



**Cambridge Assessment
International Education**

Example Candidate Responses – Paper 3

**Cambridge International AS & A Level
Law 9084**

For examination from 2023



© Cambridge University Press & Assessment 2024 v1

Cambridge Assessment International Education is part of the Cambridge University Press & Assessment. Cambridge University Press & Assessment is a department of the University of Cambridge.

Cambridge University Press & Assessment retains the copyright on all its publications. Registered centres are permitted to copy material from this booklet for their own internal use. However, we cannot give permission to centres to photocopy any material that is acknowledged to a third party even for internal use within a centre.

Contents

Introduction.....	4
Question 1.....	6
Example Candidate Response – high.....	6
Example Candidate Response – middle.....	9
Example Candidate Response – low.....	12
Question 2.....	15
Example Candidate Response – high.....	15
Example Candidate Response – middle.....	20
Example Candidate Response – low.....	24
Question 3.....	28
Example Candidate Response – high.....	28
Example Candidate Response – middle.....	33
Example Candidate Response – low.....	36
Question 4.....	40
Example Candidate Response – high.....	40
Example Candidate Response – middle.....	46
Example Candidate Response – low.....	48
Question 5.....	50
Example Candidate Response – high.....	50
Example Candidate Response – middle.....	54
Example Candidate Response – low.....	56

Introduction

The main aim of this booklet is to exemplify standards for those teaching Cambridge International AS & A Level Law, and to show how different levels of candidates' performance (high, middle and low) relate to the syllabus requirements. This document helps teachers to assess the standards required to achieve marks beyond the guidance of the mark scheme.

In this booklet candidate responses have been chosen from the June 2023 exam series to exemplify a range of answers.

For each question, the response is annotated with examiner comments about where and why marks were awarded or omitted. This is followed by comments on how the answer could be improved. There is also a list of common mistakes and guidance for candidates.

Please refer to the June 2023 Examiner Report for further details and guidance.

The mark scheme is available on the [School Support Hub](#)

9084 June 2023 Question Paper 32

9084 June 2023 Mark Scheme 32

Past exam resources and other teaching and learning resources are available on the [School Support Hub](#)

How to use this booklet

This booklet goes through the paper one question at a time, showing you the high-, middle- and low level response for each question. In the left-hand column are the candidate responses, and in the right-hand column are the examiner comments.

Example Candidate Response – low	Examiner comments
<p>In In contract law, it must be ^{exist} an offer and acceptance, consideration and intention to be bound to create a legally enforceable contract. An offer is the expression of willingness to be bound into a contract as the acceptance exist. An acceptance refers to the unconditional consent of an agreement to the terms of the offer. 1</p> <p>Based on the facts that A ^{valuable} consideration in the law sense, may consist of some rights, profits, interest and benefits accruing to one party and some forbearance, detriment, loss or responsibility given, suffered or undertaken by others. In Williams v Roffey Bros, the worker was in financial difficulties and could not make the work done in time.</p> <p>2 The Roffey Bros then offer an extra wages for them to make it done in time to avoid penalty. Similarly, Bilal in the question also facing financial difficulties and but not ^{possible for}</p>	<p>1 AO1: The introduction sets out that the general principles of formation of contract have no place in a question solely on discharge of contract.</p> <p>AO2 and AO3: This is merely an introduction with no application to the scenario set.</p> <p>2 AO1: Consideration and pre-existing contractual duties as per <i>William v Roffey</i> are not relevant to this scenario and, as</p>

Answers are by real candidates in exam conditions. These show you the types of answers for each level. Discuss and analyse the answers with learners in the classroom to improve their skills.

Examiner comments are alongside the answers. These explain where and why marks were awarded. This helps you to interpret the standard of Cambridge exams so you can help your learners to refine their exam technique.

How the candidate could improve their answer

- The starting point is to identify the area of law relevant to the scenario given. Starting each answer with an overview of formation of a contract is only relevant if the scenario relates to formation. Doing so for each question wastes valuable examination time. Candidates should not try to fit a multitude of different areas of law into one answer. Questions are usually specific to one area of contract law.
- Connected to the point above, applying accurate law is a key skill. This generally follows.

This section explains how the candidate could have improved each answer. This helps you to interpret the standards of Cambridge exams and helps your learners to refine their exam technique.

Common mistakes and guidance

- Not identifying the key areas of discharge of contract and not demonstrating detailed knowledge of the different areas of discharge. There were three key areas which needed to be addressed in the scenario. More often than not there was an overview of the areas. Explanations lacked detail and failed to demonstrate thorough understanding and knowledge.
- A common mistake was identifying part-performance but not part-performance. This is a crucial point and needed to be addressed. The candidate's answer was inaccurate application to the trees at the front. The candidate failed to identify the key areas of discharge of contract.

This section lists common mistakes as well as helpful guidance from the examiner. This will help your learners to avoid these mistakes. You can use this alongside the relevant Examiner Report to guide your learners.

Question 1

Example Candidate Response – high

Examiner comments

1 Asif buys a building and wants some renovation done because of which he contracts with different people for different things but there are problems that arise such as Bilal is not able to fulfil his work due to financial problems, ~~the~~ a washbasin is a little cracked that was installed by Carl and Asif changes his mind of planting trees in the back of the building and wants to make a parking lot. 1

In the first scenario where Bilal is unable to fulfil his contract due to financial problems, He has only installed 1/3 of the windows which amount to only part performance. As shown in precedent the case of *Sumpter v Hedges* in which the contract was of building stables and a house for the defendant but the claimant did only some work which amounted to £333 and the whole contract was of £500+ the court decided that this does not amount to fulfilment of the contract and in this scenario it is a matter of actual choice so Bilal is in the wrong here and Asif may not have to pay Bilal however as Asif has used the windows Bilal had bought if he wants he can give Met amount to Bilal but this is a matter of choice as well. 2

1 AO1: No credit awarded for the first paragraph as there is no requirement to set the scene and repeat elements of the scenario.

AO2 and AO3: This sets the scene but there is no application to the given scenario.

2 AO1: This is a good explanation of partial performance using *Sumpter v Hedges* to illustrate aspects of the legal concept.

AO2 and AO3: This is a brief but accurate application of partial performance to the installation of some of the windows. The final line in this paragraph shows an understanding that choice is something to consider. The candidate sub-concludes this part of the response and this is supported by relevant law.

Example Candidate Response – high, continued

Examiner comments

Furthermore in the second scenario where Asif appoints Carl to install 20 washbasins Carl has completed his contract but Asif refuses to pay Carl. Here Asif would have to pay Carl as Carl has done substantial performance and as seen in the case of *Hoenig vs Isaacs* in which the ~~step~~ substantial performance was done and only £54 worth of defects were there whereas the whole contract was of £500+ pounds the court ruled that payment should be made after or in accordance to the minor defects. Same we can see here as only one out of 20 washbasins have a little crack in them. If it were more than that the rule which was applied in *Bolton vs Mahadeva* would apply but that is not the case here and if Asif does not pay Carl can sue Asif and most probably will be successful with his claim. 3

In addition to this in the scenario of Dora, she claims that she has invested a lot of time planning and researching suitable trees for the back of the building and demands payment. In this scenario Dora maybe able to sue Asif for prevention of performance on quantum meruit basis as was shown in the case of *Planche vs Colburn*

3 AO1: Accurate identification that there is an issue of substantial performance in terms of the number of washbasins installed. Two key authorities are used to illustrate situations where a claim for substantial performance will or will not be permitted.

AO2 and AO3: The candidate explains briefly but accurately why they are not applying *Bolton v Mahadeva*. Additional credit is available for explaining that Asif would be required to pay the full amount less that needed to put right the damage, i.e. replacing one washbasin. The candidate stays focused on the issue throughout the paragraph.

Example Candidate Response – high, continued

Examiner comments

in which the writer had written a book for a publisher but the publisher did publish and abandoned the project the court decided that the writer should be paid. Same can be seen here as Dora had put in time researching and looking for trees but Asif prevented him. **4**

Overall Asif maybe right in the first scenario where Bilal and his windows were involved but the remaining two scenarios of Dora and Carl he may be in the wrong and if they decide to sue Asif may be found liable. However there is a problem in Dora's case as she had not bought the trees but still the time was invested. **5**

4 AO1: Identification that the issue in the last part of the scenario is concerning prevention of performance and that there may be a claim on a *quantum meruit* basis. This demonstrates a detailed knowledge and understanding of this aspect of discharge of contract.

AO2 and AO3: Some reasoned and accurate application of prevention of performance is given. The candidate mentions *quantum meruit* but there is no application of how it would apply.

5 The candidate gives a vague, uncertain conclusion. Conclusions ideally round off the answer and advise the client as per the question.

Mark for AO1 = 12 out of 12

Mark for AO2 = 4 out of 5

Mark for AO3 = 5 out of 8

**Total mark awarded =
21 out of 25**

How the candidate could improve their answer

- The candidate could have set out legal reasons/principles as opposed to writing out, in detail, the facts of cases. Each element of discharge has specific issues/rules needing to be explained. These needed to be set out to demonstrate knowledge and understanding.
- Whilst the candidate focused on the three issues in the scenario, the application, at times, lacked depth. For example, the candidate might have added that partial performance requires voluntary acceptance and applied this aspect to the scenario, for example, did Asif have a choice? With substantial performance, the answers needed a sub-conclusion stating that the agreed full sum needed to be paid less the cost of replacing the one sink.

Example Candidate Response – middle

Examiner comments

Q1. ~~Zee~~ Asif buys an office building...

Ans. A contract is formed when two parties decide to be bound by an arrangement. Contract can be discharged in three ways, performance, breach or frustration.

Asif buys an office and contracts with Bilal to supply and install new windows. Bilal abandons the work because of financial difficulties and Asif completes it later on.

~~Asif is~~ The Entire and strict performance rule is applied on Bilal here which clearly states that the contract is only completed if the entire performance is done as seen in *Cutter v Powell*. If the work

is abandoned in between party can't claim for the work they did before as they did not complete the work and performed the contract ~~per~~ completely it is form of part performance as seen in *Ritchie v Atkinson*. Asif have no liability towards Bilal as the performance was not completed

1 AO1: The candidate makes a good start by identifying that the starting point for discharge of contract is that entire performance is required. An accurate case of authority is identified.

AO2 and AO3: This is a focused and reasoned application of the entire performance rule. The application is, as required, supported by case authority.

2 AO1: The candidate uses the words partial performance but does not explain the criteria accurately. They also use authority for a different area of discharge of contract namely divisible (*Richie v Atkinson*).

AO2 and AO3: The candidate's response lacks focus and concentrates on the entire performance rule. The candidate does not identify that some of the work was completed before abandonment and that abandoned supplies were used to complete the job. The fact that there was no voluntary acceptance on the part of Asif is overlooked.

