



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 2 – CONTRACT LAW

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Performance across the paper was a little lower than normal levels, at least in part because there were very few scripts right at the top end. Some individual questions where candidates did not on average score so well are the following:

- The ways in which terms might be implied terms under the Sale of Goods Act 1979, and identifying implied terms and remedies under the Consumer Rights Act 2015
- Incorporation of terms by notice: most candidates made some relevant points, but a full analysis of the nature and timing of the notice and the onerousness of the clause, with appropriate citation of case law, was required to get the full marks available.
- Distinguishing offers and invitations to treat.
- The exceptions to the entire performance rule. There were not many good answers on substantial performance, which required consideration of the “dividing line” between performance which was substantial (*Hoenig v Isaacs*) and that which was not (*Bolton v Mahadeva*).
- Explaining the nature of rescission and the bars to rescission.



Two features of weaker scripts which are routinely referred to in these Chief Examiner reports are as follows:

- Citation of case law or statutory authority: many questions credit marks for appropriate citation, and in some questions, it is not possible to get full marks without it. Candidates should be encouraged to cite case law or statute appropriately, in both Scenario A and B questions.
- In many cases in Scenario B questions, candidates did not apply the law they had just been invited to state. Whilst not a universal rule, it is generally the case that where questions in Section B initially require the statement or explanation of legal principles, the next sub-question is likely to involve their application.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1 - Almost uniformly answered well.

Question 2 - Answered quite well, though not many candidates gave a full enough account for all five marks.

Question 3 - Answered quite well, more candidates might have provided a case to support the answer.

Question 4 - Mixed performance, sometimes through lack of understanding the question, sometimes through lack of case law to support the answer.

Question 5 - Generally well answered.

Question 6 - Generally well answered.

Question 7 - Very well answered

Question 8 - Very well answered

Question 9 - Quite poorly answered – few candidates could articulate the limbs of the rule accurately.

Question 10 - Well answered.

Overall, the balance of straightforward questions and a few less mainstream questions has achieved the purpose of discriminating between the different levels of candidate performance.

Section B

Scenario 1

Question 1

Candidates did surprisingly poorly on this question, which was largely a test of basic principles. A significant number could not successfully identify the advert as an invitation to treat and therefore identified the reply as a counter-offer.

Question 2

Candidates did a little better on this question, averaging in each part just over half of the available marks.

Question 3

Candidates struggled with this question, particularly the third part. Only a limited number of candidates contemplated that the acceptance might not have occurred before the third-party notification, and so the number getting the higher marks by considering the law from *Dickinson v Dodds* was very limited.

Question 4

Performance on this question was only fair – often the description of the implied terms was less than full, and candidates only had a limited knowledge of the statutory, as opposed to common law, remedies.

Scenario 2

Question 1

Candidates did only fairly well on identifying the modes of incorporation of terms (a question normally answered quite well) and were poor in applying the rules relating to incorporation by notice.

Question 2

Candidates were only a little better at identifying the modes of implied terms; and it was surprising indeed that very few could name the three main statutory implied terms in part (b).

Question 3

Candidates' attempts at the statement of the complete performance rule (a), and the application of the prevention of performance exception (c), were fair. Few, however, were able to apply the substantial performance rule in anything more than a very cursory way (b).

Scenario 3

Question 1

Candidates performed only fairly well on the existing duty rule and the Williams v Roffey exception. That said, this question is probably at the highest technical end of Level 3, so the fact that performance was not out of line with other questions and scenarios was something of a positive.

Question 2

The past consideration rule and exception (a) and their application (b) were done a little better, as might be expected; though again, a little lower than normal on a question of this type.

Question 3

This question too was answered only fairly well, with the law (a) being dealt with a little better than the application (b).

Question 4

Conversely, the explanations of rescission (a) and the bars to rescission (b) were not done as well as the application in part (c).

SUGGESTED POINTS FOR RESPONSE**JANUARY 2023****LEVEL 3 UNIT 2 – CONTRACT LAW****SECTION A**

Question Number	Suggested Points for Responses	Marks (Max)
1	Identification of any three of: Offer Acceptance Consideration Intention to create legal relations N.B. 1 mark may be awarded for “agreement” in lieu of offer and acceptance	3
2	The Postal Rule: is an exception to the general rule applies to the acceptance of an offer where the parties contemplated acceptance by post / reasonable to use the post which is properly posted (stamped and addressed) and effects acceptance of the offer on posting, not receipt even if the letter does not arrive case, e.g. Adams v Lindsell	5
3	That the consideration for a promise does not need to be of equal value or worth e.g. <u>Chappell v Nestle</u> (1960)	2
4	In business agreements presumption of intention to create legal relations Presumption is rebuttable An ‘honour clause’ is evidence to the contrary The contract is not enforceable Relevant case law e.g: Rose & Frank v Crompton Bros (1924) Jones v Vernon’s Pools (1938)	4
5	A term going to the root of the contract <u>Poussard v Spiers & Pond</u> (1876) Innocent party may treat contract as discharged by breach Innocent party has the right to claim damages for breach of contract	4
6	Importance of the statement Whether reduced to writing Time in negotiations when made Special knowledge of the maker of the statement Whether suggested to verify	3
7	Fraudulent Negligent (within the meaning of s.2(1) of MA 1967 – not required for mark) Innocent	3



