

GCE

Applied Business

Unit **F256**: Business Law

Advanced GCE

Mark Scheme for June 2016

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All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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Annotations

	The response given is 'Unclear' to the marker.
	'Benefit of doubt' but credit given.
	To indicate the response is in 'Context' of the relevant case study.
	Response is incorrect, no credit can be given.
	Use for Level of response answers to indicate Level 1.
	Use for Level of response answers to indicate Level 2.
	Use for Level of response answers to indicate Level 3.
	Use for Level of response answers to indicate Level 4.
	The response is not incorrect but has 'Not answered the question'.
	Own figure rule. Use where indicated in the mark scheme.
	'Repeat', response repeats the same marking point.
	'Noted but no credit given' or to indicate all or part blank answer pages have been seen by the marker.
	Correct point/answer. Credit can be given.

Blank answer spaces

To be sure you have not missed any candidate responses you must check every page of the question paper and annotate any blank answer spaces with the following annotation: 

Additional Objects

You must also check any additional pages (shown as Additional Objects) which the candidate has chosen to use.

Before you begin marking, use the Linking Tool, to 'link' any additional page(s) to the relevant question(s) and mark the response as normal.

All additional pages must be annotated with the 'SEEN' stamp, so it is clear to centres that the additional pages have been viewed by the marker.

Subject-specific marking instructions**Testing of QWC**

In this external assessment the assessment of QWC will take place in Question 3d which is a levels of response question and carries 14 marks.

Marks are embedded within this question for assessing the quality of written communication. The following criteria are embedded within the levels of response for Question 3d.

Level 4:

Ability to present relevant material in a well planned and logical sequence. Material clearly structured using appropriate business terminology confidently and accurately. Sentences, consistently relevant are well structured in a way that directly answers question. There will be few, if any errors of grammar, punctuation and spelling.

[4 marks representing the appropriate level of written communication are embedded in this level of response]

Level 3:

Ability to present relevant material in a planned and logical sequence. Appropriate business terminology used. Sentences for the most part relevant presented in a balanced, logical and coherent manner which addresses the question. There will be occasional errors of grammar, punctuation and spelling.

[3 marks representing the appropriate level of written communication are embedded in this level of response]

Level 2:

Limited ability to organise relevant material. Some appropriate business terminology used. Sentences are not always relevant with material presented in a way that does not always address the question. There may be noticeable errors of grammar, punctuation and spelling.

[2 marks representing the appropriate level of written communication are embedded in this level of response]

Level 1:

Ability to communicate at least one point using some appropriate business terminology. Sentences have limited coherence and structure, often being of doubtful relevance to the main focus of question. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

[1 mark representing the appropriate level of written communication is embedded in this level of response]

Question		Answer	Mark	Guidance
1	(a)	Indicative content: <ul style="list-style-type: none"> The Insolvency Act. 	1	AO1: 1 For one mark. Do not award incorrect names for the Act even if they have 'insolvency' in their title eg do not award "The Business Insolvency Act".

Question		Answer	Mark	Guidance
1	(b)	Indicative content: <ul style="list-style-type: none"> death of partner (father) legal requirement to dissolve no right to continuity/perpetuity not incorporated no separate legal identity. Exemplar response: Eg One of the partners has died (1) therefore the law demands the partnership is dissolved (1) because the business does not have a separate legal identity from its owners (1) . Eg Brandon and Marcus' father has died (1) . Since the business is not incorporated (1) there is no provision for continuity (1) .	3	AO1: 1 AO2: 2 One mark for a correct identification, plus up to two further marks for explanation. Context must be at least implicit.

Question		Answer	Mark	Guidance
1	(c)	Indicative content: <ul style="list-style-type: none"> • selling assets • turn assets into cash. 	1	AO1: 1 For one mark. No context required.

