whether the mistake was due to exceptional circumstances – was it reasonable to see an advert naming a particular beach and assume that it was the local beach with that name, without making further enquiries?
- Draw any reasonable conclusion following from the above.

The camera

- Identify that Dan has made a particular intended purpose known for the camera
- Discuss whether it would be reasonable for Dan to rely on the skill of the seller
- Discuss whether Dan did actually rely on the judgment of the seller
- Discuss whether there is a breach of the implied term that the goods should be fit for their purpose
- Draw any reasonable conclusion following from the above
- Credit any discuss that there would not be a misrepresentation here because there is no duty to disclose.
- Credit discussion that this could be seen as a unilateral mistake on the part of Dan, with the shop having full knowledge about his mistake.

The flights

- Discuss the likelihood that the flights being made available on the internet is likely to be seen as an invitation to treat, and that his booking was an offer
- Discuss whether the email confirming the booking was an acceptance or merely a confirmation of the order being placed, in this case it looks likely to have been an acceptance
- Discuss the fact that if Dan was aware of the mistake in the price then the contract will be void for unilateral mistake
- Discuss whether Dan may have known about the mistake in this case – the price is much lower than would normally be the case but it is not uncommon for very cheap flights to be made available on the internet
- Draw any reasonable conclusion on unilateral mistake following from the above.

Assessment Objective 3**(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 5 Carlo contracts with Burly Builders to work on his house. Daisy, his neighbour, gives violin lessons in the evening, so Carlo makes it a term of the contract with the builders that 'all work should finish by 5.00 pm so that neighbours are not affected by noise'. In fact Burly Builders frequently work until 7.00 pm and on several occasions Daisy has had to abandon her lessons due to the noise.

To apologise for the disturbance Carlo buys tickets to take Daisy to see a concert at the Royal Theatre. Unfortunately the theatre has sold too many tickets for the concert, and Carlo and Daisy are unable to see the performance. Daisy is very upset about this.

When planning the work on his house, Carlo was visited by a representative of Garden Roofs who said that a plant covered roof would be perfect for his house. He asked the builders to use one of these roofs and they did so, purchasing the roof from Garden Roofs themselves. However the roof turned out to be unsuitable and within a short time it had to be replaced.

Advise whether Daisy can successfully claim directly against the builders for loss of earnings, and against the Royal Theatre for disappointment, and whether Carlo would be successful if he sued Garden Roofs for compensation. [50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
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Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers MAY:

Assessment Objective 1**(25)**

Explain the rules of privity; that a contract can only be enforced by and against the parties to the contract, *Tweddle v Atkinson*, *Dunlop v Selfridge*.

Explain statutory exceptions:

- Contract (Rights of Third Parties) Act; allowing a party who was intended to benefit from a contract, which they were not a party to, to enforce the contract in their own right
- Section 1(1)(a) where a contract contains an express term to that effect, or Section 1(1)(b) where the term purports to confer a benefit on a third party. Candidates should discuss the meaning of third party within the act.

Explain the exceptions developed by the courts:

- Collateral contracts; where a new contract was imposed by the court between a person making a representation and the person who acted on that representation, *Shanklin Pier v Detel Products*
- Special cases, where the courts have decided that one person may sue to recover losses suffered by another party, *Jackson v Horizon Holidays*, *Woodar v Wimpey*, extended to some commercial situations in *Linden Garden Trust v Lenesta Sludge*
- Other ways that the rule of privity may be avoided at common law: assignment, agency, suing under the law of negligence

Credit can be given for mentioning the following exceptions to the rule, although they are less likely to be applicable in this situation:

- The trust device; where an implied trust was used to avoid the rules of privity, *Les Affreteurs Reunis v Walford*
- Restrictive covenants; where restrictions on the use of land can be passed to subsequent purchasers, *Tulk v Moxhay*.