8	Destruction of subject matter Illness / death of a party Supervening illegality Purpose of contract destroyed Government intervention	2
9	A loss which is not too remote is recoverable It is not too remote if it arises naturally from the breach ... or is in the reasonable contemplation of the parties at the time the contract is made <u>NB (not reasonable foreseeability)</u>	3
10	An order of the court requiring a party to perform an obligation under a contract	1
Section A Total: 30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	Identify an offer as a statement of terms upon which the offeror is willing to be bound – or other acceptable definition Invitation to treat (ITT) is merely an invitation to others to make offers. Advertisements are usually seen as ITT - especially in the context of a bilateral agreement Relevant authority eg <u>Partridge v Crittenden</u> (1968) Conclude that Rosie's Facebook advert is likely to be considered an ITT.	5
1(b)(i)	Bindy's statement is statement of terms on which willing to be bound Its terms are certain enough to be capable of acceptance It is therefore an offer to buy	3
1(b)(ii)	Rosie's reply to Bindy is a counter offer to sell at £250 A counter offer is a fresh offer on different terms to original offer Counter offer has the effect of rejecting / terminating original offer Original offer cannot subsequently be accepted Relevant authority eg <u>Hyde v Wrench</u> (1840) Counter-offer capable of acceptance / binding if accepted	5
Question 1 Total: 13 marks		
2(a)	Unconditional assent Acceptance must be of all terms / mirror the offer Must be communicated to the offeror Once communication of valid acceptance takes place both parties will be bound by their obligations under the contract Relevant authority eg <u>Entores v Miles Far East Corporation</u> (1955)	4
2(b)	Bindy made her acceptance in a voicemail message. Consider whether acceptance communicated at 11.00am + reasons Consider w. acceptance only communicated at 3.00 pm + reasons Credit reasoned conclusion	3

2(c)	Rosie made the offer to sell to Anneka verbally at 11:30 am Anneka immediately accepted the offer verbally Both parties would have obligations under this agreement Consideration Intention	3
<i>Question 2 Total: 10 marks</i>		
3(a)	Revocation is possible at any time prior to acceptance Even where a specified time given to accept offer Only effective when communicated to the offeree Communication can be via a reliable 3rd party Unilateral offer cannot be revoked once the offeree has started to perform the act Relevant authority eg Payne v Cave (1789); Dickinson v Dodds (1876); Errington v Errington (1952) (1 mark per case – max 2 marks) Credit an explanation of the effect of revocation i.e. to end the offer	4
3(b)	Anneka informed Bindy that she had bought the table at 12 noon Communication of revocation can be by a reliable 3rd party – Bindy is a reliable 3rd party If acceptance at 12 noon, identify that revocation too late If acceptance at 3pm, consider whether revocation effective Credit reasoned conclusion Relevant authority e.g. <u>Dickinson v Dodds</u> (1876) (if not previously credited)	5
<i>Question 3 Total: 9 marks</i>		
4(a)	Implied term that goods sold are of a satisfactory quality s.9 Consumer Rights Act 2015 (CRA) As three of dining chairs are noticeably taller than other three chairs these (or the dining suite) is not of satisfactory quality.	3
4(b)	Remedies are: Refund Price reduction Rosie has a right to reject the goods within 30 days She alternatively could request that chairs are replaced with six matching chairs. Goods should then be replaced within a reasonable time Time limit for rejection is paused whilst she is waiting for the replacement She can use the chairs she has until they are replaced. Linked to relevant sections of the CRA (s.19 -24 CRA 2015) credit only to be awarded where the candidate links the correct section number with the appropriate remedy)	5
<i>Question 4 total: 8 marks</i>		
Scenario Total: 40 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	By signature e.g. L'Estrange v Graucob By reasonable notice e.g. Olley v Marlborough Court By course of dealings e.g. Hollier v Rambler Motors By common understanding e.g. British Crane Hire v Ipswich Plant Hire	6
1(b)	The Contract Note is not signed so is not incorporated by signature The clause may nevertheless be incorporated by reasonable notice The notice is given before the formation of the contract The clause is likely to be contained in a contractual document As it is described as a Contract Note (cf. Chapelton v Barry) Notice has been given by the reference to "See Back" Notice may be reasonable even if clause not read by Mary Onerous clauses, however, require additional steps to be drawn to the other party's attention Case: e.g. Interfoto v Stiletto The clause may be regarded as an onerous one, as the price is a significant term No special attention has been brought to the clause It may therefore not form part of the contract (credit student who reasons that the clause is incorporated)	9
<i>Question 1 total: 15 marks</i>		
2(a)	By statute e.g. under the SGA / SGSA etc By custom e.g. location or trade practice "Implied in law" e.g. Liverpool CC v Irwin / as a matter of policy "Implied in fact / by the courts" e.g. The Moorcock / on the facts of the case	6
2(b)	Satisfactory quality Fitness for purpose Correspondence (or match) with description	3
<i>Question 2 Total: 9 marks</i>		
3(a)	Party agreeing to perform their obligation first cannot sue other party Unless their own performance is precise and exact Case: e.g. Cutter v Powell / reference to the Rule in Cutter v Powell	3
3(b)	Jassan's fitting of the shelving is not precise and exact Without any exception to the rule, Mary would not have to pay	9