Question		Answer	Mark	Guidance
1	(d)	Indicative content: <ul style="list-style-type: none"> • some partners play no role in running the business • some partners have limited liability • limited partners are solely investors • the partnership must have one partner with unlimited liability. Exemplar response: Eg In a limited partnership some partners have limited liability (1) whereas in an ordinary partnership all partners are responsible for the debts of the business (1) . Eg In an ordinary partnership all partners have a say in the day to day running of the business (1) . In a limited partnership some partners play no active role in running the business (1) .	4	AO1: 2 AO2: 2 One mark for each correct identification up to a maximum of two identifications, plus a further one mark for each of two developments. No context required. Do not award – ‘(all) partners have limited liability’ (one partner does not).

Question	Answer	Mark	Guidance
1 (e)	<p>Use levels of response criteria.</p> <p>Indicative content:</p> <p>Private Limited Company:</p> <ul style="list-style-type: none"> • limited liability • separate legal entity • control dependant on shareholders • financial institutions more willing to lend • greater access to capital via shareholders • pay dividends/share profit • Corporation Tax • many legal requirements • must publish accounts • governed by Companies Acts. <p>Partnership:</p> <ul style="list-style-type: none"> • unlimited liability • jointly and severally liable • can have limited partners • control dependent on partners/limited partners • difficulty obtaining finance from banks • capital sourced from partners' savings • partners keep all profits • Income Tax • minimal start-up requirements • no published accounts • governed by Partnership Act/Limited Partnership Act. <p>Exemplar response:</p> <p>One benefit of being a private limited company is that the business would be incorporated (L1). This would mean that the brothers would not be at risk of losing their luxury family homes (CONT) if the business got into financial difficulties (L2). The protection of limited liability may</p>	14	<p>AO1: 2 AO2: 3 AO3: 4 AO4: 5</p> <p>Levels of response</p> <p>Level 4 (10 - 14 marks) Candidate evaluates the brothers' decision to trade as a private limited company rather than a partnership.</p> <p>Level 3 (6 - 9 marks) Candidate analyses the brothers' decision to trade as a private limited company rather than a partnership.</p> <p>Level 2 (3 – 5 marks) Candidate applies knowledge and understanding of the advantage(s)/disadvantage(s) to Marcus and Brandon of being a private limited company/partnership.</p> <p>Level 1 (1 – 2 marks) Candidate identifies advantage(s)/disadvantage(s) of being a private limited company/partnership with no use of context.</p> <p>Please indicate each time a candidate achieves a particular level as this will help you allocate marks within that level.</p> <p>Context should be annotated every time L2 and L4 are awarded with the 'CONT' annotation.</p> <p>L2: Must contain more context than just name-dropping eg The brothers might find the registration process for incorporation difficult because their father has always dealt with the legal formalities.</p> <p>Non-contextual answer max Level 1.</p> <p>Level annotation required.</p>

Question		Answer	Mark	Guidance
		encourage the brothers to take undue risks, by growing the business too quickly, and threaten the future viability of the business (L3) . Setting up their new business as a partnership and accepting the family friend's offer to become a limited partner may have been a more sensible decision. Not only would being a partnership discourage the brothers from taking undue risks (a tendency they showed when their father was alive (CONT)) but also provide much needed funds for expansion. Given the previous borrowing for the factory and vehicles it is unlikely that the bank will be willing to provide such funds (L4) .		

Question		Answer	Mark	Guidance
2	(a)	<p>Indicative content:</p> <ul style="list-style-type: none"> • requirements of job descriptions • wording of advertisement • questions on application form • interview questions • selection criteria – equal merit • gender/sexual orientation discrimination • age discrimination • racial discrimination • disability discrimination • religious discrimination • pregnancy • other discrimination – civil partnership, transsexual • positive action – reasonable/proportionate. <p>Exemplar response:</p> <p>Eg Marcus must ensure that he words the job advertisement correctly (1). The Equality Act does not allow him to specify that all delivery drivers must be male (1).</p>	6	<p>AO1: 3 AO2 3</p> <p>One mark for each correct identification up to a maximum of three identifications, plus a further one mark for each of three explanations.</p> <p>Context must be at least implicit.</p> <p>Specific stage of selection and recruitment process required to award two marks eg interviewing, advertisement, application form etc.</p>

