



## CHIEF EXAMINER REPORT

**JUNE 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 June 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.

## Chief Examiner Overview

Candidates are reminded to only attempt a question where they have a strong understanding of everything the question is asking. This was notable in the section A question about the Unfair Contract Terms Act 1977 and Consumer Rights Act 2015 – a notable minority of candidates who answered this question seemed unaware of the former legislation.

Candidates should use case law to evidence and provide authority to their points. This is particularly true in section B problem questions.

In terms of subject areas, performance was generally strong on communication of acceptance, consideration and discharge of contract. Performance could be improved on misrepresentation where candidates are reminded that simply discussing the “type” of misrepresentation is only part of an answer. Responses should also include detailed discussion of the elements making up an actionable misrepresentation.

## 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 tested candidates' knowledge of the rule of privity and exceptions to the rule. Candidates generally approached this as a descriptive answer allowing them to recite their knowledge about privity, but stronger candidates also provided analysis (this is an area that does invite analysis).	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Identification of basic rule that third party cannot sue or be sued on a contract</li><li>• Case law supporting the basic rule</li><li>• Discussion of pre-1999 exceptions</li><li>• Discussion of Contracts (Rights of Third Parties) Act 1999</li><li>• Conclusion</li></ul>	

Question 2	25 marks
This was the least popular question on the exam paper, almost certainly because the question covered the traditionally unpopular area of discharge of contract. However, performance was generally quite strong on the question.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Identification of the usual rule that 'entire' or 'strict' performance is required in order to discharge the contractual obligation</li><li>• Recognition that anything short of strict performance is breach</li><li>• Discussion of some or all of:<ul style="list-style-type: none"><li>▪ Substantial performance</li><li>▪ Partial performance</li><li>▪ Acceptance of part performance</li><li>▪ Prevention of performance</li><li>▪ Considering contract as made up of separate obligations</li></ul></li></ul>	

Question 3	25 marks
<p>Candidates would on occasion base their answer on knowledge of only one of the two Acts the question asked about. These candidates tended to only discuss the Consumer Rights Act, not UCTA 1977, and did so on the basis of implied terms, not exemption clauses and therefore could not identify the key issue as a result.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> <li>• Recognition that clauses which exclude or limit liability are treated differently to other contractual clauses</li> <li>• Consideration of common law protection through rules relating to incorporation of terms</li> <li>• Consideration of common law protection through rules relating to interpretation of terms</li> <li>• Consideration of statutory protection under Unfair Contract Terms Act 1977</li> <li>• Consideration of statutory protection under Consumer Rights Act 2015</li> <li>• Recognition 1977 act applies only to exemption clauses, 2015 Act can apply to any unfair term</li> <li>• Conclusion</li> </ul>	

Question 4	25 marks
<p>The question related to issues around agreement which is always a popular choice. The more challenging legal issue in part a attracted a lower mean mark than the more straightforward issue in part b.</p>	
<p>Suggested Points for Response:</p>	
<p><b>(a) 10 marks</b></p> <ul style="list-style-type: none"> <li>• Definition of unilateral offer</li> <li>• Explanation of unique nature of unilateral contracts – only one party is bound and other party accepts by performance</li> <li>• Recognition of issue of how to revoke ‘offer to the world’</li> <li>• Recognition of issue of whether revocation possible once performance commenced</li> <li>• Case law to support discussion</li> <li>• Reasoned conclusion</li> </ul> <p><b>(b) 15 marks</b></p> <ul style="list-style-type: none"> <li>• Identification of basic rule that acceptance must be communicated</li> <li>• Discussion of acceptance by post</li> <li>• Discussion of acceptance by instantaneous methods</li> <li>• Case law to support discussion</li> <li>• Reasoned conclusion</li> </ul>	

## Section B

Question 1	25 marks
<p>This question required knowledge of misrepresentation, which continues to be a popular question choice despite the fact that performance on these questions has been poor in recent years. Candidates seem to consider identifying the category of misrepresentation to be the primary issue, often missing key issues relating to actionability.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"><li>• Definition of actionable misrepresentation: false statement of fact or law which can induce and does induce a contract</li><li>• Consideration of statements of law</li><li>• Consideration of statements of future intention</li><li>• Consideration of silence/change of circumstances</li><li>• Inducement and what constitutes a material representation</li><li>• Opportunity to discover the truth</li><li>• Categories of misrepresentation</li><li>• Remedies for misrepresentation – damages</li><li>• Remedies for misrepresentation – rescission</li><li>• Case law to support discussion</li></ul>	

Question 2	25 marks
<p>This was the least popular section B question, requiring knowledge of duress. The notable issue here was candidates not knowing or understanding more recent legal developments.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"><li>• Explanation of doctrine of duress</li><li>• Identification of different types of duress</li><li>• Discussion of duress to goods as a form of physical duress</li><li>• Discussion of doctrine of economic duress</li><li>• Discussion of distinction between lawful and unlawful acts</li><li>• Application of these doctrines to the scenario</li></ul>	

Question 3	25 marks
This two-part question required knowledge of various legal issues relating to terms.	
Suggested Points for Response:	
<p><b>(a) 10 marks</b></p> <ul style="list-style-type: none"> <li>• Identification of Consumer Rights Act 2015 as relevant legislation</li> <li>• Discussion of implied term as to satisfactory quality</li> <li>• Discussion of implied term as to goods to be fit for a particular purpose</li> <li>• Discussion of remedies under Consumer Rights Act 2015</li> <li>• Case law to support discussion</li> </ul> <p><b>(b) 15 marks</b></p> <ul style="list-style-type: none"> <li>• Definition of condition</li> <li>• Effect of term being categorised as condition</li> <li>• Definition of warranty</li> <li>• Effect of term being categorised as warranty</li> <li>• Definition of innominate term</li> <li>• Effect of term being categorised as innominate</li> <li>• Reasoned application of law to facts</li> </ul>	

Question 4	25 marks
This was a question on consideration which was less popular than expected, however, performance was in line with other questions.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identification of central importance of consideration to a valid contract</li> <li>• Definition of consideration</li> <li>• Identification of rule that consideration must be sufficient but need not be adequate and application to facts</li> <li>• Identification of rule that part payment of debt is no satisfaction for the whole and application to the facts</li> <li>• Identification of doctrine of promissory estoppel and application to the rental agreement</li> <li>• Case law to support discussion</li> </ul>	