

To be taken only between ... and ... 2012

A2 GCE LAW

G156/01: Contract Law Special Study

Candidates answer on the Question Paper.

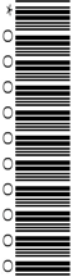
OCR Supplied Materials:

- Clean copy of the Special Study Materials

Duration: 1 hour 30 minutes

Other Materials Required:

None



Candidate Forename		Candidate Surname	
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Centre Number										Candidate Number
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INSTRUCTIONS TO CANDIDATES

- Write your name, centre number and candidate number in the boxes above. Please write clearly and in capital letters.
- Use black ink. HB Pencil may be used for graphs and diagrams only.
- Answer **all** questions.
- Read each question carefully. Make sure you know what you have to do before starting your answer.
- You are reminded of the importance of including relevant knowledge from **all** areas of your course, where appropriate, including the English Legal System.
- Write your answer to each in the space provided. Additional paper may be used if necessary but you must clearly show your candidate number, centre number and question number(s).
- Do **not** write in bar codes.

INFORMATION FOR CANDIDATES

- The number of marks is given in brackets [] at the end of each question or part question.
- The total number of marks for this paper is **80**.
- Candidates are reminded of the need to write legibly and in continuous prose, where appropriate. In answering questions **1** and **2** you will be assessed on the quality of your written communication (QWC) including your use of appropriate legal terminology. These questions are marked with an asterisk (*).
- Candidates are reminded that they are able to use the information given in the sources to support their own knowledge and understanding, evaluation, analysis, and application of the law. Where candidate wish to extract from the source in this way they should use quotation marks or accurately cite lines of the source. Candidates who merely 'lift' information from the source materials without using it to support further knowledge, evaluation, analysis or application, will receive little or no credit. You are expected to demonstrate understanding of the area(s) of law and the development of law and to use legal methods and reasoning to analyse legal material, to select appropriate legal rules and apply these in order to draw conclusions.
- This document consists of **24** pages. Any blank pages are indicated.



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You are reminded of the importance of including relevant knowledge from **all** areas of your course, where appropriate, including the English Legal System.

In answering questions use the source materials and your knowledge of the subject.

2* According to Major and Taylor (Source 11 page 8 lines 1-3 Special Study Materials):

“If a party performs an act which is merely a discharge of a pre-existing obligation, there is no consideration, but where a party does more than he was already bound to do, there may be consideration.”

Consider the extent to which the development of the rules on performance of an existing duty mean that for there to be consideration for a fresh promise a party must do ‘more than he was already bound to do’ under the existing duty. **[34]**

Start writing your answer to question 2 below. Start writing your answer to question 3 on page 17.

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In answering questions use the source materials and your knowledge of the subject.

- 3** Clare, Maureen and Pauline all work in the law school where Chris is a lecturer. Consider whether or not each of them could enforce the following agreements.
- (a)** Chris asks Clare if she will type out the manuscript for his latest Contract Law text book. No mention is made of payment but after the work is completed Chris says that he will pay Clare £300. **[10]**
 - (b)** Maureen, who has previous experience as a proof reader, volunteers to proof read the manuscript. Chris gratefully accepts. After the work is done Chris promises to pay Maureen £100. **[10]**
 - (c)** When the typed manuscript is completed and proof read, Chris has lectures all day and cannot get to the post. He promises Pauline that in future he will try to stop moaning about his workload if she will take the manuscript to the post and send it to the publishers for him. **[10]**

Start writing your answer to question 3 below.

Write the number of the part question **(a)**, **(b)** or **(c)** in the margin.

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OXFORD CAMBRIDGE AND RSA EXAMINATIONS

Advanced GCE

LAW

[G156MS]

Unit G156: Law of Contract Special Study

Specimen Mark Scheme

The mark scheme must be read in conjunction with the Advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all will receive no marks. Reward grammar, spelling and punctuation.

Candidates are expected to demonstrate understanding of the area(s) of law and the development of law and to use legal methods and reasoning to analyse legal material, to select appropriate legal rules and apply these in order to draw conclusions.