Question		Answer	Mark	Guidance
2	(b)	<p>Indicative content:</p> <ul style="list-style-type: none"> • to formalise the new employment quickly • to show they intend to run a professional business • timely clarification of job roles/responsibilities • to meet legal requirements • to meet eight week deadline • to comply with the Employment Rights Act • to change terms and conditions of those previously employed • to minimise future disputes • can be referred back to in case of dispute with staff • written evidence of terms. <p>Exemplar response:</p> <p>Eg To clarify the production operatives' new job roles (1), reducing the likelihood of future disputes (1).</p> <p>Eg To formalise the employees' new employment (1) thereby meeting legal requirements (1).</p>	4	<p>AO1: 2 AO2: 2</p> <p>In each case, Award:</p> <p>Two marks for a contextual explanation.</p> <p>One mark for a non-contextual explanation.</p> <p>Do not award 'looks professional'.</p> <p>Must be impact on the business.</p>

Question		Answer	Mark	Guidance
2	(c)	<p>Indicative content:</p> <ul style="list-style-type: none"> • provide safe working conditions • provide necessary training • not undermine trust and confidence • pay for work done • not negligent. <p>Exemplar response:</p> <p>Eg <i>Charleton Catering Ltd</i> must pay its workers (1) on time (1).</p> <p>Eg The partners must ensure that the employees receive the necessary training (1). For example, production operatives should be trained in how to handle the hot vats of soup (1).</p>	2	<p>AO1: 1 AO2:1</p> <p>One mark for a correct identification plus a further one mark for explanation.</p> <p>Duties must be under common law. Do not award statutory or contractual duties.</p> <p>Explanation must be in context.</p> <p>Accept examples by way of explanation.</p>

Question		Answer	Mark	Guidance
2	(d)	<p>Indicative content:</p> <ul style="list-style-type: none"> • unilateral negotiation • collective bargaining • single representative • clarifies employees' position • likely adherence to trade union agreement • improved communication • time saving. <p>Exemplar response:</p> <p>Eg Employees who are members of the trade union will use a single union representative to put forward their views (1). This means that <i>CC Ltd</i> will not need to spend time negotiating with each employee separately (1).</p> <p>Eg An agreement that is made between an employer and employees with trade union backing is more likely to be accepted by the employees (1). This reduces the likelihood of the same issue being raised by employees time and time again, allowing the business to run more smoothly (1).</p>	4	<p>AO1: 2 AO2:2</p> <p>One mark for each correct identification up to a maximum of two identifications, plus a further one mark for each of two explanations.</p> <p>Context must be at least implicit.</p> <p>N.B. Benefits to the business required</p>

Question		Answer	Mark	Guidance
2	(e)	<p>Indicative content:</p> <ul style="list-style-type: none"> • 11 hours off between shifts • employees entitled to a 20 minute break during a six hour shift • break must be uninterrupted • break must be away from their work • 48 hour limit to length of average working week • one day off a week • night shift entitled to regular health checks • night shift must not average more than 8 hours in 24 • not work overtime without consent • paid annual leave of 5.6 weeks/28 days. <p>Exemplar response:</p> <p>Eg Marcus must ensure that employees are given at least 11 hours off between shifts (1). This makes organising the staffing rota very difficult (1).</p> <p>Eg Breaks should be uninterrupted (1), therefore, even if there is a problem with one of the soups, the brothers must not force the production operatives to return to the production line whilst on their designated break (1).</p>	6	<p>AO1: 3 AO2: 3</p> <p>One mark for each correct identification up to a maximum of three identifications, plus a further one mark for each of three explanations.</p> <p>Context must be at least implicit.</p> <p>Impact on business required for explanation mark.</p>