Example Candidate Response – middle, continued

Examiner comments

Moving further Asif contracts with Carl to install 20 washbasins in the building. When the work is completed Asif notices that one washbasin is cracked and so refuses to pay Carl. In this situation the strict performance rule can be limited as Carl did give substantial performance which makes it very clear that the contract is performed properly if the party have completed the work, minor defects can be ignored or the money can be charged for the minor damage caused as seen in *Henig v Isaacs* and *Bolton v Mahadewa*. Asif is liable to pay Carl for the job he have performed completed, the least he could do is to deduct amount for one washbasin that is cracked.

3

3 AO1: The candidate identifies substantial performance but lacks accurate explanation of the criteria, for example, the candidate states that minor defects can be ignored. Two appropriate cases are cited by name with no explanation of how they are relevant.

AO2 and AO3: There is limited application of the substantial performance rule. The candidate identifies that Asif must pay for the job performed but not that, if this is substantial performance, he will be required to pay the full amount less the cost of putting right the defect. The candidate states 'the least he can do' implying that morally this is the correct thing to do rather than applying legal rules.

Example Candidate Response – middle, continued

Examiner comments

Asif contracts with Dora to plant trees around the building. She completes front of the building and promise to finish at the back when the windows stored there are removed. However when the time arrives Asif tell Dora he dont want any planting at back.

Using Quantum merit basis Asif must pay to Dora for the work she has done in the front and he did already pay her, but Dora later asks for ^{more} money as she spent her time in researching suitable trees.

Here it was ~~was~~ a Divisible contract and Dora was already paid for the performance so Asif was not obligated to pay her for Research as also seen in Travel v law dos tour. ~~and~~ and

~~Re~~ Relph v Colburn. 5

4 AO1: The candidate accurately identifies that payment may be made on a *quantum meruit* basis.

AO2 and AO3: There is some confusion regarding where *quantum meruit* applies. The candidate appears to suggest this will apply when payment has already been made.

5 AO1: The candidate addresses divisible contracts, but the understanding and knowledge demonstrated of this principle is limited.

AO2 and AO3: The candidate inaccurately applies the concept of divisible contract in a situation where such does not apply. Authorities used to support this are not relevant.

Mark for AO1 = 5 out of 12

Mark for AO2 = 3 out of 5

Mark for AO3 = 3 out of 8

**Total mark awarded =
11 out of 25**

How the candidate could improve their answer

- Candidates needed to provide more accurate and detailed descriptions of the relevant areas of discharge of contract. This will come from better use of authorities and greater accuracy in explaining concepts.
- Detailed and accurate application is key to entering the higher mark levels. It is important to read the scenario carefully so that the relevant law can be applied effectively.

Example Candidate Response – low

Examiner comments

	<p>In contract law, it must be^{exist} an offer and acceptance, consideration and intention to be bound to create a legally enforceable contract. An offer is the expression of willingness to be bound into a contract as the acceptance exist. An acceptance refers to the unconditional consent of an agreement to the terms of the offer. 1</p>
2	<p>Based on the facts that A consideration, in the law sense, may consist of some rights, profits, interest and benefits accruing to one party and some forbearance, detriment, loss or responsibility given, suffered or undertaken by others. In Williams v Roffey Bros, the worker was in financial difficulties and could not make the work done in time. The Roffey Bros then offer an extra wages for them to make it done in time to avoid penalty. Similarly, Bilal in the question also facing financial difficulties and but they ended up abandons the work. It might found that Bilal may be responsible for the breach of contract as they did not finish up their work as stated in the contracts. Asif may sue Bilal for the breach and may the court may imposed imposed specific performance such as mandatory performance to enforce the Bilal done their work as promised or Asif may sue for the damages in monetary form. 3</p>

1 AO1: The introduction sets out that the general principles of formation of contract have no place in a question solely on discharge of contract.

AO2 and AO3: This is merely an introduction with no application to the scenario set.

2 AO1: Consideration and pre-existing contractual duties as per *William v Roffey* are not relevant to this scenario and, as a result, are not creditworthy.

AO2 and AO3: Application of *Williams v Roffey* suggests confusion as to the relevant area of law.

3 AO1: The candidate identifies 'specific' performance and the requirement that all work needs to be done.

AO2 and AO3: The candidate shows some understanding of the concept of entire performance and applies this to the scenario.

Example Candidate Response – low, continued

Examiner comments

Next, ^{one of} the washbasin done by Carl is cracked and Asif refuses to pay Carl as promised. It could ~~then be found Asif~~ be found Asif might not be found guilty of being not paid to the Carl. It can be argue with the according to the Consumer Right Act, it must then ~~have~~ a right for consumer to get a ~~qualified~~ goods ~~to~~ or service that meets the ^{minimum} qualification standard. The court might ask Carl to repair ~~an~~ or replace the broken washbasin in order to get them their wages as promised. 4

Then, the requirement of Dora to get the payments of her work on planning and researching the suitable trees for the back of the building might be found related to the non-pecuniary ~~damages~~ remedy. It is found non-pecuniary remedy include the mentally unpleasant of the claimant to be awards. 5

In a nutshell, Asif might be found ~~to~~ have to pay Dora and Carl as then finished their works and could get a damages from Bilal. 6

4 AO1: The Consumer Rights Act has no place in this scenario and demonstrates a lack of understanding of the legal concepts relevant to the scenario.

AO2 and AO3: Application of the Consumer Rights Act shows lack of awareness of the relevant area of law being addressed.

5 AO1: There is implied recognition of the need to repair/replace the one broken wash basin but no detail regarding payment is given.

AO2 and AO3: The candidate gives a limited, reasoned application but accurate conclusion regarding Carl being required to repair or replace the broken wash basin. There is no relevant law applied.

6 AO1: Non-pecuniary remedy has no place in a discharge of contract response unless remedies are specifically asked for.

AO2 and AO3: A remedy cannot be granted in the absence of a breach. No application of discharge of contract.

7 AO1: No accurate law.

AO2 and AO3: The candidate provides a vague conclusion without foundation.

Mark for AO1 = 1 out of 12
 Mark for AO2 = 2 out of 5
 Mark for AO3 = 1 out of 8

Total mark awarded = 4 out of 25

How the candidate could improve their answer

- The starting point is to identify the area of law relevant to the scenario given. Starting each answer with an overview of formation of a contract is only relevant if the scenario relates to formation. Doing so for each question wastes valuable examination time. Candidates should not try to fit a multitude of different areas of law into one answer. Questions are usually specific to one area of contract law.
- Connected to the point above, applying accurate law is a must. When inaccurate AO1 is set out, inaccurate AO2 generally follows.

Common mistakes and guidance

- Not identifying the key areas of discharge of contract and not demonstrating detailed knowledge of the different areas of discharge. There were three key areas which needed to be addressed in the scenario. More often than not there was an overview of the areas. Explanations lacked detail and failed to demonstrate thorough understanding and knowledge.
- A common mistake was identifying part-performance but not addressing the need to show voluntary acceptance of part-performance. This is a crucial point and needed to be applied to the given scenario. Another common mistake was inaccurate application to the trees at the front. The tree work was done and payment already made.

Question 2

Example Candidate Response – high

Examiner comments

This question pertains to the concept of capacity of minors to enter into contracts and what rights they are provided by the law. It has to be assessed, whether Zoe has a liability regarding the three contracts she has entered in. **1**

s9 of the Family Law Reform Act of 1969 states that anybody below the age of 18 is held to be a minor. It also brought down the age requirement from 21 to 18. As such, Zoe is held to be a minor as she has just celebrated her 18th birthday. **2**

The first assessment of her liability has to be made in relation to the lease of the premises. According to the facts, Zoe hired/leased these premises for a period of three years but stops leasing it after six months. The law allows minors to enter into contracts that may be later repudiated by the minor before they turn 18 or a reasonable time after that. In *Edwards v Carter*, it was held that this reasonable time will be decided by the courts. In *Steinberg v Scala*, a minor bought two shares of a stock. She paid the first one but couldn't pay off the second. The courts allowed no

1 AO1: Whilst it is not necessary to explain the relevant area of law and no credit is available, some candidates find this a useful way to introduce the topic.

AO2 and AO3: There is accurate identification of relevant area of law but no creditworthy application/evaluative comments.

2 AO1: There is no requirement to explain old and new law in scenario questions.

AO2 and AO3: The candidate accurately identifies that Zoe is a minor but inaccurately states she is minor as she has just celebrated her 18th birthday.

Example Candidate Response – high, continued

Examiner comments

to do this but also did not pay her first share back. Similarly, the law provides her the right to repudiate the contract as she is still a minor and the contract was one that would be later for a prolonged period. Thus, she is not liable contractually in regard to the lease. **3**

Next comes the bank loan. Zoe takes a \$20,000 loan from the bank in order to equip her new salon. It is to be noted here that the law does allow minors to enter into contracts that may guarantee their financial independence, as said in the case of *Clément v London & North Railway*, but a loan of that amount from a bank does not exactly amount as "financial" independence and neither was this a case of employment. As such, the bank cannot hold Zoe liable and the contract cannot be enforced against her. **4**

However, an important fact provided is that this loan was guaranteed by her parents. S2 of *Minor Contract Act 1987* states that if an adult gives a guarantee for a contract that has been entered into by a minor and

3 AO1: The candidate takes each issue in the scenario and addresses them methodically starting with the lease. This is a good technique. There is detailed knowledge and understanding of voidable contracts is demonstrated and relevant cases cited.

AO2 and AO3: The candidate accurately uses the AO1 to apply to the issue of the lease and the fact that due to her age she can repudiate the agreement. The answer would have benefitted from adding that she would not be able to claim back what she had already paid.

4 AO1: The candidate drifts slightly into beneficial contracts of service and the issue of financial independence. This is not relevant to the loan. However, sub-concludes accurately.

AO2 and AO3: Application to beneficial contracts of service suggest some misunderstanding of when to apply this area of law.

Example Candidate Response – high, continued

Examiner comments

later that contract is breached, the guarantors will be liable and the contract will be enforceable against those who gave the guarantee. Therefore her parents are liable. **5**

The third point to analyze is the purchase of the computer from a shop, for which she later stops to pay for. The law allows minors to purchase any necessities for a reasonable price. ~~s38~~ of Sales of Goods Act ¹⁹⁷⁹ says that any necessity bought a minor must be paid for by them provided the goods are actually supplied and are sold at a reasonable price. s38(3) of SOGA defines necessities as anything the minor may need according to their circumstances. **6**

In the case of ~~the~~ Chappel v Cooper, a minor hired contractors to buy her husband but later refused to pay as she was a minor. The courts held that because she was under an obligation to buy her husband, it counted as a necessity. In the case of Nash v Inman, a minor spent a sum of money to buy clothes, which included 11 gold plated wrist.

5 AO1: The candidate accurately identifies the relevance of the Minors Contract Act including the correct section (Section 2) when there is a guarantor involved. There is a clear understanding of this area of capacity.