Assessment Objective 2**(20)**

- Identify that Daisy has no privity of contract with Burley Builders.
- Discuss whether Daisy can claim that the contract between Carlo and Burley Builders purports to give rights to Daisy that she can enforce herself under the Contract (Rights of Third Parties) Act, in this case the contract does mention neighbours' interests and so it is arguable that the contract purports to give them rights.

- Identify that Daisy does not have any privity of contract with the Royal Theatre because Carlo purchased the tickets.
- Discuss whether this would be a special case, the kind of situation where one person would generally make a contract for themselves and someone else.
- Discuss the fact that this would allow Carlo to claim damages on behalf of both himself and Daisy, but would not allow Daisy to bring a claim directly herself.
- Discuss whether the contract between Carlo and the theatre is one that purports to give a benefit to a third party. This is likely to be the case because when someone buys 2 tickets they are inevitably intending to give a benefit to someone else who will see the show.
- Discuss whether the absence of a name on the ticket would be an obstacle to the requirement that the third party is named or described.
- Draw any reasonable conclusion based on the discussion of the law.

- Identify that privity also appears to be an obstacle that would prevent Carlo bringing a claim directly against Garden Roofs, the contract with Garden Roofs was made by Burley Builders and not Carlo.
- Discuss whether any of the exceptions to the rule of privity might apply in this case:
- It is unlikely that the contract between Garden Roofs and Burley Builders makes any mention of Carlo, and so it is probably not a contract that purports to give a benefit to a third party, so is unlikely to come under the Contract (Rights of Third Parties) Act 1999.
- There may be a collateral contract between Carlo and Garden Roofs, Garden Roofs' consideration to Carlo being the promise that the product would be suitable and Carlo's consideration to Garden Roofs being the instruction to Burley Builders to complete the work using this product. If this is the case then Carlo has a direct contract with Garden Roofs that has been broken and he can sue.

Assessment Objective 3**(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 6 Zack is a singer who performs live music regularly. He hires Alvin as a guitarist to play while he sings. Alvin has broken his arm in an accident and will be unable to play the guitar for three months. Alvin has been paid in advance for the remainder of the month.

Brigid is the owner of a restaurant where Zack is booked to play. However, Zack has just been invited to play at a special awards ceremony on the same evening, and is unable to play at both venues.

Claude is the owner of a hotel on an island where Zack has been booked to play the following week. Normally the island is accessed by a bridge. However, the bridge has recently been destroyed in a flood and the only way to access the island is by helicopter which Zack cannot afford.

Advise whether Zack is entitled to treat the contracts with Alvin, Brigid and Claude as frustrated and any consequences that may apply. [50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers MAY:

Assessment Objective 1**(25)**

Explain the ways in which a contract may be frustrated:

- Impossibility of performance, *Nichol and Knight v Ashton Eldridge*, but not mere difficulty or extra expense,
- Radical change of circumstances, *Krell v Henry*.
- Illegality of performance, *Fibrosa v Fairbairn Lawson*.

Explain the circumstances where the courts will decide that frustration will not apply.

- Where performance would be possible but more difficult or expensive than originally anticipated, *Tsakiroglou v Noble Thorl*.
- Where the change of circumstances is not sufficiently radical, *Herne Bay v Hutton*, *Davis Contractors v Fareham*.
- Where the potentially frustrating event was in the anticipation of the parties, *Amalgamated Investment v John Walker*.
- Where the impossibility of performance was due to the fault of one of the parties or due to their choice to use other means to perform a contract, *The Super Servant 2*.

Credit an explanation of anticipatory breach

- Where one side indicates that they won't perform the contract the other side has the choice whether to take action immediately, *Hochster v De La Tour*.
- That they also have the option to wait and see whether circumstances will change but if they do this they run the risk of the contract being frustrated, *Avery v Bowden*.

Explain the provisions of the Law Reform (Frustrated Contracts) Act 1943 that seek to do justice between the parties:

- Section 1(2) where money paid in advance of the frustrating event may be reclaimed minus just expenses.
- Section 1(3) where a party has to account for any unjust enrichment they would have gained from performance of the other side before the frustrating event.