This mark scheme contains indicative content but it is not exhaustive or prescriptive. It should be used alongside the matrix of levels of assessment and live exemplar standardisation scripts (which cover a range of responses identifying where within a level of assessment a particular response lies). Examiners are required to use the indicative content of the mark schemes only in conjunction with the matrix of levels of assessment as informed by actual responses in the standardisation scripts. Examiners should not be drawn prescriptively and quantitatively to the content of the mark scheme when marking candidates' responses and should follow the specific guidance provided by the Principal Examiner in terms of breadth and depth of responses. Appropriate credit will be given for non-standard answers.

Question Number	Answer	Max Mark																		
1	<p>Discuss the extent to which the precedent in Chappell & Co Ltd v Nestle (Sources 2 and 3 page 2 Special Study Materials) represents a development of the law on sufficiency of consideration.</p> <table border="0"> <thead> <tr> <th>Mark Levels</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>11-12</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>9-10</td> <td>4</td> </tr> <tr> <td>Level 3</td> <td>7-8</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 2 Define the principle arising from the case. Link to any leading case e.g. <i>Thomas v Thomas</i>, <i>White v Bluett</i>, <i>Ward v Byham</i> etc. Consider how the case confirms the existing definition of consideration:</p> <ul style="list-style-type: none"> • Consideration need not be adequate but it must be sufficient. • What is sufficient must be real/ tangible/ have some value. <p>Discuss how the case represents a development:</p> <ul style="list-style-type: none"> • Definition of sufficiency was extended to those situations where manufacturers make inducements to people to buy their products as the result of free gifts or other means. • Sufficiency extends to things that have no apparent worth and that will be thrown away. • Value was found in the benefit gained by extra sales rather than in the object exchanged itself. <p><i>Credit any reference to Lord Somervell's observation that a peppercorn could be good consideration even though it might be thrown away – and that it is for the parties to identify their own bargain and not for the court to interfere.</i></p> <p>Assessment Objective 3 <i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i> <i>Reward grammar, spelling and punctuation.</i></p>	Mark Levels	AO2	AO3	Level 5	11-12	-	Level 4	9-10	4	Level 3	7-8	3	Level 2	4-6	2	Level 1	1-3	1	[16]
Mark Levels	AO2	AO3																		
Level 5	11-12	-																		
Level 4	9-10	4																		
Level 3	7-8	3																		
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Level 1	1-3	1																		