Question		Answer	Mark	Guidance
2	(f)	<p>Indicative content:</p> <ul style="list-style-type: none"> • meets at intervals throughout the year in Brussels or Luxembourg • considers proposals from European Commission • debates/discusses proposed legislation • votes on any EU legislation to be passed (qualified majority voting) • power to commit member states to new policies • ultimate law making body of the European community. <p>Exemplar response:</p> <p>Eg The Council of Ministers debates proposed legislation (1) before taking a vote on whether it should become law (1).</p> <p>Eg The Council of Ministers meets several times a year (1) to consider proposals put forward by the European Commission (1).</p>	2	<p>AO1: 2</p> <p>Up to two marks.</p> <p>No context required.</p>

Question		Answer	Mark	Guidance
3	(a)	<p>Indicative content:</p> <ul style="list-style-type: none"> offer (1) – a statement without misrepresentation (1) acceptance (1) – unconditional consent to all terms (1) consideration (1) – some mutual exchange of value (1) intention (1) – both parties intend to be legally bound (1) capacity (1) – ability/authority to make a contract (1) legality (1) - within legal parameters (1). <p>Exemplar response:</p> <p>Eg There must be capacity (1). This means that both parties have the legal authority to make a contract (1). <i>CC Ltd</i> must ensure that the person who signs the contract on behalf of the Catkin Nursing Home is of sound mind and authorised to act on the nursing home’s behalf (1).</p> <p>Eg Consideration (1) both <i>CC Ltd</i> and Catkin Nursing Home must offer something in exchange (1). <i>CC Ltd</i> will exchange soup for payment from the nursing home (1).</p>	9	<p>AO1:3 AO2: 6</p> <p>One mark for each correct identification up to a maximum of three identifications, plus up to a further two marks for each of three explanations.</p> <p>Contextual explanation required to award three marks.</p> <p>Element must be named for marks to be awarded.</p> <p>Do not accept “agreement” for “acceptance”.</p>

Question		Answer	Mark	Guidance
3	(b)	<p>Indicative content:</p> <ul style="list-style-type: none"> goods must be safe not cause injury/harm in normal use. 	1	<p>AO1: 1</p> <p>For one mark.</p>

Question	Answer	Mark	Guidance
3 (c)	<p>Indicative content:</p> <p>Mutual agreement:</p> <ul style="list-style-type: none"> • consent of both parties • in accordance with terms in the contract • at end of specified time period • includes novation <p>Frustration:</p> <p>Indicative content:</p> <ul style="list-style-type: none"> • an event which makes it impossible to complete the contract. • includes death of partner/cessation of business. <p>.</p> <p>Exemplar response:</p> <p>Eg Mutual agreement: A contract can be terminated when both parties agree that this is the best course of action (1). An example of this is when an existing contract is terminated and substituted for a new one – perhaps the nursing home would like three varieties of soup per day in future and <i>CC Ltd</i> are happy to supply (1).</p> <p>Eg Frustration: An event that makes it impossible for the contract to continue (1), such as the closing down of the nursing home (1).</p>	4	<p>AO1: 2 AO2:2</p> <p>One mark for a correct identification plus a further one mark for example.</p> <p>Context must be at least implicit.</p> <p>Examples to be awarded as second marks only.</p>

