



CHIEF EXAMINER REPORT

JANUARY 2025

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 2025 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.

Chief Examiner Overview

Common issues of technique were a lack of reference to primary law (cases and statutes), choosing multi-part questions where clearly the student did not understand one (or more) of the sub-parts, and papers where a candidate clearly spent most of their time on one or two very long answers to the detriment of other answers.

Common issues of knowledge were limited knowledge on distinguishing terms and representations; implied terms; remedies (especially the areas examined in B2, specific performance and remoteness); and misrepresentation.

Better answers tended to have both breadth and depth of legal knowledge, including plenty of reference to relevant authority. Such answers tended to spend more time on analysis (part A) and application (part B) rather than simply reciting everything the candidate knew about the area in general.

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 may be limited.

Section A

Question 1	25 marks
This question was attempted by just under half the cohort. It was a relatively 'traditional' question on the topic of consideration, similar to questions which have been asked before, and performance was in line with what was expected.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Definition(s) of consideration• Recognition of sufficient consideration as a key component in a valid contract• Traditional approach of courts to pre-existing contractual duties as consideration• Discussion of decision of Court of Appeal in Williams V Roffey• Subsequent case law• Application of practical benefit in cases of part payment of debt• Alternative definitions of consideration• Requirement that consideration must move from the promisee• That adequacy of consideration is not required• Comparison with law relating to pre-existing legal duties• Influence of doctrine of duress• Detailed discussion of subsequent case law• Consideration of role of doctrine of promissory estoppel	

Question 2a	15 marks
This question was extremely popular, being answered by more than 80% of candidates. Performance was stronger on part (b) than on part (a), which was in line with expectations given the topic area of part (b) (intention to create legal relations) is generally considered more straightforward than that of part (a) (privity).	
Suggested Points for Response:	
<ul style="list-style-type: none">• Identification of basic principle, that only parties to a contract can sue or be sued upon it• Historic exceptions to privity, including some or all of:<ul style="list-style-type: none">• Collateral contracts• Alternative claim in tort• Agency• Statutory exceptions• Trusts• Contracts for pleasure on behalf of a group• The Contracts (Rights of Third Parties) Act 1999	

Question 2b	10 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> • Correct identification of relevant Case Laws and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Relevant new developments • Identification of requirement of intention to create legal relations to form a binding contract • General approach of the court in commercial agreements • Methods of rebutting the commercial presumption • General approach of the court in domestic and social arrangements • Methods of rebutting the commercial presumption 	

Question 3	25 marks
This question was the least popular Section A question. Weaker responses discussed statute law, not the common law that the question asked them to focus on.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Definition of exemption clauses and outline of their function • Common law rules relating to incorporation by signature • Common law rules relating to incorporation by reasonable notice • Basic principles of interpretation • Case law to illustrate the above • Common law rules relating to incorporation by course of dealing • Specific rules of interpretation e.g. contra proferentum • Discussion of interrelation between common law and legislation in the area 	

Question 4	25 marks
This question on restraint of trade was attempted by just under half the cohort and performed best of all question in terms of mean mark. Restraint of trade is a very self-contained area and so ends up being self-selecting - candidates either know the area and do well, or don't know the area at all.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Usual rule that clauses in restraint of trade is unlawful • Exception, when reasonable both in the public interest and between the parties • Consideration of what is reasonable in the public interest, including relevant case law • Consideration of what is reasonable between the parties, including relevant case law • Consideration of rationale behind restricting restraint of trade • <i>Solus</i>/tie agreements 	

Section B

Question 1a	11 marks
<p>This question concerned “remedies” and was one which was considered by more accessible. It was expected that SBQ1 would involve a more accessible topic in part (a) (terms vs representations) than in part (b) (implied terms) and this was borne out in that a lower mean mark was achieved on part (b).</p>	
Suggested Points for Response:	
<ul style="list-style-type: none">• Identification of objective test for intention• Discussion of specific guidelines e.g.<ul style="list-style-type: none">◦ Importance attached to statement◦ Specialist knowledge of either party◦ Accepting responsibility/ requesting verification◦ Timing of statement◦ Reduction into writing• Relevant case law supporting discussion• Application of above to scenario• Collateral warranties• More detailed discussion of relevant law• A detailed and persuasive conclusion	
Question 1b	14 marks
Suggested Points for Response:	
<ul style="list-style-type: none">• Explanation of implied terms as alternative/addition to express terms• Concept of implying a term as a matter of custom• Application of law relating to custom to scenario• Concept of implying a term as a matter of fact• Discussion of traditional tests for implying term as a matter of fact• Application of law relating to implying term in fact to scenario• Concept of implying a term as a matter of law• Discussion of traditional approach for implying term as a matter of law• Application of law relating to implying term in fact to scenario• Discussion of recent higher court authority on when courts can/will imply terms	

Question 2a	12 marks
Only a small handful of candidates attempted the question. A number of candidates did not discuss specific performance despite this very clearly being signposted as the issue in B2(a).	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Identification of remedy of specific performance • Recognition that remedy is equitable and thus discretionary • Requirement damages must be inadequate • Difficulties in supervision of the contract • Need for mutuality • Possibility of mandatory injunction as alternative remedy 	
Question 2b	13 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> • Identification of principle of remoteness • Two-limbed test for remoteness in contract law • Losses arising in the usual course of things • Losses arising out of special circumstances 	

Question 3	25 marks
This question was popular. Misrepresentation as a topic area has historically been a difficult area for candidates.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Definition of misrepresentation • Requirement for false statement of fact • (Non)actionability of statements of opinion • (Non)actionability of statements of intention • Half-truths • Inducement • Categorisation of misrepresentation • Remedies • Liability for repeating statements of others • 'Fiction of fraud' • Bars to rescission • Damages for distress/disappointment 	

Question 4	25 marks
This question was answered by about half of the cohort and attracted an average mean mark and performed as expected.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Identification of doctrine of frustration • Frustrating events: supervening illegality • Frustrating events: temporary impossibility • Frustration of common purpose • Requirement frustration must not be self-induced • Legal effects of frustration under the Law Reform (Frustrated Contracts) Act 1943 • Requirement frustration must be unforeseeable 	