

Mark Scheme for January 2012

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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Annotations

Annotation	Meaning
CP	Critical point
AP1, AP2 etc	Analytical point 1, Analytical point 2
LC	Linked case
+	Well developed ...eg CP+
R(ep)	Repetition
SO	Sort of
⌋	Irrelevant material
C1 etc	Case
C1+	Case – well explained
✓	Credited AO1 material
(AO)2	Point (AO2)
(AO)2+	Developed point (AO2)
(AO)2++	Well developed point (AO2)
LTS	Link to source

Question	Answer	Marks	Guidance													
1*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Explain the critical point (CP) of the case: the Court of Appeal rejected the daughter’s defence that she had a contractual right to remain in the house and the mother won her appeal. The majority of the court found that an agreement between a mother and child fell in the same category as an agreement between a husband and wife (ie. ‘social and domestic’) and that therefore there should be a presumption against ITCLR. The presumption was not rebutted in this case.</p> <p>Link this case with another relevant case (LC) for development such as: <i>Balfour v Balfour</i>, <i>Merritt v Merritt</i>, <i>Edwards v Skyways</i>, <i>Snelling v Snelling</i></p> <p>Discuss the case analytically (AP), for example making points such as:</p> <p>AP1 Maintaining the presumption in this situation protects family life from the intrusion of contract law.</p> <p>AP2 Its protection of the family as a private domain is perhaps out of step with current attitudes towards family roles.</p> <p>AP3 Maintaining the presumption in this situation prevents the floodgates from opening.</p> <p>AP4 The application of the ‘rules’ in this case shows that whilst they may seem simple in theory, they are difficult to apply in practice: both Salmon LJ and the first instance judge felt that there was ITCLR in this case.</p> <p>AP5 Any other relevant point.</p>	12	<table border="1" data-bbox="1424 284 1783 499"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11–12</td> </tr> <tr> <td>4</td> <td>9–10</td> </tr> <tr> <td>3</td> <td>7–8</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Marks should be awarded as follows:</p> <ul style="list-style-type: none"> • Max 3 marks for the Critical Point (CP) • Max 6 points for the Applied Points (AP) • Max 3 points for a relevant Linked Case (LC) <p>Level 5 Candidates are unlikely to achieve L5 without discussing the CP, without using a linked case for the purpose of showing development and without making 2 analytical points.</p> <p>Level 3 Candidates are unlikely to achieve L3 without discussing the CP.</p>		AO2 Level	AO2 marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3
AO2 Level	AO2 marks															
5	11–12															
4	9–10															
3	7–8															
2	4–6															
1	1–3															
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</p>	4	<table border="1" data-bbox="1424 1106 1805 1326"> <thead> <tr> <th>AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>10-12</td> <td>4</td> </tr> <tr> <td>7-9</td> <td>3</td> </tr> <tr> <td>4-6</td> <td>2</td> </tr> <tr> <td>1-3</td> <td>1</td> </tr> </tbody> </table>		AO2 marks	AO3 mark	10-12	4	7-9	3	4-6	2	1-3	1		
AO2 marks	AO3 mark															
10-12	4															
7-9	3															
4-6	2															
1-3	1															