AO2 and AO3: The candidate very briefly but accurately applies Section 2 by stating that her parents will be liable. Limited reasoning is shown.

6 AO1: The candidate demonstrates accurate and detailed knowledge and understanding of the concept of necessary goods supported by statutory authority.

Example Candidate Response – high, continued

Examiner comments

It was noted that although it was alright given his background, he - already had such clothes, therefore didn't need them. **7**

7 AO1: In this paragraph, the candidate demonstrates further knowledge of the concept of necessary goods with relevant cases used to illustrate.

Similarly, it can be assessed whether Zoe's purchase of the computer really a necessity. It is said that he gave only her an "old" computer, but it doesn't say that it is not capable of being used. In such case, Zoe purchasing a new and expensive computer, as a result demand to a necessity as she could do work on her old computer well enough. Therefore when she stops paying her credit repayments to the shop, it is unlikely that it will be enforced against her. **8**

8 AO1: In this paragraph, the candidate continues on the theme of necessary goods and adds further detail.

In conclusion, the law of capacity mostly protects Zoe from any contractual liability towards the three contracts, the lease being a voidable one, the bank loan being unenforceable as the computer not amounting to a necessity. **9**

AO2 and AO3: There is detailed application of the concept of necessities. Using *Nash v Inman* and *Chapple v Cooper*, the candidate decides that the computer is not a necessary and explains why.

9 AO1: The candidate draws all previous cited law into a conclusion.

AO2 and AO3: There is a brief but accurate conclusion restating the advice given to Zoe.

Mark for AO1 = 10 out of 12
 Mark for AO2 = 4 out of 5
 Mark for AO3 = 6 out of 8

Total mark awarded = 20 out of 25

How the candidate could improve their answer

- The candidate should have remembered to concentrate on the relevant areas rather than trying to fit all areas of capacity into the response. Whilst there is mostly accurate and relevant law, the candidate drifted into an area which had no place in this response.
- On the whole, the application was mostly focused on the issues and was supported by relevant material. There was a slight drift into inaccurately applying beneficial contracts of service and limited detailed application in respect of the loan.

Example Candidate Response – middle

Examiner comments

Zoe is 17 years old and wants to open her own Salon. She leases a premises for three years and also took a £2000 loan for equipment. Moreover she bought on a credit an expensive computer even though she already has one. After six months she decides to close the salon and became a hairdresser at another Salon. She stopped the credit repayments to the bank and shop and also stops leasing the premises. ①

*her parents guaranteed the loan...
The real question is how liable Zoe is ~~one of~~ to for her contracts for premises, bank loan, and the shop. ②

One of the main aspect of a contract that makes it binding is capacity. The family reforms act (1987) reduced the age for being an adult from 21 to 18. Zoe was a minor since she was 17. ③

There are two ^{type of} binding contracts for minors firstly those for necessary goods as well as services, and second beneficial employment and training contracts in the sales of goods and if it was deemed

① AO1: Whilst re-writing the scenario may help candidates concentrate their minds on the area of law, there is no credit available and doing so uses up valuable examination time.

② AO1: The candidate demonstrates their appreciation of the three distinct contracts that need addressing.

③ AO1: The candidate states the correct statute to identify the age of capacity in contract law.

AO2 and AO3: The candidate correctly identifies Zoe as a minor as she is 17 years old.

Example Candidate Response – middle, continued

Examiner comments

that a necessity is something that is required in a life of a minor. If someone has already available goods they aren't a necessity e.g. Nash v. Inman where the child obtained 11 fancy waistcoats whereas his father had already provided him with sufficient clothing. ^{child was liable} This is important as in Zoe's case she bought a new computer which isn't a necessity as she already owns a computer. The court since wouldn't see this as a necessity will hold Zoe liable and will possibly result in restitution. 4

Moreover it is also held that in a case where a young widow couldn't pay for her husband's funeral, it was held that minors will pay cash upfront and will be charged reasonably. However this ~~does not~~ ^{may not} apply to Zoe as she didn't take any services other than the bank loan. 5

Furthermore contracts that are for employment and training are only valid if it benefits the minor. In the White Palace case a trainee boxer was asked to give in his rewards, it was held that since ~~the~~ ^{he} received benefit from the boxing ^{training} he should give up the rewards. In another case a dancer was mistreated and since the contract wasn't beneficial it wasn't valid. 6

4 AO1: There is mostly an accurate explanation of necessary goods including a definition of a necessary and case illustration.

AO2 and AO3: Mostly focused and reasoned application to the issue of the computer. The candidate explains why the computer would not be considered necessary and effectively supports the application with relevant case authority.

5 AO1: Whilst the case cited by the candidate is relevant to necessary goods, the candidate drifts into a general look at capacity.

AO2 and AO3: There is a drift into services and bank loans which are two separate aspects.

6 AO1: Beneficial contracts of services and, in particular, contracts of employment are not relevant to this scenario. There is no employment issue to address.

Example Candidate Response – middle, continued

Examiner comments

Moving forward when it comes to contracts of an ongoing nature e.g. partnership deals, sales leasing etc the minor can rightfully retract from the contract. ~~if a~~ if a minor stops leasing the premises and hasn't paid previous payments, the landlord can retrieve the rent for previous months but the minors aren't held responsible for future of the lease. Therefore looking at Zoe's case Zoe won't be held liable for not completing 3 years in the premises and since we ~~do~~ can conclude from the case she "stopped" her lease ~~therefor~~ and no mention of not paying the rent therefore when it comes to the premises Zoe won't be held liable as up to now we can assume she has paid the lease. 7

Lastly to understand the facts of the bank loan was that it was for £20,000 for and it was guaranteed by the parents, in the current law it is held that when an adult ~~promises~~ ~~repay~~ guarantees a loan etc it will be enforceable. Therefore, Zoe would not be held liable mainly as the loan will be enforceable on her parents. 8

In conclusion the liabilities are as such, since the computer was non-necessary Zoe will be held liable (Nash v. Inman) most likely for restitution. Secondly, as for the premises Zoe won't be held liable as minors don't have to account for the future payments of lease only previous. And, lastly as for the bank loan Zoe won't be held liable as firstly she probably spent most money and secondly her parents guaranteed the loan, making it enforceable on them.

7 AO1: The candidate recognises that leases are contracts of an ongoing nature and briefly sets out the rights and obligations of the parties. The candidate accurately identifies the position of the landlord but lacks case authority.

AO2 and AO3: Some reasoned application of the law in respect of the rent and the fact that Zoe has (or should have) paid rent up to the point of 'stopping' and that the Landlord will not have to return already paid rent. The application is not supported by relevant authorities.

8 AO1: There is simplistic but accurate identification of the law relating to loans. The candidate lacks the use of relevant law namely, Section 2 Minors Contract Act 1987.

AO2 and AO3: There is simplistic but accurate and reasoned application to the issue of the loan. However, this was not supported by relevant authorities.

Mark for AO1 = 7 out of 12
Mark for AO2 = 3 out of 5
Mark for AO3 = 4 out of 8

**Total mark awarded =
14 out of 25**

How the candidate could improve their answer

- To achieve high marks, candidates are required to demonstrate a thorough knowledge and understanding of the key areas. This requires detailed and accurate descriptions. The descriptions need to be substantiated with relevant authority – statutory or case law. This candidate did not cite any law in respect of two of the three issues, namely in respect of voidable contracts and void contracts and the relevance of the Minors' Contracts Act 1987.
- The application of the law associated with necessary goods was good and effectively supported by relevant material namely case authority. Both the lease and the loan were dealt with in a more simplistic manner without the backing of authority.

Example Candidate Response – low

Examiner comments

Under minors contract Act 1987 anyone who is below the age of 18 is considered a minor. The minors contract ~~can~~ can be divided into 3 contracts. Firstly comes necessary contracts which are valid and binding for his condition, health and life of the minor. S(3)(d) defines necessary goods as "goods suitable for his condition and actual requirement for the ordinary or service (SOGS 1979)". Secondly comes beneficial contract contracts that need to benefit the minor (Clements V London Railway) and lastly comes voidable contracts which are valid until the minor decides to ~~rep~~ repudiate it. 1

In the given case Zoe is a hairdresser who just celebrated her 17th birthday hence she is a minor under the minor contract act 1987. She wants to ~~open~~ open her salon and leases premises for 3 years. She also takes out a loan for £20,000 from the bank to support her salon and the loan is ~~guaranteed~~ guaranteed by her parents. In order for Zoe to keep track of her orders she buys an expensive computer on credit to replace the old one she has. 6 months later she decides to close her business and is now a hairdresser she stops leasing the premises and stops her regular loan credit payments to the bank and the shop. 2
When Zoe went to the shop to buy an

1 AO1: The candidate starts by introducing the area of law including enforceable and voidable contracts. This demonstrates some understanding of capacity. There was no credit available for the explanation of beneficial contracts of service as they have no relevance to issues in the scenario.

AO2 and AO3: The candidate does not use the law to identify that Zoe was 17 and therefore a minor. This would have attracted credit.

2 AO1: The candidate separates out the individual parts of the scenario. This is a good technique. However, there is never credit available for re-writing out the scenario. This simply uses up valuable examination time.

AO2 and AO3: There is no application or evaluation in this paragraph.

Example Candidate Response – low, continued

Examiner comments

expensive computer is just to replace her old one we need to establish whether the purchase of the computer was necessary or not. This situation comes in line in the case of *Nash v Inman* where it was held that the purchase of the ~~costly~~^{luxury} ~~costly~~ ~~costly~~ were not necessary because the minor already had had been provided clothes and the fancy ~~costly~~ were not deemed necessary. Necessary goods are defined in §3(3) of the ~~sale~~ ~~of~~ ~~goods~~ ~~and~~ ~~services~~ ~~act~~, "goods suitable for his condition and actual requirement at the time of the sale and delivery".

In the given case it has also been stated that Zoe had leases premises for 3 years but after 6 months she stops. This situation comes under beneficial contracts that contracts should be made in such a way that they benefit the minor. And since Zoe has closed her business she is not entitled to ~~be~~ ~~pay~~ ~~for~~ ~~pay~~ for the rest of the years because contracts made by minors are not valid or binding and a contract should be such that it is not exploitative as seen in the case of *De Francesco* where the contract was not valid because it was only one dimensional and only the adult was

4 gaining the advantage. In the case it has also been stated that she stop Zoe also stops her regular bank loan once she closed her business this contract between her and the bank comes under voidable where the contract is only valid if the minor does not repudiate the contract, repudiation can be also be seen

3 AO1: The candidate addresses necessary goods. Appropriate statutory and case authority are used to illustrate.

AO2 and AO3: The candidate understands the concept of necessary goods and the relevant law but only states that they need to establish whether the computer was necessary but fail to do so. As a result, there is no evidence of application.

4 AO1: In this paragraph, the candidate mentions the lease but wanders into the realms of beneficial contracts of service. In respect of the lease, the candidate needed to address voidable contracts.