Question	Answer	Mark	Guidance
3 (d*)	<p>Use levels of response criteria.</p> <p>Indicative content:</p> <ul style="list-style-type: none"> • vicarious liability – friend, favour, employee? Own car, course of duty? Frolic of own? • contributory negligence – parking bays full, Georgia ignored sign, dangerous driving, rushing, delivered to wrong entrance, radio blaring out, behaviour reasonable? • actions of gardener – hose pipe, shouted, ran inside to help, injury, cause, actions reasonable? • breach of contract – attempted delivery, power cut, lack of delivery drivers, lost soup, late? <p>Exemplar response:</p> <p>Eg An employer is responsible for the torts of employees (L1). Since Georgia was delivering the soup at the specific request of Brandon it appears that <i>CC Ltd</i> is responsible for the injury caused to the gardener (CONT) when she spilled the soup (L2). It could however be argued that it was the hose pipe left out by the gardener that caused Georgia to trip and that, given he knew that the soup was dripping, he should have taken more care when running into the building to catch up with her (L3). Ignoring the sign to deliver to the correct entrance (CONT), driving at speed down the drive and leaving her radio blaring, all suggest that Georgia was not paying enough attention as she hurried to deliver the soup. While Georgia contributed to the incident through her own negligence this does not excuse <i>CC Ltd</i> from liability. <i>CC Ltd</i> is responsible for Georgia's torts and is likely to have to pay damages for the injuries caused to the gardener if the case goes to court (L4).</p>	14	<p>AO1: 2 AO2: 3 AO3: 4 AO4: 5</p> <p>QWC is assessed in this question.</p> <p>Levels of response</p> <p>Level 4 (10 - 14 marks) Candidate evaluates <i>CC Ltd's</i> legal position with regard to the incident at Catkin Nursing Home.</p> <p>Level 3 (6 - 9 marks) Candidate analyses <i>CC Ltd's</i> legal position with regard to the incident at Catkin Nursing Home.</p> <p>Level 2 (3 – 5 marks) Candidate applies knowledge and understanding of relevant legislation to the incident at Catkin Nursing home.</p> <p>Level 1 (1 – 2 marks) Candidate identifies relevant legal issues with no use of context.</p> <p>Please indicate each time a candidate achieves a particular level as this will help you allocate marks within that level.</p> <p>Context should be annotated every time L2 and L4 are awarded with the 'CONT' annotation.</p> <p>L2: Must contain more context than just name-dropping eg Georgia did not hear the gardener shouting. Non-contextual answer max Level 1.</p> <p>Level annotation required.</p>

Question		Answer	Mark	Guidance
4	(a)	<p>Indicative content:</p> <ul style="list-style-type: none"> • private law • disputes between parties • between plaintiff and defendant • remedies to compensate the victim • burden of proof on the balance of probabilities • not criminal. <p>Exemplar response:</p> <p>Eg Legislation that governs disputes between parties (1). Civil law is designed to compensate the victim for any damage or inconvenience they have suffered (1).</p> <p>Eg Civil law involves a complaint by one party about the behaviour of another (1). The courts decide the case on the balance of probabilities (1).</p>	2	<p>AO1: 2</p> <p>Up to two marks.</p> <p>Do not award examples.</p> <p>No context required.</p>
Question		Answer	Mark	Guidance
4	(b)	<p>Indicative content:</p> <ul style="list-style-type: none"> • falling short of the standards expected of an employee • wrongful/improper/unlawful behaviour by an employee • inappropriate attitude or actions of an employee • deliberately break the reasonable rules of employer. 	1	<p>AO1: 1</p> <p>For one mark.</p> <p>Do not award specific examples.</p> <p>No context required.</p>

Question		Answer	Mark	Guidance
4	(c)	<p>Indicative content:</p> <ul style="list-style-type: none"> • advice • negotiation • conciliation • arbitration. <p>Exemplar response:</p> <p>Eg A conciliation service (1). This is where ACAS helps the employer and employee resolve their dispute by guiding them towards a compromise (1).</p> <p>Eg Arbitration (1). ACAS listens to the employer's and the employee's point of view and makes a judgment which is legally binding on both parties (1).</p>	4	<p>AO1: 4</p> <p>One mark for each correct identification up to a maximum of two identifications, plus a further one mark for each of two descriptions.</p> <p>The role of the LRA in Northern Ireland is identical to the role of ACAS in Britain.</p> <p>No context required.</p> <p>A specific service must be named to award marks.</p>