Question	Answer	Marks	Guidance												
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the basic rules regarding intent to create legal relations in contract law:</p> <ul style="list-style-type: none"> • intent to create legal relations is a necessary condition for the formation of a contract (<i>Balfour v Balfour</i>) • There is a presumption against intent to create legal relations in family situations, eg: <ul style="list-style-type: none"> ○ Between husband and wife (<i>Balfour v Balfour; Pettit v Pettit</i>) ○ Between parent and child (<i>Jones v Padavatton</i>) • There is a presumption against intent to create legal relations in social situations, eg: <ul style="list-style-type: none"> ○ Entering into a club's competition (<i>Lens v Devonshire Social Club</i>) ○ Oral agreements between bingo players (<i>Wilson v Burnett</i>) ○ Agreements between friends when sharing cars (<i>Buckpitt v Oates</i>) • These presumptions can be rebutted where there is objective evidence to the contrary, eg: <ul style="list-style-type: none"> ○ where married couples or cohabiting couples are separating or separated (<i>Merritt v Merrit; Eves v Eves; Tanner v Tanner; Soulsbury v Soulsbury; Darke v Strout</i>) ○ where agreements have been recorded in writing (<i>Merritt v Merritt; Errington v Wood; Darke v Strout</i>) ○ where family members have made an agreement in a business context (<i>Snelling v Snelling</i>) ○ Gambling cases where clear evidence can show an intention to divide the winnings (<i>Peck v Lateu</i>) ○ where reliance has been placed on the agreement (<i>Parker v Clark; Albert v MIB; Simpkins v Pays</i>) 	16	<table border="1" data-bbox="1393 280 1789 512"> <thead> <tr> <th>AO1 Level</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14–16</td> </tr> <tr> <td>4</td> <td>11–13</td> </tr> <tr> <td>3</td> <td>8–10</td> </tr> <tr> <td>2</td> <td>5–7</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Level 5 Candidates are unlikely to achieve L5 without including 8 relevant cases/statutory provisions and covering both main presumptions and their rebuttals very well. Candidates are likely to use material from both within and beyond the source/resource booklet. The discussion of cases/statutes should include a direct link to cited cases/statutory provision, including sufficient factual material only to ensure accuracy of citation and to support a discussion.</p> <p>Level 4 Candidates are unlikely to achieve L4 without including 6 relevant cases/statutory provisions</p> <p>Level 3 Candidates are unlikely to achieve L3 without including 4 relevant cases/statutory provisions and either covering one main presumption and its rebuttals well or covering both main presumptions.</p> <p>Level 2 Candidates are unlikely to achieve L2 without including 2 relevant cases/statutory provisions.</p>	AO1 Level	AO1 marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4
AO1 Level	AO1 marks														
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Question	Answer	Marks	Guidance												
	<ul style="list-style-type: none"> • There is a presumption in favour of intent to create legal relations regarding commercial agreements (<i>Esso Petroleum v CCE; J Evans & Son v Andrea Merzario Ltd; McGowan v Radio Buxton</i>) • This presumption can be rebutted but requires very clear evidence in order to do so (<i>Edwards v Skyways</i>), eg: <ul style="list-style-type: none"> ○ where 'honour clauses' have been used (<i>Rose and Frank v Crompton Bros; Jones v Vernons Pools; Appleson v Littlewoods</i>) ○ where 'letters of comfort' have been used (<i>Kleinwort Benson v Malaysian Mining Corporation</i>) ○ agreements 'subject to contract' (<i>Confetti Records v Warner Music UK</i>) ○ collective bargaining agreements (<i>Ford Motor Co v AUEFW</i>) • Where an agreement is very vague, the courts may use that vagueness to infer that it was not intended to be binding (<i>Vaughan v Vaughan</i>) 														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss the extent to which, if any, the courts give emphasis to the intentions of the parties when deciding whether or not to find intent to create legal relations.</p> <ul style="list-style-type: none"> • The presumptions both for and against intent to create legal relations are policy based rather than intention based: <ul style="list-style-type: none"> ○ the courts do not want to open the floodgates to an enormous number of cases concerning agreements made socially or domestically <p>Atkin LJ justified the presumption against intent to create legal relations <i>inter alia</i> by arguing that the family was a private sphere into which contract law should not properly enter</p> <ul style="list-style-type: none"> ○ the courts prefer negotiations in commercial situations to take place on a general understanding that agreements are intended to be binding. This also tends to protect consumers 	14	<table border="1" data-bbox="1395 890 1749 1121"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13–14</td> </tr> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve Level 5 without an analytical engagement with the question and a logical conclusion.</p>	AO2 Level	AO2 marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
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Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> ○ therefore the way in which the presumptions are formulated suggests that the courts do not give much emphasis to the intention of the parties ○ however, the presumptions are simply starting points and can be rebutted so the way in which they can be rebutted must be considered ● On the other hand, there is some evidence to show that some judges have, at least in part, based their judgments on the actual intentions of the parties: notably Fenton Atkinson LJ in <i>Jones</i> and Atkin LJ in <i>Balfour</i> ● All the rules regarding the rebuttal of the presumption are objective rather than subjective tests of intention. This might suggest that the courts do not give emphasis to the intentions of the parties but the courts have little option but to rely on an objective approach. The question then becomes: how close are the tests to the likely subjective intentions? ● In certain situations, the rebuttal of the presumption against intent to create legal relations seems to be based more upon the context of the agreement than the actual intentions of the parties, eg: <ul style="list-style-type: none"> ○ where agreements are made in a business context ○ where agreements are made between a couple that were separating or separated ○ where agreements include non-family members ○ where some reliance had been placed on the agreement ○ arguably, these rules may perhaps be quite distant from the intentions of the parties ● In other situations, the rebuttal of the presumption against intent to create legal relations seems to be based more clearly upon something in the agreement itself, eg: <ul style="list-style-type: none"> ○ where agreements have been recorded in writing ○ where agreements are too vague to suggest that parties intended to be bound ○ arguably, these rules may perhaps more closely reflect the intentions of the parties 		