AO2 and AO3: This paragraph demonstrates some confusion. The candidate addresses the lease but applies the law relevant to beneficial contracts of service. The lease would be under the heading 'voidable contract'. Such confusion means that there can be no AO2 or AO3 credit awarded here.

Example Candidate Response – low, continued

Examiner comments

In the case where a minor had to pay in installments and she payed the first half but could not pay the second and the court held that she could repudiate the contract and not pay the second installments but can not recover the first. Similarly, Zoe can stop the loan paying the loan but she can not recover the money that has been paid. Therefore, there liability towards the bank and leasing the premises is not valid since she is still a minor and can break the contract at any point and at being a minor but the question where the computer purchase was necessary it arises because it is completely useless to purchase a new computer when she already has a new one and therefore needs to complete the credit payment. The parents are Zoes guarantors and under S(2) of guarantees a guarantee can confirm a contract on behalf of the minor. Hence contract is valid.

5 AO1: The candidate addresses the loan but wanders into an explanation of the law relevant to voidable contracts. The loan is unenforceable against Zoe due to her age.

AO2 and AO3: The candidate again demonstrates confusion and whilst addressing the loan, an unenforceable agreement, applies the law associated with voidable contracts. Such confusion means that there can be no AO2 and AO3 credit awarded.

6 AO1: Whilst there is confusion, the candidate accurately states that the lease can be ended whilst Zoe is a minor.

AO2 and AO3: In amongst the confused application of law to the lease and the loan, the candidate simplistically sub-concludes stating that she can break the leasing agreement as she is still a minor. The application lacks reason.

7 AO2 and AO3: There is basic application of the law of necessary goods to the computer. The application is limited and not fully reasoned or supported by legal rules.

8 AO1: The candidate addresses Section 2 and the guarantor. However, there is no mention of the relevant Act.

AO2 and AO3: This paragraph contains some accurate application of the law to the loan and the guarantee albeit in a very brief and limited way.

Mark for AO1 = 5 out of 12

Mark for AO2 = 1 out of 5

Mark for AO3 = 2 out of 8

**Total mark awarded =
8 out of 25**

How the candidate could improve their answer

- The candidate did not need to write out the whole scenario, as this serves no purpose and wastes valuable examination time. More marks would have been awarded if the candidate had included detailed, accurate and relevant information with statutory and/or case authority. The response was undermined by the errors and misunderstandings. Whilst this candidate did separate out the three issues, they only applied accurate law to one and this application was limited. Accurate law was required for all parts of the response.
- The quality of application was undermined by confusion and drifting into inaccurate areas. Justification for the advice given is key to the higher levels.

Common mistakes and guidance

- Setting out, sometimes in great detail, irrelevant areas of capacity, for example, the law relevant to Beneficial Contracts of Service. There was no such issue to discuss. Explanations of the law were often summaries rather than detailed. Writing out the scenario and all the facts of the case is seen often and wastes valuable time. Whilst material facts are relevant, there is no additional credit for the minutiae of case facts.
- A common mistake made by weaker candidates was to try to apply the concept of beneficial contracts of service to the lease, often using associate cases to justify. Candidates should not assume that each and every element of a concept will need to be included in a response. The key is to identify and apply relevant law. There was often a lack of focus and detail, for example, many candidates were able to surmise that Zoe was able to end the lease but did not add that she would be unable to recover monies already paid.

Question 3

Example Candidate Response – high

Examiner comments

injunctions, rescission.

Equitable remedies are provided alongside common law in order to compensate for breaches in contract law. Equitable remedies are based on the concept of equity and justice. It can be asserted, however, to what extent do they actually achieve justice. **1**

Equitable remedies are usually given in cases where damages alone are not enough, or if the claimant's item that was damaged was unique. It is also granted where the claimant's business is harmed and damages alone won't compensate. **2**

There are many different types of equitable remedies, one of which is that of specific performance. The criteria for where it is given and where it is not follows:

- i) not given where damages are enough
- ii) not given where it has to be supervised by the court.
- iii) not given in personal service contracts employment.
- iv) not given where delay defeats equity
- v) only given where principle of mutuality is present.
- vi) not given where there is not pure intention. **3**

Another type of remedy is that

1 AO1: A good introduction showing an understanding of the topic of equitable remedies immediately. The candidate sets out briefly when they are used and why.

AO2 and AO3: Within the introduction, the candidate sets out what the remedies are and what they are going to address.

2 AO1: In this paragraph, the candidate adds further detail and explains when equitable remedies might be required and adds an example. This shows a further understanding of the key area.

AO2 and AO3: This paragraph demonstrates an ability to analyse when the remedies will be used if damages are not enough.

3 AO1: In this paragraph, the candidate starts by explaining specific performance and gives examples of when it will or will not be granted. This lacks authority but, later in the response the candidate utilises relevant authority within their AO2 and AO3.

AO2 and AO3: Here, the candidate demonstrates reasoned analysis of the situations when specific performance will or will not be granted. The assessment at this point is basic and lacks the support of relevant material but this will come later.

Example Candidate Response – high, continued

Examiner comments

restitution, whenever any property or benefit obtained ~~on~~ ^{unrightfully} by ~~any~~ party is taken back and given from whom it came from. This is the most common type of remedy applied in cases involving minors. 4

Another one is that of injunction, which can be mandatory or prohibitory. The courts awarded an injunction in the case of Warner Brothers, a person who actress Betty Davis breached contract and started another project. Another remedy is that of rescission. 5

Another concept that comes under equity is that of promissory estoppel. This is where a party has relied upon a promise of another that they will not enforce a contractual right and protects the party relying upon this promise. This was introduced by Lord Denning in the case of Central London Properties v High Trees, where the defendant was prevented from taking compensation for the rent not paid because during war time. 6

Now, it can be debated whether these remedies actually achieve,

4 AO1: The candidate deals accurately with restitution and adds detail, for example, the fact that this is the most common remedy when dealing with minors.

AO2 and AO3: At this point there is no assessment/evaluation of restitution.

5 AO1: The remedy of injunction is dealt with briefly. The two types are named rather than explained but this shows that the candidate is aware of this type of equitable remedy. At the end, the candidate mentions rescission but does not add any detail.

AO2 and AO3: At this point, there is no assessment or evaluation of types of injunctions.

6 AO1: The doctrine of promissory estoppel is not relevant to a question asking for assessment of equitable remedies.

Example Candidate Response – high, continued

Examiner comments

justice or not. It can be argued that these remedies are designed to dispense justice and therefore do so. As in the case of Webster v Craig, the person knew that the price mentioned was wrong so he was granted specific performance. Also in Attorney General v Blake the law gave an exception and granted restitution because they didn't want the writer to benefit from breaching the Official Secrets Act.

Moreover, equitable remedies also protect the rights of minors and make sure they do not have to suffer unjustly. For example, in order to use the remedy of restitution against a minor, it has to be proven that their intent and conduct was indeed fraudulent and they have obtained an unfair enrichment. Moreover, in the case of Flight v Bolland, it was held that specific performance cannot be used against minors as there is not a concept of mutuality.

Also, the Limitation Act 1980 s5 says that the wrong must be repaired as soon as possible so it can be dealt with and so the defendant is liable.

7 AO1: Whilst couched in amongst AO2 and AO3, discussion on equitable remedies in general, the candidate identifies two key, relevant cases with the facts and type of remedy addressed.

AO2 and AO3: It is at this point that the candidate fully engages with the question. They start here by discussing whether or not the remedies do achieve justice and use cases to substantiate their assertions. The candidate uses two different types of remedy. This would have benefitted from a more fully developed analysis.

8 AO1: Again, the candidate includes in their general AO2 and AO3, a relevant case explaining the facts and remedy of specific performance.

AO2 and AO3: In this paragraph, the candidate takes a detailed look at equitable remedies and minors' evaluating when they are used and when they cannot be used. This demonstrates focused and reasoned evaluation.

Example Candidate Response – high, continued

Examiner comments

& this wrong doing. The correction
 delay defeats equity protects
 no dependent, as in Leathur
International Gallery, where it was
 deemed unfair to claim that
 a painting was taken after 6
 years. In D & G Builders v Lees,
 it was said that in order to get
 equity, one must do equity. 9

Although it is not a remedy, promisor
 Estoppel also protects claimants and
 prevents wrong doing as it must
 not be used "as a sword and not a
 shield".

However, there are some drawbacks
 to the use of equitable remedies
 as well. It may be argued that
 their application is narrow and
 rigid e.g. specific performance
 doesn't apply to employment cases,
 as was said in Ryan v Mutual
Tontine Association. In Stoczarzka
v Latvian Shipping, it was
 said that a lack of consideration
 wasn't enough to be granted
 restitution, there has to be some
 unfair gain by the other party too. 10

Furthermore, it is also true
 that they are only granted in

9 AO1: The candidate recognises the importance of the Limitation Act in a question concerned with equitable remedies. Case authority is used to illustrate this. There is also a brief mention of an equitable maxim.

AO2 and AO3: The candidate addresses one of the equitable maxims and assesses when equity might be defeated. Two relevant cases are used to support the discussion.

10 AO1: As before, amongst AO2 and AO3, the candidate identifies relevant equitable remedy cases. The candidate identifies the facts of the case and the relevant remedy.

AO2 and AO3: This paragraph demonstrates focused and reasoned evaluation with the candidate looking at a different side of the discussion namely some of the drawbacks and limitations. Cases are used well to illustrate.

Example Candidate Response – high, continued

Examiner comments

exceptional cases and are only given when conditions of a contract are breached, it may otherwise be quite difficult to obtain them. 11

In light of the detailed discussion above, it can be concluded that equitable remedies do achieve justice ^{to a greater extent} as they compensate for great losses and are adapted to use to prevent injustice. 12

11 AO2 and AO3: This paragraph is essentially a continuation of the previous one with the candidate continuing to look at the fact that the remedies are used only in exceptional circumstances. This relates back to the beginning where they stated that the remedies were only available in situations where damages would not suffice.

12 AO2 and AO3: Very neat conclusion drawing everything together and answering the question one final time.

Mark for AO1 = 10 out of 12
 Mark for AO2 = 5 out of 5
 Mark for AO3 = 8 out of 8

**Total mark awarded =
 23 out of 25**

How the candidate could improve their answer

- The candidate would have achieved full marks for AO1 had they included detail on rescission. The candidate merely mentioned the name and no more.
- The range of analysis and assessment demonstrated by this candidate meant that full marks for AO2 and AO3 were well deserved.