Assessment Objective 2**(20)****Alvin**

- Identify that Alvin will be unable to perform his contract and that this will be a frustrating event because it will become impossible to perform the contract
- Identify that under the Law Reform (Frustrated Contracts) Act a party must account for any unjust enrichment they would otherwise gain from a frustrating event, in this case the advance payment made to Alvin
- Conclude that Zack can treat the contract with Alvin as frustrated and reclaim the advance payment.

Brigid

- Identify that Zack is unable to play at her restaurant because he has double booked himself
- Identify that self induced frustration, including situations where a party to a contract has a choice about whether to perform or not, do not amount to frustration
- Conclude that Zack will not be able to escape his obligations to Brigid and that if he does not play he will be liable in breach of contract.
- Credit a discussion that Brigid may bring action immediately for anticipatory breach if Zack indicates that he is unwilling to perform his contract with her.

Claude

- Identify that it is not impossible to access the island but that it will be significantly more difficult and expensive
- Discuss the fact that mere difficulty does not amount to a frustration of the contract and nor does the fact that a party will make a loss on the contract or cannot afford to perform
- Identify the fact that a contract can be frustrated through radical change of circumstances
- Discuss whether the unavailability of the bridge would possibly amount to a radical change as travel to the island is an inevitable part of what Zack has to do and travel by helicopter is a very different proposition to using a bridge
- Identify that the contractual obligation itself is to play and it is up to Zack how to get there, thus this is probably not a radical change
- Conclude that Zack still has an obligation to play on the island, and that failure to do so will lead him to be in breach of contract.

Assessment Objective 3**(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

Section C

- 7 Olga has agreed to sell her boat to her neighbour, Ricardo, for a very low price. Ricardo has been a family friend for five years and has given her advice on investments in the past. She has also agreed to sell her car to Bobbie, her doctor. Olga's husband, Justin, said he would leave her unless she sold him some shares in a family company.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario. (20)

Statement A: There will be a presumption of undue influence between Olga and Ricardo.

Statement B: Olga is unlikely to be able to claim undue influence against Bobbie unless he has been her doctor for a long time.

Statement C: Olga is unlikely to be able to claim undue influence against Bobbie if he pays her a fair price for the car.

Statement D: If Justin pays Olga a fair price for the shares the contract will be binding on her.

Marking levels	AO2
Level 5	17 - 20
Level 4	13 - 16
Level 3	9 - 12
Level 2	5 - 8
Level 1	1 - 4

Assessment Objective 2

(20)

Statement A: There will be a presumption of undue influence between Olga and Ricardo.

- Reason that a presumption of undue influence can arise when a relationship of trust has arisen between the parties.
- Reason that it appears in this case that Olga trusts Ricardo and is likely to be influenced by him in financial matters.
- Reason that a presumption of undue influence may well arise in this case.
- Conclude that the statement is accurate.

Statement B: Olga is unlikely to be able to claim undue influence against Bobbie unless he has been her doctor for a long time.

- Reason that there are some relationships where the law recognises the likelihood of one party being dominant over the other.
- Reason that one of these relationships is that between doctor and patient.
- Reason that there is no requirement in law that the relationship between doctor and patient is a longstanding one.
- Reason that Olga may well be able to claim presumed undue influence against Bobbie.
- Conclude that the statement is inaccurate.

Statement C: Olga is unlikely to be able to claim undue influence against Bobbie if he pays her a fair price for the car.

- Reason that for a presumption of undue influence to arise there must be a contract that requires further explanation.
- Reason that where someone has paid the going rate for goods, no further explanation will be required, as this will satisfy the burden of proof and show that no undue influence has been applied.
- Reason that if Bobbie pays a fair price no presumption of undue influence will arise.
- Conclude that the statement is accurate.

Statement D: If Justin pays Olga a fair price for the shares the contract will be binding on her.