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2	<p>According to Major and Taylor [Source 11 page 8 lines 1-3 Special Study Materials]:</p> <p>“If a party performs an act which is merely a discharge of a pre-existing obligation, there is no consideration, but where a party does more than he was already bound to do, there may be consideration.”</p> <p>Consider the extent to which the development of the rules on performance of an existing duty mean that, for there to be consideration for a fresh promise, a party must do ‘more than he was already bound to do’ under the existing duty.</p> <table border="1" data-bbox="236 524 829 761"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>14-16</td> <td>13-14</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>11-13</td> <td>10-12</td> <td>4</td> </tr> <tr> <td>Level 3</td> <td>8-10</td> <td>7-9</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>5-7</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-4</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Define consideration; e.g. use the definition in <i>Dunlop v Selfridge</i> – “an act of forbearance, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable”.</p> <p>Explain the basic rule that performance of an existing contractual duty cannot be consideration for a fresh agreement <i>Stilk v Myrick</i>.</p> <p>And that the rule applies to public duties also <i>Collins v Godefroy</i>.</p> <p>Identify the basic exception – where something additional service is given e.g. <i>Hartley v Ponsonby</i> in the case of a contractual duty or <i>Glassbrook Bros v Glamorgan County Council</i> in the case of a public duty.</p> <p>Credit any reference to the reasoning in <i>Pao On v Lau Yiu Long</i> or <i>The Eurymedon</i>.</p> <p>Explain the rule on gaining an extra commercial benefit being the consideration in <i>Williams v Roffey Bros & Nichols Contractors Ltd</i>.</p> <p>Use any other relevant cases in illustration of the argument.</p> <p>Assessment Objective 2</p> <p>Discuss the fact that original definitions of consideration focused on a benefit/detriment relationship, but that this itself was an inadequate definition.</p> <p>Comment on the broader character of the modern definition from <i>Dunlop v Selfridge</i> based on an exchange of promises.</p> <p>Comment on the need the need for the consideration to be real. Tangible and have some value to the parties.</p> <p>Discuss the fairness of the application of the original principle to the facts in <i>Stilk v Myrick</i>.</p> <p>Consider the fairness and logic of the exception in <i>Hartley v Ponsonby</i>.</p> <p>Consider whether what was done in <i>Hartley</i> was extra in the sense that it was real and tangible.</p> <p>Consider whether there is any essential difference in the facts of the last two cases or whether they merely rest on a matter of degree.</p> <p>Consider the exception in <i>Williams v Roffey</i> – there certainly is not anything extra done, does the extra benefit amount to anything that can be considered real or tangible, and whether the value attached to completing the work on time actually amounted to anything extra done.</p> <p>Discuss the fact that the judges are keen to preserve commercial efficacy and to ensure that parties make their own bargain.</p> <p>Consider that the judges were not prepared to extend the principle in <i>Re Selectmove</i>.</p>	Mark Levels	AO1	AO2	AO3	Level 5	14-16	13-14	-	Level 4	11-13	10-12	4	Level 3	8-10	7-9	3	Level 2	5-7	4-6	2	Level 1	1-4	1-3	1	
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2 cont'd	<p>Assessment Objective 3 <i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i> <i>Reward grammar, spelling and punctuation.</i></p>	[34]																								
<p>3</p> <p>3(a)</p> <p>3(b)</p> <p>3(c)</p>	<p>Clare, Maureen and Pauline all work in the law school where Chris is a lecturer. Consider whether or not each of them could enforce the following agreements.</p> <p>Chris asks Clare if she will type out the manuscript for his latest Contract Law text book. No mention is made of payment but after the work is completed Chris says that he will pay Clare £300.</p> <p>Maureen, who has previous experience as a proof reader, volunteers to proof read the manuscript. Chris gratefully accepts. After the work is done Chris promises to pay Maureen £100.</p> <p>When the typed manuscript is completed and proof read, Chris has lectures all day and cannot get to the post. He promises Pauline that in future he will try to stop moaning about his workload if she will take the manuscript to the post and send it to the publishers for him.</p> <table border="1" data-bbox="231 913 1005 1153"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>(for each of a, b, c)</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>9-10</td> <td>17-20</td> <td>9-10</td> </tr> <tr> <td>Level 4</td> <td>7-8</td> <td>13-16</td> <td>7-8</td> </tr> <tr> <td>Level 3</td> <td>5-6</td> <td>9-12</td> <td>5-6</td> </tr> <tr> <td>Level 2</td> <td>3-4</td> <td>5-8</td> <td>3-4</td> </tr> <tr> <td>Level 1</td> <td>1-2</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.</p> <p>Potential answers MAY:</p> <p>Assessment Objective 1 Give definitions of past consideration, its exceptions and sufficiency and adequacy. Use any relevant cases in illustration.</p> <p>Assessment Objective 2</p> <p>3(a)</p> <ul style="list-style-type: none"> • Recognise the consideration as past here <i>Re McArdle</i>. • Discuss the application of the exception to the past consideration rule in <i>Lampleigh v Braithwait</i> and consider whether there is good consideration because the activity followed a request for the service. • Consider also that because of the nature of the work there may be an implied promise to pay for the service. • Conclude that there is a good chance that the agreement is enforceable. <p>3(b)</p> <ul style="list-style-type: none"> • Recognise that there is only a gratuitous offer by Maureen. • Recognise again that in any case if there is any consideration for the promise to pay then it is past consideration <i>Re McArdle</i>. • Recognise that there could be a commercial expectation <i>Re Stewart and Casey</i>. • Reach any sensible conclusion. 	Mark Levels	AO1	AO2	(for each of a, b, c)	Level 5	9-10	17-20	9-10	Level 4	7-8	13-16	7-8	Level 3	5-6	9-12	5-6	Level 2	3-4	5-8	3-4	Level 1	1-2	1-4	1-2	<p>[10]</p> <p>[10]</p>
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Question Number	Answer	Max Mark
3(c)	<ul style="list-style-type: none">• Identify that there is a request for the service from Chris.• Recognise that the service could be good consideration, it has a definite value to Chris and is real and tangible <i>Chappell v Nestle</i>.• Recognise also that Chris's promise may not be sufficient, it is quite vague <i>White v Bluett</i>.• Conclude that the promise is probably unenforceable.	[10]
Paper Total		[80]

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Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.