Example Candidate Response – middle

Examiner comments

Equitable remedies were tools established to develop upon the common law and provide compensation to the claimant in a contract where the award of damages was viewed as inapplicable, if not completely unjust. In providing this additional route towards fairness it can be reasonably perceived that remedies at the court's disposal are strong tenants in the pursuit of achieving justice within contracts. However, the types of remedies and their ramifications need to be examined before reaching such a definable conclusion. 1

There are a plethora of equitable remedies available when the compensation of damages expires, or is found inadequate. Specific performance is a remedy that instructs parties to comply with the terms of a contract and fairly compensate wronged claimant(s). There are rules pertaining to specific performance that are governed by maxims. For example, the concept of 'delay defeats equity' states that suing for damages seeking remedies for beyond a reasonable time is not permissible, as illustrated in the landmark case of *Leaf v International Galleries Ltd.*, where the time lag between the alleged damage and the time for seeking them was beyond a reasonable timeframe. 2

Similarly, the concept of "those who seek remedies must come with clean hands" is also particularly important, as an intentional fault on the claimant's part may halt the receipt of any applicable remedies, as observed in *Webster v Cecil*, and *D & C Builders v Rees*. Specific performance is an indispensable tool to achieve justice, thus demonstrating the extent of options available to compensate the claimant. 3

1 AO1: The candidate starts by accurately setting out when an equitable remedy will be granted.

AO2 and AO3: Within this paragraph, the candidate addresses the question and briefly mentions fairness but no more.

2 AO1: Next, in this paragraph, the candidate explains briefly what specific performance is. The candidate then drifts away from explaining in detail the actual remedy to explaining the equitable maxim 'delay defeats equity' and illustrates this with a case.

AO2 and AO3: Whilst the candidate begins this paragraph explaining specific performance, they move to analyse one of the equitable maxims. There is implied AO2 and AO3 from the facts of the case.

3 AO1: The candidate continues to drift away from the question and concentrates again on equitable maxims, in this paragraph on 'those who seek equity must come with clean hands'. The maxim is illustrated with two cases rather than using the cases to illustrate the type of remedy and when the remedy can or cannot be used.

AO2 and AO3: As above, the candidate analyses another equitable maxim and again uses the cases to imply fairness. However, this all lacks focus and reason and is drifting from the issue at hand, namely equitable remedies.

Example Candidate Response – middle, continued

Examiner comments

The courts may grant the remedy of injunction to instruct the parties to do, or abstain from something. This can be seen in the infamous case of Warner Brothers v Nelson, where an actress who acted outside the terms of her contract was forced to comply. 4

4 AO1: In this paragraph, there is a brief but accurate description of injunctions in general. A case is used to illustrate but the explanation fails to show how an injunction was used in the case.

AO2 and AO3: There is no analysis or evaluation in this paragraph.

The remedies of rescission and specific restitution are also fundamental in the quest for justice. Rescission brings the parties back in a pre-contractual position that allows both to benefit or amicable part ways. Specific restitution is a fair principle imposed to prevent unjust enrichment of a party, as witnessed in Attorney General v Blake, where the courts, despite classifying the A.G.'s suit as lockstep, still prevented Blake from unjustly obtaining a profit. 5

5 AO1: Rescission, specific performance and restitution are joined together in an assessment and evaluation paragraph. Amongst the assessment, the candidate correctly describes restitution, what the aim is and, adds authority.

AO2 and AO3: Whilst rescission and specific performance are mentioned in this paragraph, the candidate analyses and evaluates restitution and acknowledges that it is a fair principle and prevents unjust enrichment. The case is used as justification.

Whilst discussing equitable remedies it is also essential to understand how to approach justice in contracts as it relates to minors, who are individuals under the age of 18 as per the Contract Terms Act. ~~Any~~ ~~minor~~ Minors are exempted from being held liable in mutual contracts where remedies such as specific performance are being demanded, as they are not legally subject to some contractual obligations, besides the lone exceptions of contracts of 'necessaries', goods and services and contracts in their self-benefit. 6

6 AO1: In this paragraph, the candidate brings in the topic of minors and how they are not subjected to the same rules of a person with full capacity. Stature incorrectly named.

AO2 and AO3: In this paragraph, there is no explicit assessment, however, by stating the legal rules there is implied analysis/evaluation of protection/fairness as minors are not the same as adults.

In exploring the various remedies and relevant case laws available to be awarded in lieu of damages, as well as the additional safeguards instituted in place, it is a fair and reasonable judgement to conclude that equitable remedies

Example Candidate Response – middle, continued

Examiner comments

achieve justice in contract law to a significant extent. When certain remedies may become void, it is important to introduce new ones, something that is demonstrated in the development and application of the aforementioned remedies. Hence, they remain pivotal in establishing new facts for contractual justice.

7

7 AO2 and AO3: The candidate makes a basic attempt at a conclusion returning to the question and trying to apply it. It is not fully developed or reasoned.

Mark for AO1 = 8 out of 12

Mark for AO2 = 3 out of 5

Mark for AO3 = 2 out of 8

**Total mark awarded =
13 out of 25**

How the candidate could improve their answer

- Whilst this candidate clearly had an idea of the types of equitable remedies and what they were, they would have achieved Level 4 marks had they separated each one and given a description with a case example. Candidates have to take care that they answer the question asked. This question was on equitable remedies rather than equity as a whole and equitable maxims.
- There was some reasoned analysis and evaluation, but it lacked reason and was often partially developed. The drift into discussion of equitable maxims limited the marks available.

Example Candidate Response – low

Examiner comments

There are two types of remedies under contract law, common law remedies and equitable remedies. The only remedy under common law is damages. Damages is an amount paid to compensate an innocent party. ¹ There are three types of limitation of damages, causation, remoteness

There are two types of losses namely pecuniary and non-pecuniary loss. Pecuniary losses dealt with financial losses. Non-pecuniary losses dealt with mental distress, discomfort, disappointment and hurt feelings. Traditionally, this ~~rule~~^{loss} cannot seek for recovery ~~but~~ unless it was for pleasure and enjoyment. ~~sta~~ This was stated in Watts v Morrow (1991). ²

Equitable remedies have falls under four categories, injunctions, specific performance, rescission and rectification. ~~Injunct~~ Injunctions have fallen into ~~three~~ three parts, ~~interim~~, namely, interim, prohibitory and mandatory. Interim ~~divident~~ injunction suggests that there's a temporary orders from court until court hearing. Prohibitory suggests that injunction implies that an ~~to~~ order to a party which he must ^{not} do something followed by court order. mandatory injunction implies that a party must do something followed by a court order.

¹ AO1: This candidate starts with an introduction but drifts straight into addressing damages and the aim of damages rather than concentrating on the question, namely equitable remedies.

² AO1: In this paragraph, the candidate wanders into the area of pecuniary and non-pecuniary losses. There is no credit available as such losses are not relevant to this question.

Example Candidate Response – low, continued

Examiner comments

An example of case under injunction is in fact, an actress. ~~In fact, an actress~~ signed a contract under a company for two years and it was written that the actress cannot worked for under company under these two years. The actress failed to do so and the court held an injunction to the actress and ~~proh~~ prohibited her to do so. 3

Specific performance is where a party was told to ~~performe~~ perform an act under court by a court to perform an act. ~~under~~ An example is Beswick v Beswick (1934) where a specific ~~form~~ performance was held. 4

~~Res~~ Rescission is where the court will put the parties back into the position ~~of~~ which ~~it~~ that they were in pre-contractual obligations. An example ~~of~~ is which the fact that there's ~~a~~ a party purchased a share of the company but it ended up falls in value. The party wanted to seek for damage but the court held that ~~it~~ in order for rescission to be granted, it has to be possible to put the parties back into their pre-contractual duty. Thus, the claimant's claim was ~~un~~ unsuccessful. 5

Rectification is ~~where~~ only applied to written document. It was to correct the mistake done in ~~written~~ ^{written} contract. 6

3 AO1: It is in this paragraph that the candidate starts to acknowledge equitable remedies and names them (albeit not all correctly). The most detail given is in respect of the different types of injunctions with the addition of a case, albeit unnamed.

AO2 and AO3: There is a hint of AO2 and AO3 through the facts of the injunction case. However, there is very limited use of legal rules and no evaluation.

4 AO1: In this paragraph, the candidate briefly explains specific performance. The description is limited and lacks detail. There is case citation, but no more detail given than it is a case involving specific performance.

5 AO1: The candidate gives a brief explanation of rescission. An unnamed case is used to illustrate when rescission will not be granted. There is a lack of focus and accuracy.

6 AO1: Rectification is not relevant to this question.

Example Candidate Response – low, continued

Examiner comments

Equitable remedies in contract law helps to achieve justice as they ~~make~~^{put} the parties back into the position of the pre-contractual obligation. This suggests the parties to be impartial and the decision does not bias to any parties. As for damages under contract law, it only compensate the innocent party but they did not thought of the defendant position. 7

8 There are three possible limitations of remedy, ~~eat~~ namely, causation, remoteness and mitigation in loss. ~~An example of~~ An example of causation is Quinn v Burch Brothers (1966). In fact, the defendant did not provide the claimant a stepladder for ~~re~~ repairing. The claimant simply climb up a table which he knew it was not suitable. ~~of~~ After he fell down, he brought the case to court and seek for damages. The court held that since the claimant has simply climb up a table for repairation, ~~this~~ was constitute as a victim's voluntarily act. However, it was considered as an intervening act which will break the chain of causation. Thus, the defendant was not liable.

Remoteness happened when there's a reasonable foreseen. An example of case is ~~Had~~ Hadley v Baxendale (1854). ~~In fact,~~ In ~~the~~ this case, the court held that in order to charged the

7 AO2 and AO3: The candidate attempts AO2 and AO3 but applies the rule of damages rather than the aim of equitable remedies but there is a hint of an attempt to compare fairness in terms of equitable remedies and damages.

8 AO1: The rest of the response fails to contain any relevant content. The candidate drifts into the limitations of an award of damages.

AO2 and AO3: There is no further creditworthy content.

Example Candidate Response – low, continued

Examiner comments

defendant, he must have reasonably foreseen the outcome. Since ~~the~~ the defendant did not foreseen his delay will cause the claimant on a loss of profit, he ~~will~~ ^{would} not be liable.

Mitigation in loss ~~het~~ suggests that the claimant must have first mitigate the loss of ~~the~~ what they have suffered in order to charge the defendant. They should not make ~~in~~ ~~us~~ it worst and seeking ~~to~~ for the damages as a whole.

These limitations implies that ~~even~~ the claimants may unable to seek for damages if they break the causation, ~~de~~ the defendant did not foreseen the losses and the claimant did not mitigate the losses. However, these limitations were under the remedy of common law. In equitable remedies, ~~there isn't any~~ it isn't incurred any of the limitations. ~~the remedies~~ It aids to put them ~~&~~ back in pre-contractual obligations and could use court orders to order the parties do or not do ~~&~~ any specific action.