- Reason that any pressure that improperly influences Olga will give rise to a claim of undue influence.
- Reason that threats to leave her will probably be seen as improper influence.
- Reason that it does not matter whether the contract itself is good or bad for a claim of actual undue influence to be brought.
- Reason that Olga may well be able to end the contract even if she is paid a fair price for the shares.
- Conclude that the statement is inaccurate.

- 8 Jenna owns a factory that manufactures spare parts for cars. Until recently she employed Alec as a financial director, Branco as an IT technician and Cecilia as a customer support worker. All three of the employees have recently left Jenna's employment and now wish to start working for competing companies. Jenna wishes to enforce terms in their contract which prevent them from doing so for one year.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario. [20]

Statement A: Jenna has a legitimate interest in restraining Alec from working for another firm.

Statement B: In Alec's case, one year is probably too long but the court can change it to six months.

Statement C: Jenna has a legitimate interest in preventing Branco from using his skills as an IT technician in a rival company.

Statement D: It would be reasonable to prevent Cecilia from working as a customer support worker for a rival company within ten miles for one year.

Marking levels	AO2
Level 5	17 - 20
Level 4	13 - 16
Level 3	9 - 12
Level 2	5 - 8
Level 1	1 - 4

Potential answers MAY:

Assessment Objective 2

(20)

Statement A: Jenna has a legitimate interest in restraining Alec from working for another firm.

- Reason that the restraint of trade clause will only be enforced if there is a legitimate interest to protect and that they are prima facie void.
- Reason that Jenna must show that Alec has knowledge of a trade secret or specialist customer knowledge.
- Reason that the more senior an employee is the more likely it is that a restraint will be upheld.
- Reason that Alec may well have client knowledge and due to his senior position Jenna will probably be able to restrain him.
- Conclude that the statement is accurate.

Statement B: In Alec's case, one year is probably too long but the court can change it to six months.

- Reason that the length of the restraint must be proportionate to the legitimate interest.
- Reason that 1 year may well be a reasonable length of time as it would protect Jenna from unfair exploitation of trade secrets.
- Reason that the courts will not re-write a contract term, it will either be enforced or will fail.
- Reason that 1 year may be reasonable and that the courts will not re-write the term.
- Conclude that the statement is inaccurate.

Statement C: Jenna has a legitimate interest in preventing Branco from using his skills as an IT technician in a rival company.

- Reason that an employer can restrain an ex employee from using trade secrets to the advantage of a competitor.
- Reason that an employer cannot stop someone from working elsewhere if they have general skills, even if they gained those skills during their previous employment.
Either
- Reason that the skills of an IT technician are likely to be general skills rather than specialist knowledge.
Or
- Reason that Branco is likely to have knowledge of the systems and specific software used in Jenna's factory and that this could be useful to a competitor.
- Draw any reasonable conclusion which follows the line of reasoning made by the candidate.

Statement D: It would be reasonable to prevent Cecilia from working as a customer support worker for a rival company within ten miles for one year.

- Reason that Cecilia probably does have specialist knowledge of Jenna's customer base that can justify a restraint.
- Reason that the time and distance must be reasonable to protect Jenna and not punitive.
- Reason that the restraint must not prevent Jenna from making a living in the only area that she has experience of working in.
- Reason that the restraints will be looked at together in assessing reasonableness.
- Reason that the restraint may well be reasonable because 10 miles is probably not too far to travel to another job, depending on the nature of the location of Jenna's factory.
- Draw any reasonable conclusion which follows the line of reasoning made by the candidate.

Annotations

R	repetition
}	irrelevant (use for more than a couple of lines of text)
S/O	sort of
✓	knowledge (AO1)
def	definition (AO1)
C1 etc	to indicate cases (AO1)
n/o	to indicate use of a case but in name only
^	omission
AO2	to indicate a bold comment
AO2+	to indicate developed comment / discussion
AO2++	to indicate extremely well developed comment / discussion

Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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