



CHIEF EXAMINER REPORT

JANUARY 2024

LEVEL 6 UNIT 2 – Contract Law

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

This was a rather small cohort.

While some candidates did perform well, and others were able to do enough to meet the pass outcome, a number of candidates seemed ill-prepared for the exam. While strong candidates were able to meet the pass standard with three good answers and, on occasion, a weak fourth, many seemed to only have knowledge of one or two topics in any detail.

Candidates and centres are reminded that the unit specification provides a very clear guide as to what will be examined, to the level of specifying key case law. As such, misunderstandings of topics such as offers (and unilateral offers) in auctions, the effect of breach of a condition, or the “collateral contract” exception to privity suggest a significant number of candidates who have not understood the level of knowledge required for level 6 study.

Candidates did perform strongly in some areas, notably restraint of trade, the distinction between terms and representations, and basic rules of offer and acceptance. Areas for development include misrepresentation, consideration, intention to create legal relations and privity.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance is limited.

Section A

Question 1	25 marks
Data too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Definition of misrepresentation• Basic requirements for actionable misrepresentation• Discussion of what constitutes a statement of fact• Statements of opinion• Statements of intention• Fraudulent statements of opinion/intention• Statements of law• Misrepresentation by conduct• Relevant case law supporting	

Question 2	25 marks
Data too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Basic operation of liquidated damages clauses• Courts traditional suspicion of such clauses and identification of penalty clauses• Historic approaches: e.g. genuine pre-estimate of loss• Effect of Supreme Court decision in <u>Cavendish Square v Talal El Mkdessi; ParkingEye Ltd v Beavis</u> (2015)• Relevant case law supporting discussion• Reasoned conclusion	

Question 3

25 marks

This was a popular question which attracted a mean mark in line with the paper as a whole. Historically, candidates have always answered questions on this area in the same way: they have a good knowledge of conditions and warranties, then go on to identify innominate terms but struggle to explain them.

Suggested Points for Response:**(a) 12 marks**

- Identification of objective test for intention
- Discussion of specific guidelines e.g.
 - Importance attached to statement
 - Specialist knowledge of either party
 - Accepting responsibility/ requesting verification
 - Timing of statement
 - Reduction into writing
- Relevant case law supporting discussion
- Reasoned conclusion

(b) (13 marks)

- Definition of conditions
- Explanation of remedies for breach of condition
- Definition of warranties
- Explanation of remedies for breach of warranty
- Distinguishing condition from warranty
- Innominate terms
- Relevant case law supporting discussion
- Reasoned conclusion

Question 4	25 marks
This question was answered relatively well, attracting the highest mean mark across the paper.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Definition of a restraint of trade clause • Discussion of traditional approach to such clauses – void on the face of it • Explanation of when clauses will be upheld – reasonableness between parties • Explanation of when clauses will be upheld – reasonable in the public interest • Discussion of relevant law on what is considered reasonable • Relevant case law supporting discussion • <i>Solus</i>/tie agreements • More detailed discussion of relevant law • A detailed and persuasive conclusion Reasoned conclusion 	

Section B

Question 1	25 marks
This was a question intended to balance a difficult area (undue influence) with an easier one (intention to create legal relations). Candidates performed better with (a).	
Suggested Points for Response:	
<p>(a) 15 marks</p> <ul style="list-style-type: none"> • Identification of doctrine of undue influence • Equitable nature of doctrine, remedy of rescission • Need to demonstrate actual undue influence in all cases • ‘Evidential lift’ where relationship of trust and confidence • Transaction must be one which ‘calls for explanation’ • Application of above law to the scenario <p>(b) 10 marks</p> <ul style="list-style-type: none"> • Requirement of intention to create legal relations • Presumption in domestic/social cases • Presumption in commercial cases • Methods of rebutting presumption • Application of above law to the scenario 	

Question 2	25 marks
This was a problem question on offer and acceptance. Traditionally, this has led to a very high mark. Here, the mark was notably lower than very similar previous questions but the question did perform strongly in relation to the paper as a whole	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Identification of requirement for agreement to form valid contract • Traditional approach to finding agreement – offer and acceptance • Distinction between invitation to treat and offer • Advertisements as invitations to treat or unilateral offers • Requirement for communication of acceptance • ‘Receipt rule’ for instantaneous communication • Auctions as invitations to treat • Unilateral offer made by auctioneer where no reserve • Application of above law to the scenario • "Limited stock" argument • ‘Business hours’ element of receipt rule • Remedies • Further depth and breadth of discussion on above points • Further relevant case law to support the above 	

Question 3	25 marks
Data too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Definition of consideration • Requirement for sufficient consideration to be exchanged • Rule against past consideration • Exception of ‘implied assumpsit’ • Principle that consideration must have sufficient value... • ...but need not be adequate • Consideration when amending contracts • Doctrine of ‘practical benefit’ • Application of above law to the scenario • Availability of remedy of specific performance • Implied terms as to price • Further depth and breadth of discussion on above points • Further relevant case law to support the above 	

Question 4	25 marks
This was a problem question on privity. Traditionally, these have proved less popular, but this was selected by a number of candidates here.	
Suggested Points for Response:	
(a) 6 marks	
<ul style="list-style-type: none">• Identification of doctrine of privity• Usual operation of rule against privity• Recognition that rule against burdens remains strict• Application of above law to the scenario	
(b) (10 marks)	
<ul style="list-style-type: none">• Recognition of exceptions to rule against privity where third party enforcing benefit of contract• Discussion of Contracts (Rights of Third Parties) Act 1999• Application of above law to the scenario	
(c) (9 marks)	
<ul style="list-style-type: none">• Recognition of exceptions to rule against privity where third party enforcing benefit of contract• Discussion of common law exception of collateral contracts• Application of above law to the scenario	