Mark for AO1 = 5 out of 12
Mark for AO2 = 1 out of 5
Mark for AO3 = 2 out of 8

**Total mark awarded =
8 out of 25**

How the candidate could improve their answer

- To improve their marks, this candidate needed to concentrate on the question asked. The response was undermined by error and drift into areas of law not relevant. Almost half of the response addressed content not relevant to the question. Whilst there was some accuracy in descriptions there was a lack of any detail and range of case illustrations. Ideally, a candidate would address each remedy separately.
- This response lacked any detailed analysis and evaluation. The candidate needed to address the key word in the questions 'justice' and analyse and evaluate. The very limited AO2 and AO3 was supported by limited use of legal concepts.

Common mistakes and guidance

- The main mistake made by candidates was to confuse equitable remedies with the grant of damages and the limitations. Where equitable remedies were addressed, they were, more often than not, addressed in a very brief manner with limited detail and authority. Whilst candidates were most knowledgeable on specific performance and Injunctions, rescission and restitution often only received a mere mention. Candidates would have benefitted from addressing all four equitable remedies, giving a description and a case illustration rather than concentrating on just one or two and addressing those in detail.
- A common mistake was to explain the facts of cases rather than using the reasons for the decisions and discussing fairness/justice. The analysis and evaluation was often limited. A good technique is to take one issue, explain what is fair about it, e.g. that it is just, develop that discussion further and then either discuss in greater detail or give a counter argument.

Question 4

Example Candidate Response – high

Examiner comments

Acceptance refers to the expression of absolute willingness to enter into a ~~contract~~ binding contract on definite terms. ~~A~~ A contract becomes binding when it ~~is~~ the acceptance exactly mirrors the offer made. There are certain rules which apply in relation for a valid acceptance. Some of them include that acceptance must be made by the offeree, must be in a prescribed manner, communication of the acceptance, etc. ¹

The rule of communication for valid acceptance states that ~~the~~ acceptance it should be clearly communicated to the offeree. An example of this general rule is seen in the case of *Felthouse v Bindley*. The P asked ~~to~~ the D offered to buy the P's horse. The D did not provide any answer. The court held that ~~silence~~ cannot be implied to acceptance cannot be implied by silence hence, there ~~is~~ was no contract. ²

However, there are certain exceptions to the general rule. The first exception is unilateral contracts. The court holds that acceptance in unilateral contracts can be inferred from performance. The contract will be binding once performance has been done and

¹ AO1: This is a good introduction. The candidate gives a definition of acceptance and explains that acceptance must mirror the offer and some of the different ways acceptance can happen.

AO2 and AO3: Whilst there is not explicit AO2 and AO3 within the introduction, there is some implied by stating the rules are that acceptance requires communicating.

² AO1: The candidate addresses one of the key rules of acceptance, namely silence. A relevant case is used to illustrate the rule.

AO2 and AO3: Within the explanation of silence, the candidate acknowledges that the rule is that acceptance must be communicated. The facts of the case by implication respond to the question asked and offer a form of analysis.

Example Candidate Response – high, continued

Examiner comments

there is no need to inform the other party about it before performance has been made. The court An example is the case of *Carlill v Carbolic Smoke Ball Company*. The company advertised that whoever would use their product would not get the flu again. Ms Carlill used it but got the flu again and ~~as~~ claimed the money promised by the company. In the advertisement the court held they were liable to pay b/c Ms Carlill has performed what was required of her ~~and~~ the contract was binding. 3

The court also recognizes part performance of a contract as binding, as in the case of *Errington v Errington*. 4

The second exception to no general rule is conduct. The law states that acceptance can be implied by conduct if that is the norm. As illustrated by the case of *Brook & Bagden v Metropolitan Rail*, the ϵ was a supplier of coal to the rail company from several years ~~with~~ any formal agreement. Later the company refused to pay him and the court stated acceptance

3 AO1: In this paragraph, the candidate addresses another method of acceptance, namely that associated with unilateral contracts and explains when acceptance takes place in these. The candidate uses the case of *Carlill* to illustrate the rule. Usually, it is not necessary to write out all the facts of a case, but in this response, the candidate has used the case well to illustrate.

AO2 and AO3: As above, the candidate focuses on the question and acceptance in unilateral offers. The candidate explains the rules relating to acceptance and unilateral agreements can be considered an exception to the general rule. This is supported by effective use of a case. The entire paragraph is supported by relevant material.

4 AO1: The candidate gives brief mention of *Errington v Errington*. They correctly identify the legal rule.

AO2 and AO3: There is brief mention of the rule illustrated in *Errington v Errington* but no analysis or further discussion.

Example Candidate Response – high, continued

Examiner comments

was implied by conduct and hence there was a contract so the company was liable to pay. ⁵

Another exception to the general rule is the postal rule. Many years ago when ~~the~~ technology ~~was~~ hadn't advanced ~~commu~~ the ~~get~~ most common mode of communication was ~~the~~ by post. ~~the~~ Many times letters of offers or acceptance would get lost or reach the parties very late causing uncertainty as to whether the contract existed or not. To avoid this uncertainty, the court ~~was~~ created the postal acceptance rule. This rule said that acceptance would be made upon posting the acceptance letter even if it ~~it~~ does not reach the offeror. This was seen in the case of Adams v Lindsell. The acceptance letter had been posted by the C the day he received the offer. However, it reached the offeror seven days later than it was supposed to. ~~the~~ ~~the~~ offeror by that time had sold the wool to a third party. The court held him liable for breach of contract ~~even~~ by applying the postal rule.

⁵ AO1: Acceptance by conduct is dealt with in this paragraph. Again, the case authority is used accurately to illustrate the rule.

AO2 and AO3: When addressing conduct, the candidate identifies that this is another exception to the general rule. This is responding to the question asked and offering some analysis.

Example Candidate Response – high, continued

Examiner comments

This or many argue that the postal rule is unfair towards the offeror as he may not be aware that a contract has been formed. To address this the court created an exception to the postal rule as well.

It stated that the postal rule could be excluded through an exclusion clause. This ~~was~~ was demonstrated in the case of *Flower Securities* where the offeror mentioned in the offer that the contract would come into existence only if 'notice in writing' would be received. The court held that this clause excluded the postal rule. ⁶

Furthermore, with modern technologies such as messages, smartphones and phone calls? the law states that parties when using such mode of communication should behave as if they are face to face. Hence acceptance would only be made if it would be successfully communicated. This was seen in the case of *Furze v Miles* where the court had to decide where ~~acceptance~~ acceptance were

⁶ AO1: There is detailed address of the postal rule. The candidate uses the case of *Adams v Lindsell* to illustrate the rule and demonstrates detailed knowledge and understanding of the rule.

AO2 and AO3: As above, the candidate notes that the postal rule is another exception to the general rule. They acknowledge this is a very old exception and asks why it was used. They then go into deeper analysis and evaluation of this rule and how unfair it may be considered and that perhaps it should now be excluded.

Example Candidate Response – high, continued

Examiner comments

took place to decide upon the damages according to the law of that country. The court concluded that since ~~the~~ communication was made via ~~the~~ acceptance was made when communicated to the offeror. Hence, it was made in London. The case was decided according to English law. **7**

The law is still uncertain on ~~accept~~ contracts made through email. Although recent case law states, that ~~the~~ acceptance would be complete when ~~it~~ ~~is~~ reached the offeror. ~~but~~ if the offeror fails to read it until later does not matter. This ~~was~~ principle was used in the case of Thomas v BPE solicitors. The judges concluded that "no universal rule can cover all cases." **8**

Therefore, in conclusion, it is not true for all cases that acceptance must be communicated for the contract to be formed. As in exceptions mentioned above i.e. unilateral contracts implied by conduct and postal rule. There is still uncertainty with emails and many people find the postal rule is unfair. However, it was a necessity of the time to create certainty for the offeror. As the judges said, no universal

rule can cover all such cases. **9**

7 AO1: The candidate explains the rule regarding modern technologies in this paragraph and the fact that they are considered to be the same as face-to-face agreements. Relevant authority, *Entores*, is used to illustrate how the rule is applied.

AO2 and AO3: Whilst there is limited explicit evaluation and analysis within the paragraph relating to non-instantaneous methods of communicating acceptance, the candidate still responds to the question asked and why it is considered face-to-face.

8 AO2 and AO3: Explicit AO2 and AO3 is evident in this paragraph. The candidate acknowledges that there is still uncertainty in communications with more modern forms of acceptance. There is focused and reasoned analysis and evaluation.

9 AO2 and AO3: The candidate writes a very neat and concise conclusion returning to the question and reiterating the issues.

Example Candidate Response – high, continued

Examiner comments

<p>intention: willingness to contract</p> <p>presumption: Balfour v Balfour</p> <p>Domestic / social : X intention Jones v Padavatton husband wife</p> <p>rebuttal: Merritt v Merritt Simkins v Pays.</p> <p>commercial : Esso Petroleum Crappell v Nestle.</p> <p>rebuttal:</p> <p>① mere puff : Corliss</p> <p>② honour pledge clause : agreement only Rose & Frank Co.</p> <p>③ subject to contract :</p> <p>④ MOU</p> <p>Eval:</p> <p>① promise, seriousness</p> <p>② purpose X intention</p>

Mark for AO1 = 12 out of 12
 Mark for AO2 = 4 out of 5
 Mark for AO3 = 6 out of 8

**Total mark awarded =
 22 out of 25**

How the candidate could improve their answer

- The candidate addressed the key areas including the general rules and the exceptions. All areas were supported by relevant authorities.
- They could have added more explicit AO2 and AO3 and acknowledged that there is uncertainty in some areas rather than only concentrating on certainty. This would have been enough for full marks.

Example Candidate Response – middle

Examiner comments

Acceptance is a certain and binding agreement to terms of a contract. Generally, acceptance must be communicated to the offeror for a contract to exist. However, depending on the mode of communication, the time of acceptance may vary. This essay will assess the extent to which the statement mentioned is true. 1

Generally, Acceptance needs to be communicated to the offeror for contracts to come into existence, when instantaneous forms of communication is used, such as e-mail, telephone, Face - acceptance of contracts come into existence upon receiving. However, there are exceptions to this rule. 2

The postal rule, as landmarked in the case of *Adams v Lindsell*, is a rule of law that unless specifically enforced into the contract and its terms, does not come into effect. Where it does come into effect, acceptance is communicated at the time of posting, (with all in the correct form - correctly stamped, addressed etc) NOT upon receiving. NOT receiving or the letter getting lost in the mail is irrelevant, where the postal rule is concerned. 3

1 AO1: The candidate starts with a brief introduction to the topic of acceptance and acknowledges that modes of acceptance may vary.

AO2 and AO3: The candidate sets the scene for discussion – that there are different modes of acceptance.

2 AO1: In this paragraph, the candidate sets out the general rule regarding instantaneous methods and states that there are exceptions. This demonstrates an understanding of the topic.

AO2 and AO3: There is limited analysis/evaluation but the candidate acknowledges that there are exceptions.

3 AO1: There is no direct acknowledgement that the postal rule is an exception to the general rule, but the candidate neatly explains the postal rule and illustrates it with relevant authority.