	<p>Substantial performance an exception Case: e.g. Hoenig v Isaacs, Bolton v Mahadeva There are only two out of twenty defective shelves And the proportion of the contract price to fix them is less than 10% He is likely to have substantially performed the contract He can therefore sue for payment of the sum due However, this is subject to a deduction in respect of the defects By way of counterclaim or set off He will therefore only be entitled to £1,850 (£2,000 - £150).</p>	
3(c)	<p>George has not completed work so not entitled to sue for price of it But has been prevented from performing contract by Mary He may therefore sue for the value of work done so far i.e. a quantum meruit Or he may sue in contract for loss of profit caused to him by Mary's repudiation Case: Planche v Colburn (1831)</p>	4
<i>Question 3 Total: 16 marks</i>		
Scenario Total: 40 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Performance of existing contractual duty not normally good consideration for promise of extra payment Because no new obligation is undertaken in return Stilk v Myrick (1809)</p>	2
1(b)	<p>"Exception" to Stilk v Myrick Where there is a contract for goods or services And a promise of extra payment is made Doubt whether a party will complete their side of the bargain A promise of extra payment is made From which the promisor obtains a practical benefit In the absence of fraud or duress The practical benefit is consideration for the promise of extra payment</p>	3
1(c)	<p>David has not undertaken any additional obligation so, prima facie, has not provided any consideration. Principle from Williams v Roffey (1991) may apply:</p> <ul style="list-style-type: none"> • contract for goods and services • promise of £2,000 extra payment • obtained a practical benefit • having the work completed on time to re-open • promise was not obtained by fraud or duress <p>and the practical benefit is therefore consideration for the promise</p>	7



	... so the promise of extra payment will be enforceable by David	
<i>Question 1 Total: 12 marks</i>		
2(a)	General rule is that past consideration is not good consideration e.g. Re McArdle (1951) Exception: Doctrine of implied assumpsit Act or promise is done or given at the request of the promisor It must have been understood by the parties that payment would be made Payment would have been legally recoverable had it been promised in advance e.g. Lampleigh v Brathwaite (1615) or Re Casey's Patents (1892).	5
2(b)	Work carried out precedes later promise So may be regarded as a past consideration / not good consideration Work was carried out at Fiona's, the promisor's, request Payment would have been legally recoverable if promised in advance Has spent a whole day Carrying out the work of his trade Sum is not insignificant So likely to be understood that work to be paid for, rather than provided gratuitously David can therefore enforce the promise of payment of £500	6
<i>Question 2 Total: 11 marks</i>		
3(a)	Where a half-truth is told Where a statement which was initially true becomes false before the contract is entered Where the contract is one of the utmost good faith Where the contract is made between parties in a fiduciary relationship Where it is a misleading omission within the CPUT Regulations 2008	3
3(b)	Statement is a statement of fact about employees Whilst true, it conveys misleading impression It is likely that the statement is therefore a "half-truth" e.g. as in Nottingham Patent Brick and Tile Co. v Butler (1866). Induced Ajmal into contracting with him Statement is therefore likely to be a misrepresentation	5
<i>Question 3 Total: 8 marks</i>		

4(a)	Involves setting aside the contract “ab initio” (i.e. from the beginning) Restoring the contracting parties to pre-contractual positions	3
4(b)	By affirmation By lapse of time (“laches”) Where substantial restoration is impossible Where rights have been acquired by an innocent third party.	3
4(c)	David has now performed three-quarters of work The work cannot be undone or returned Not now be possible to restore parties to their pre-contractual positions So the contract cannot now therefore be rescinded Case, e.g. Erlanger v New Sombrero Phosphates	3
<i>Question 4 Total: 9 marks</i>		
Scenario Total: 40 marks		