Question		Answer	Mark	Guidance
4	(d)	<p>Indicative content:</p> <ul style="list-style-type: none"> wrongful dismissal cases are procedurally straightforward so appropriate for ACAS attempts resolution (rather than just arbitration) fewer formalities and forms quicker procedure/shorter waiting list less legalistic/austere confidential/private cheaper/free of charge. <p>Exemplar response:</p> <p>Eg If an employee loses their case they may be ordered to pay court costs at an employment tribunal (1) but ACAS provides all of its services for free (1).</p> <p>Eg Pursuing a claim for wrongful dismissal with ACAS will normally be faster (1) as it has shorter waiting lists than the tribunal service which tends to deal with the more complex cases (1).</p>	4	<p>AO1: 2 AO2: 2</p> <p>One mark for each correct identification up to a maximum of two identifications, plus a further one mark for each of two explanations.</p> <p>The role of the LRA in Northern Ireland is identical to the role of ACAS in Britain.</p> <p>No context required.</p>

Question		Answer	Mark	Guidance
4	(e)	<p>Use levels of response criteria.</p> <p>Indicative content:</p> <ul style="list-style-type: none"> suspicion sufficient for suspension full investigation required for dismissal Carmen humiliated in front of colleagues Carmen's disciplinary record – poor time keeping verbal/written warning procedures requirement to issue written statement of allegation entitlement to meeting with employer to discuss situation 	14	<p>AO1: 2 AO2: 3 AO3: 4 AO4: 5</p> <p>Levels of response</p> <p>Level 4 (10 - 14 marks) Candidate evaluates Carmen's claim for wrongful dismissal.</p> <p>Level 3 (6 - 9 marks) Candidate analyses Carmen's claim for wrongful dismissal.</p> <p>Level 2 (3 – 5 marks)</p>

Question	Answer	Mark	Guidance
	<ul style="list-style-type: none"> • entitlement to support from trade union rep (or friend/relative) • Carmen given no right of reply to allegation • entitlement to 1 week's notice for 1 month's employment • right to appeal • statutory dismissal procedure • innocent? deliberate? • incompetence? lack of training? • minor/gross misconduct? • summarial dismissal justified? <p>Exemplar response:</p> <p>Eg Any employer who wishes to dismiss an employee must follow statutory dismissal procedures (L1). Marcus did not give Carmen a written statement (CONT) of the allegations against her and as such has breached statutory legislation (L2). This, almost certainly, makes the dismissal wrongful because, by his impulsive actions and lack of written statement, Marcus has effectively denied Carmen the right to reply (L3). However, if Marcus can prove that Carmen has been deliberately adding extra salt to the soup (CONT), with the intention of damaging CC Ltd's reputation, then Carmen would be guilty of gross misconduct. In this situation Marcus would be justified in dismissing her instantly and without notice and any claim for wrongful dismissal would not be upheld (L4).</p>		<p>Candidate applies knowledge and understanding of Carmen's case to the law relating to wrongful dismissal.</p> <p>Level 1 (1 – 2 marks) Candidate identifies factor(s) of relevance in a wrongful dismissal case with no use of context.</p> <p>Please indicate each time a candidate achieves a particular level as this will help you allocate marks within that level.</p> <p>Context should be annotated every time L2 and L4 are awarded with the 'CONT' annotation.</p> <p>L2: Must contain more context than just name-dropping eg Carmen had already received one verbal warning.</p> <p>Non-contextual answer max Level 1.</p> <p>Level annotation required.</p>

Testing of QWC

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[4 marks representing the appropriate level of written communication are embedded in this level of response]

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[3 marks representing the appropriate level of written communication are embedded in this level of response]

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[2 marks representing the appropriate level of written communication are embedded in this level of response]

Level 1:

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[1 mark representing the appropriate level of written communication is embedded in this level of response]

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