AO2 and AO3: Whilst there is no explicit assessment/evaluation, the explanation of the postal rule is enough to be considered implied analysis.

Example Candidate Response – middle, continued

Examiner comments

Further, silence is generally not a

communication of acceptance unless specifically specified in the terms. **4**

Moreover, ~~when~~ with regard to contracts between consumers and businesses, such as parking tickets etc. ^(no signature required) Acceptance is not always expressly communicated but it will be implied through performance. For eg: I park my car in a car park, where I receive a ticket noting 'park at own risk' and this is also communicated to ~~me~~ ^{me} by the person giving the ticket. Even though, there is no formal acceptance communicated, it is implied that I will agree not hold the people owning the car park liable **5** for any damages caused while parked.

Therefore, it can be concluded, that the statement cannot be considered 100% true as there are situations in which the postal rule or silence is the prescribed method of communication where the contract comes to effect ~~at~~ at the time of posting and not when received by the offeror. This constitutes a binding contract even though there was no communication. where, the prescribed method of communication is instantaneous, acceptance the contract comes to existence when communicated / read by (email, fax) the offeror. **6**

4 AO1: The candidate gives a brief description of the silence rule, but no detail or case authority is given.

5 AO1: In this paragraph, the candidate addresses acceptance by machines and the issue of implied acceptance. There is some accuracy, but the description lacks detail and there is no case authority.

AO2 and AO3: There is limited analysis and evaluation. There is acknowledgment that acceptance is not always expressly stated.

6 AO1: In the final paragraph, the candidate concludes by returning to the postal rule and using this as a reason as to why the statement is not accurate.

AO2 and AO3: To conclude, the candidate addresses the question and states that they do not completely agree. They return to the postal rule and instantaneous methods to illustrate.

Mark for AO1 = 7 out of 12

Mark for AO2 = 2 out of 5

Mark for AO3 = 3 out of 8

**Total mark awarded =
12 out of 25**

How the candidate could improve their answer

- The candidate only addressed the postal rule of acceptance in any detail. Silence and acceptance by conduct were mentioned but there was basic knowledge and understanding. If these had been more detailed, in particularly silence, a higher level would have been achieved. Addressing acceptance and waiver in unilateral contracts would also have boosted the marks awarded.
- Throughout the response, there was some reasoned analysis and evaluation, but it was only partially developed with no depth. The candidate would have benefitted from adding detailed AO2 and AO3 to each point addressed.

Example Candidate Response – low

Examiner comments

The primary start to a contract is when an offer is made and when it is accepted with consideration and intent for legal relations it is a contract.

The question at hand is whether acceptance must always be communicated.

Acceptance is the "meeting of minds" and in most cases is communicated and is supposed to be that way which is a requirement. However some aspects should be inquired.

In a case where an uncle through communication means sent a message to his nephew to not sell a specific horse, however the nephew didn't reply and at an auction the horse was sold. The nephew wasn't held liable as he didn't accept the uncle's offer moreover this shows that since acceptance wasn't communicated there wasn't a valid (even oral) contract in place. However there are several other instances e.g. when there is death of the offeror and offeree didn't know yet accepts offer it is accepted.

1 AO1: This question specifically identifies the area of contract law to address, namely acceptance. There was therefore no requirement to set out all the individual elements of formation.

2 AO1: Whilst there is no requirement to write out the question or part of the question, this sometimes helps keep candidates focused.

3 AO1: The candidate gives a brief description of the acceptance rule attracting limited AO1 marks.

4 AO1: The candidate sets out the facts of a case (unnamed). This case is the authority for silence. The candidate does not explicitly address silence but is accurate when they state acceptance was not communicated.

AO2 and AO3: Through the facts of the case, the candidate implies that acceptance must be communicated suggesting limited analysis/evaluation but supported by limited use of legal principle.

Example Candidate Response – low, continued

Examiner comments

Most ~~cases~~ ^{offers} are end with death of an offeror offeror however offers like sale of land can be still accepted without communication to actual offeror. 5

~~Furthermore~~ Acceptance
It is important to understand that Acceptance can take place through several means of communication e.g. posting letter however there can be several factors e.g. the acceptance takes place when the acceptance letter is posted not received. Moreover acceptance in conclusion technically maybe it ~~is~~ may not be "communicated" but it is true that acceptance does take place. 6

5 AO1: Death is relevant to offer rather than acceptance and has no relevance here.

6 AO1: The final paragraph acknowledges that there are various means of communicating acceptance but only in a limited way, and addresses one, namely the postal rule.

AO2 and AO3: As noted above, by explaining the postal rule, the candidate produces implied analysis/evaluation but in a limited way with little reasoning.

Mark for AO1 = 3 out of 12

Mark for AO2 = 1 out of 5

Mark for AO3 = 2 out of 8

**Total mark awarded =
6 out of 25**

How the candidate could improve their answer

- The candidate needed to set out and explain the general rule of acceptance, i.e. that it must be a mirror image of the offer and must be communicated to show understanding and knowledge of the topic. There were four main areas to address. Only two of the four were mentioned in the response and in a very limited way.
- The candidate would have benefitted from keeping the question at the forefront of their mind as they set out their response. This is needed so that there is relevant analysis and evaluation throughout. Reference to the accuracy of the statement as per the question was required.

Common mistakes and guidance

- The mistake made by candidates was to concentrate on the problem with the postal rule rather than explaining the general rule associated with acceptance and the various exceptions to the rule. A question only requiring acknowledgement of the postal rule would be made clear in the wording of the question. It is so important to read the question carefully so that the response incorporates a range of relevant content.
- One of the key mistakes made by candidates was not to refer to the command rules when analysing and evaluating. There were often general discussions of what was good about acceptance, e.g. the postal rule, and what was bad. There were many responses drifting away from the question and simply evaluating acceptance as a concept.

Question 5

Example Candidate Response – high

Examiner comments

In order for a contract to be formed, there must be an offer, an acceptance, consideration, intention to create legal relations and capacity. As far as intention is concerned it is on this basis that courts decide where a contract has been formed or not. In some cases, it is difficult for the courts to decide whether the parties intended to be legally bound by the agreements made or not and for this the courts have developed two rebuttable presumptions. Firstly, in commercial agreements, the parties intended to be legally bound by the agreement made and secondly in social or domestic agreements there is a strong presumption that parties did not

intended to be legally bound. There are no hard and fast rules. There are presumptions that can be rebutted with strong evidence and therefore this helps the courts in deciding the formation of valid contracts.

1 AO1: The candidate starts by briefly explaining where the topic fits into the formation of a contract. The two presumptions are accurately explained. This paragraph also briefly explains how both presumptions can be rebutted. The focus is on the question asked.

AO2 and AO3: The candidate focuses on the question from the start. Within this paragraph, there is mention of the difficulty involved in deciding whether parties intend to be legally bound and how the courts have developed rebuttable presumptions that demonstrates analysis. The candidate continues their analysis and states that there are no 'hard and fast rules' and explains when the presumptions can be rebutted, suggesting that there is a requirement of strong evidence required if the courts are to rebut the presumption.

Example Candidate Response – high, continued

Examiner comments

In commercial agreements there is usually a strong presumption that parties intended to create legal relations because the money has exchanged hands. However, this can be rebutted with strong evidence. ²

This rule will apply even to the face of this even if it is gratuitous in nature as seen in *Edwards v Skyways - Firmware*, where free gifts are given unless there are bribes to promote business and this shows that there is an intention to create legal relations as seen in *Esso Petroleum Co. Ltd v Commissioners of Customs and Excise*. ³

However, this can be rebutted if the context is different as seen in *Rose and Frank Co. v J.R. Crumpton and Bros.*

There these two cases show how intention can lead to the formation of valid contracts and this is necessary to identify otherwise the parties may be unwillingly be bound by the terms that they don't want.

² AO1: The candidate gives a brief explanation of the commercial presumption and what it takes to rebut the presumption.

³ AO1: The candidate continues addressing commercial agreements and uses authority to illustrate examples of when intention was found and why.

AO2 and AO3: The candidate focuses on the relevant issue and analyses the situation involving gratuitous promises and agreements where free gifts are given and how the court may still find legal intent. This is effectively supported by relevant case authorities.

Example Candidate Response – high, continued

Examiner comments

Blue v Ashley is not recent case
 as that court faced to identify
 whether informal greeting will
 amount to formation of a legally
 binding contract or not and it
 was held that informal meeting
 over drink in pub does not have
 the intention. 4

ⁱⁿ social domestic agreements
 there is strong presumption
 that there is no intention -
 it may arise in these scenarios -
 between husband wife,
 parents and child and other
 social agreements. 5

so Bolton v Bolton shows
 how ~~problems are left to~~
 husband and wife are left to
 sort out their own problems
 and this case showed there
 was not intention as the
 agreement was a friendly
 one. A contrasting case is

4 AO1: *Rose and Frank Compton Bros* and *Blue v Ashley* are used to illustrate two situations where the commercial presumption was rebutted.

AO2 and AO3: The candidate uses the two relevant case authorities to illustrate why there is a need for the courts to intervene as without this, parties may unwillingly be bound. Both cases are used to focus on the question and demonstrate effective analysis.

5 AO1: The candidate gives a brief explanation of the situation regarding social and domestic agreements and when such may arise.

Example Candidate Response – high, continued

Examiner comments

Merritt v Merritt which shows because the agreement was in writing there fore there was intention to create legal relations and this helps the courts in deciding whether contracts were formed or not. 6

Moreover, a parent and child can also enter in legal relations as seen in *Jones v Padavatn* another case shows that siblings were in partnership so there was intention to create legal relations *Snelling v Snelling*.

In domestic arrangements where money has exchanged it will also be create legal relations (*Simpkin v Pays*) however this can always be rebutted. 7

It can be seen that intention helps the courts in deciding whether there was intention to create legal relations or not. 8

6 AO1: The case facts of *Balfour v Balfour* and *Merritt v Merritt* are used to further illustrate social and domestic situations showing good knowledge and understanding of this area.

AO2 and AO3: Using contracting cases is an effective way of showing analysis supported by relevant material. The candidate explains why there was a different outcome in *Merritt v Merritt* and how this helps the courts decide whether or not there is intention and a valid contract.

7 AO1: The candidate uses contrasting cases to further illustrate social and domestic situations.

AO2 and AO3: These two paragraphs lack detailed analysis. However, the candidate recognises situations where intention will be found in social and domestic agreements, for example, when money is exchanged.

8 AO1: The candidate finishes the question with a very brief conclusion having focused on the theme of the question throughout.