Question	Answer	Marks	Guidance											
	<ul style="list-style-type: none"> • The general rules regarding the rebuttal of the presumption in favour of intent to create legal relations in commercial situations also seem likely to closely reflect the intentions of the parties, eg: <ul style="list-style-type: none"> ○ honour clauses, agreements subject to contract and comfort letters • The rules regarding collective bargaining agreements are based upon policy considerations • Note the possible link to <i>de minimis non curat lex</i> – a legal principle which may be relevant to the courts’ decision making and which is not related to the parties’ intentions <p>Reach any sensible conclusion.</p>													
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</p>	4	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO1 + AO2 marks</th> <th style="text-align: center;">AO3 mark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">24 – 30</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">17 – 23</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">9 – 16</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1 – 8</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>		AO1 + AO2 marks	AO3 mark	24 – 30	4	17 – 23	3	9 – 16	2	1 – 8	1
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1 – 8	1													

Question	Answer	Marks	Guidance																														
3	<p>Potential answers may:</p> <p>Assessment Objective 1 – Demonstrate knowledge and understanding</p> <p>Define the relevant rules and use any relevant cases as authorities for those rules.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of (a):</p> <ul style="list-style-type: none"> • Identify that this is a social agreement and show that there is a presumption against ITCLR in social situations (<i>Lens v Devonshire Social Club</i>) • Identify that it may be seen as simply a friendly conversation (<i>Wilson v Burnett</i>) • Identify that considerable reliance has been placed upon the agreement in this case. • Show that the presumption can be rebutted where reliance has been placed on the agreement (<i>Parker v Clark; Albert v MIB; Simpkins v Pays</i>) • Accept conclusions stemming from analysis of level of reliance <p>In the case of (b):</p> <ul style="list-style-type: none"> • Identify that this agreement has been reached in a commercial situation • Show that there is a presumption in favour of ITCLR in commercial situations (<i>Esso Petroleum v CCE; J Evans & Son v Andrea Merzario Ltd</i>) • Show that it is very difficult to rebut the presumption in this type of case (<i>Edwards v Skyways</i>) • Show that none of the rebuttal methods (eg honour clause, <i>Rose and Frank</i>) appear to be present • Conclude that it is likely that the courts will find ITCLR in this situation 	<p>10</p> <p>20</p>	<table border="1" data-bbox="1361 248 1832 459"> <thead> <tr> <th>Level</th> <th>AO1 marks</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>7–8</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>5–6</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>3–4</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–2</td> <td>1–4</td> </tr> </tbody> </table> <p>Marks should be awarded (per scenario) as follows:</p> <table border="1" data-bbox="1361 596 1700 815"> <thead> <tr> <th>Level</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> </tr> <tr> <td>4</td> <td>7-8</td> </tr> <tr> <td>3</td> <td>5-6</td> </tr> <tr> <td>2</td> <td>3-4</td> </tr> <tr> <td>1</td> <td>1-2</td> </tr> </tbody> </table> <p>A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> • Max 3 marks for the critical point (CP) • Max 6 marks for applied points (AP) • Max 1 mark for a logical conclusion/assessment of the most likely outcome in terms of liability <p>To get three marks for the CP, candidates are likely to provide:</p> <ul style="list-style-type: none"> • an accurate statement of the legal issue; • an accurate statement of the relevant basic rules; and • supporting authority for those rules. 	Level	AO1 marks	AO2 marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4	Level	(a), (b) or (c)	5	9-10	4	7-8	3	5-6	2	3-4	1	1-2
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Question	Answer	Marks	Guidance
	<p>In the case of (c):</p> <ul style="list-style-type: none"> • Identify that this is a domestic agreement and show that there is a presumption against ITCLR in domestic situations (<i>Balfour v Balfour, Jones v Padavatton</i>) • Identify that this agreement has been reached in a commercial setting. • Show that the presumption can be rebutted when the agreement has been reached in a business setting (<i>Snelling v Snelling</i>) • Note that the court could distinguish <i>Snelling</i> on the grounds that this agreement is not as weighty or that it may lack certainty • Conclude that it is likely that the courts will find ITCLR in this situation 		<p>In order to reach level 5 responses must include a discussion of the Critical Point and in a relevant case.</p>

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 (<i>includes QWC</i>)
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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