Mark for AO1 = 10 out of 12

Mark for AO2 = 4 out of 5

Mark for AO3 = 6 out of 8

**Total mark awarded =
20 out of 25**

How the candidate could improve their answer

- Candidates should remember to utilise the word(s) within the question. This candidate did not refer to the question and, in particular, did not use the word 'justified' as per the question. Whilst it is possible to imply by the response that the candidate was looking at the intervention of the court, full AO2 and AO3 marks demand a complete focus on the question asked.
- The candidate could have included additional detailed reference to the legal reasoning in cases rather than simply naming cases and a small hint of relevance for example. This could be seen in the paragraph where parent and child and siblings in partnerships were addressed.

Example Candidate Response – middle

Examiner comments

According to the ~~the~~ Lord Wilberforce in *The Eurymedon*, a contract comprises an offer, acceptance, consideration ~~and~~ intention to be bound and no vitiating factors. The question would need an discussion on whether ~~the~~ ^{an} intention to create legal relations in formation of valid contracts is justified. ①

Offers is an expression of willingness on specified terms, made with the intention to be legally bound as it is accepted by the person to whom it is addressed. On the other hand, acceptance defined as unconditional agreement to all the terms of the offer. It would only be a valid contract where an offer was accepted. Hence, it is also important to differentiate offer and invitation to treat which is a preliminary stages wherein one party invites other to make an offer. Besides, it is also crucial for a contract ~~that~~ ^{whether} there is an intention to ~~be~~ create legal relationship. ②

An intention to create legal relations can be categorise to domestic and social arrangement and commercial agreements. The agreements made ~~between~~ ~~domestic~~ purely domestic is usually be found no intention to create legal relations and it can be rebutted. For instance, agreement between husband and wife might be purely domestic arrangement. In *Balfour v Balfour*, it was found no ~~the~~ intention to create legal relations between the couples as it is purely domestic arrangement. However, in *Meritt v Meritt*, it was found an intention to create relations and thus the contract was binding. The Meritt was being differentiated from the Balfour that ~~it~~ ^{there} was an black and white agreement between both parties after divorced while the Balfour case was made orally when the couple is still in a harmoni relationship. ③

Next, agreement between parents and child often treated as no intention to create legal relationship as they might not take it seriously. Similarly to the agreement between husband and wife, it can be rebutted if there is any evidence shows the intention of the parties to be bound into a valid contract. For example, in *Jones v Padavatton*, the mother was found no intention to offer the daughter the house as it was not stated in the agreement hence she could collect the house back from the daughter. ④

Then, social agreements such as the case to share winnings award may be found no intention to create a legal relations unless they might contribute to the winning. ~~as~~ ^{As} they might contribute to the winning no matter in monetary or physically, it might be account as an intention to create legal relations as

① AO1: There is no credit available for explaining the elements required for a valid contract particularly when the question is specifically on one area of formation, namely intention to create legal relations.

② AO1: The candidate sets out the requirements mentioned in the first paragraph in more detail concentrating on offer and acceptance. Whilst the knowledge demonstrated is accurate, it has no relevance to the question asked and therefore no credit can be awarded.

③ AO1: The candidate accurately sets out the rebuttable presumption in respect of domestic agreements. Two contrasting cases are used to illustrate when and how the presumption of no legal intent may be rebutted.

AO2 and AO3: There is some reasoned analysis of domestic agreements in this paragraph. The candidate uses two cases to illustrate similar situations with different outcomes. The reason for the difference is explained.

④ AO1: The candidate builds on the previous paragraph and introduces a different agreement, that between parent and child. Relevant case authority is used accurately to illustrate.

AO2 and AO3: Whilst the paragraph lacks explicit AO2, there is a hint of analysis in so far as the candidate explains the need for evidence and how this was not apparent in the case used to illustrate.

Example Candidate Response – middle, continued

Examiner comments

they seems to take it seriously. However, it could be rebutted as well. 5

Besides, commercial agreements usually ^{be} found has a strong intention to create a legal relations and it might be hard to rebutted it unless there is an strong evidence. In Esso Petroleum cases, it was found the Esso was trying to get benefit from the promotion hence it ~~is~~ shows an intention to be legally bound by a contract. However, there are some exception to the facts that commercial agreements ~~must~~ ^{usually} have an intention to be bound. First, it might be a mere puff which means it might ~~not~~ seems to be an intention there but was just merely an requirement. Next, it might be not an intention to bound 6

into a contract when there is no honourable pledge stated in the agreement

In conclusion, as the Lord Wilberforce conclude, it is important of ~~as~~ the exist of an intention to create legal relationship as without it the contract will not be formed and unenforceable. It is all about the thought of the offeror and offeree when it comes to ~~form~~ a contract that ~~are~~ whether they had an intention to be bound by the contracts. 7

5 AO1: The candidate adds information on social agreements and the circumstances in which there may be intention to create legal relations.

AO2 and AO3: As with the previous paragraph, there is no explicit AO2 or AO3.

6 AO1: The issue of commercial contracts is addressed in this paragraph. The candidate accurately states that these will have legal intent, but the intention may be rebutted. One relevant case is used to illustrate. The candidate mentions some exceptions when the presumption will be rebutted.

AO2 and AO3: The candidate continues in a similar way to the two paragraphs above by using cases to imply some analysis and evaluation.

7 AO1: The candidate adds a conclusion, but it fails to wholly relate back to the question asked.

AO2 and AO3: The conclusion to the response does not add any additional AO2 and AO3.

Mark for AO1 = 9 out of 12
Mark for AO2 = 3 out of 5
Mark for AO3 = 4 out of 8

**Total mark awarded =
16 out of 25**

How the candidate could improve their answer

- The candidate could have improved their response, adding to their AO1, by including a greater range of exceptions in both domestic and commercial agreements and authority. It is important to concentrate on the topic being addressed. This candidate's response could have been improved by addressing the question throughout the response and within the conclusion.
- To reach the higher level, the analysis and evaluation needed to be detailed and reasoned. It must also be explicit and supported by relevant material.

Example Candidate Response – low

Examiner comments

The intention to create legal relations in the formation of valid contracts is justified however, 'The intention to create a legal relation happened when acceptance and intention is from both sides'

1 AO1: The candidate starts by briefly setting out where intention to create legal relations fits in formation but no more. There is no credit available for such a statement.

We have to discuss the formation of valid contract however, the intention is a second important part of a contract to be formed. therefore In Merritt v Merritt where a husband and wife were living a happy life and later got to know that wife health situation not good and required a money. Moreover, husband got married and promised her wife that he would give the £5 to her every week later marriage got in really bad situation the wife had an intention to create legal relation as the husband refused to pay. She claimed the money and later got accepted by Court of Appeal held that the couple does have an intention to create legal relation same as in

AO2 and AO3: The candidate states that intention is justified, but it is not accompanied with a reason why. Statements should include a justification.

Balfour v Balfour where both husband and wife live happily later their marriage got worst and the husband used to give her wife £1. week later she claimed and her claim got rejected as court of appeal held that the party had no intention to create legal relation in future.

2 AO1: In this paragraph, the candidate explains the facts of two relevant cases but unfortunately fails to explain the legal concept and how it is applied in domestic agreements. Whilst setting out some facts helps show understanding, there is no additional credit for writing out the facts in detail. Legal reasoning/principle is more important.

Example Candidate Response – low, continued

Examiner comments

The intention could be between family members and friends known as social and domestic contracts where they mostly in between the family or friends. It has been said they mostly failed the claim as they don't have an intention to create legal relations in future as in *Balfour v Balfour* they didn't had an intention to create legal relations similarly as case of mother and daughter where the mother told her daughter that if she completed her studies she will bought her a house and pay her fees if she passed her far exam later mother got to know that daughter left her studies and married instead the mother claim the house she bought for her daughter in parallel to live and rent the court

of appeal held that it can't be a successful claim as they had no intention to create legal relation.

3

3 AO1: As with the paragraph above, the candidate sets out the facts of a different domestic agreement but again misses out setting out the legal reasoning/principle, for example, explaining the rebuttable presumption and why it did not apply.

AO2 and AO3: As with the paragraph above, there is a hint of analysis but there is no real focus of support.

Example Candidate Response – low, continued

Examiner comments

The second type of contract is business / ~~domestic~~ contract which is mostly claimable as it happened between 2 parties and a business contract termed as in Esco v Patrakum where the defendant claimed that he would give 5 tons of oil whoever bring him a 5 wrapper and later retired from his duty COA held that defendant could claim a liability as it may be breached of duty. The business and ~~domestic~~ contracts could be very serious as no matter could ~~set state~~ from there contract it is mostly done on a contract in a written form and the other party can't be disagreed from their words as written agreement required signature of both parties and had an exemption clause that if any party did not perform there side of duty would have to pay for damages and a good liability would be placed on them.

4

4 AO1: The candidate demonstrates awareness of commercial agreements and cites authority. The facts of the case are inaccurate but there is a hint at understanding that business agreements are serious. The end of this paragraph indicates some confusion.

AO2 and AO3: A hint of analysis with the mention of how serious commercial agreements are, but there lacks a link to the question.

Example Candidate Response – low, continued

Examiner comments

If had been said that the formation of valid contracts is justified in business/~~domestic~~ contracts but not in social contracts as party would be must be unjustified like this because they can't claim for the damages of remedies as they don't have an intention before but later got bound by that statement. 5

Conclusion,
The intention to create legal relations in the formation of valid contracts is justified only in business contract but not in social contract between family and friends. 6

5 AO1: This paragraph does not attract credit as it is ambiguous and fails to make a point.

AO2 and AO3: No marks are awarded in this paragraph as it lacks coherent analysis and/or evaluation.

6 AO1: The candidate provides a conclusion but there is no detail, reasoning or point made.

AO2 and AO3: The conclusion states that the rule is justified in commercial contracts but not in between family and friends, but there is no reason or justification for making such assertion.

Mark for AO1 = 5 out of 12

Mark for AO2 = 2 out of 5

Mark for AO3 = 1 out of 8

**Total mark awarded =
8 out of 25**

How the candidate could improve their answer

- The candidate needed to show an understanding of the topic being addressed. Mere case facts are not enough. Legal reasoning for decisions is the best way of demonstrating detailed knowledge and understanding.
- The candidate's response would have reached the higher levels by focusing on the whole of the question and using the legal concepts and cases to analyse/evaluate, in this case, justifying the concept of intention to create legal relations. Without doing this, it is difficult for marks to be awarded.

Common mistakes and guidance

- Evidenced by the responses, a common mistake was that candidates did not read the question before answering. Taking a few minutes to read the question and to establish what is required is essential. It was not uncommon to see candidates writing out all they knew about intention to create legal relations but at no time referring to the question and in particular justification for the concepts. It would benefit many students to learn how to explain case facts in brief. Setting out everything that happened in a case is not necessary and not something that can be given extensive credit. Material facts and legal reasoning are key.
- When there are two or more elements of a topic, candidates should try and allocate an equal amount of time for each element.

Cambridge Assessment International Education
The Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA, United Kingdom
t: +44 1223 553554
e: info@cambridgeinternational.org www.cambridgeinternational.org

© Cambridge University Press & Assessment 2024 v1