

# Cambridge International AS & A Level

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**LAW****9084/32**

Paper 3 Law of Contract

**May/June 2025**

MARK SCHEME

Maximum Mark: 75

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Published

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This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began, which would have considered the acceptability of alternative answers.

Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

Cambridge International will not enter into discussions about these mark schemes.

Cambridge International is publishing the mark schemes for the May/June 2025 series for most Cambridge IGCSE, Cambridge International A and AS Level components, and some Cambridge O Level components.

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This document consists of **20** printed pages.

**Generic Marking Principles**

These general marking principles must be applied by all examiners when marking candidate answers. They should be applied alongside the specific content of the mark scheme or generic level descriptions for a question. Each question paper and mark scheme will also comply with these marking principles.

**GENERIC MARKING PRINCIPLE 1:**

Marks must be awarded in line with:

- the specific content of the mark scheme or the generic level descriptors for the question
- the specific skills defined in the mark scheme or in the generic level descriptors for the question
- the standard of response required by a candidate as exemplified by the standardisation scripts.

**GENERIC MARKING PRINCIPLE 2:**

Marks awarded are always **whole marks** (not half marks, or other fractions).

**GENERIC MARKING PRINCIPLE 3:**

Marks must be awarded **positively**:

- marks are awarded for correct/valid answers, as defined in the mark scheme. However, credit is given for valid answers which go beyond the scope of the syllabus and mark scheme, referring to your Team Leader as appropriate
- marks are awarded when candidates clearly demonstrate what they know and can do
- marks are not deducted for errors
- marks are not deducted for omissions
- answers should only be judged on the quality of spelling, punctuation and grammar when these features are specifically assessed by the question as indicated by the mark scheme. The meaning, however, should be unambiguous.

**GENERIC MARKING PRINCIPLE 4:**

Rules must be applied consistently, e.g. in situations where candidates have not followed instructions or in the application of generic level descriptors.

**GENERIC MARKING PRINCIPLE 5:**

Marks should be awarded using the full range of marks defined in the mark scheme for the question (however; the use of the full mark range may be limited according to the quality of the candidate responses seen).

**GENERIC MARKING PRINCIPLE 6:**

Marks awarded are based solely on the requirements as defined in the mark scheme. Marks should not be awarded with grade thresholds or grade descriptors in mind.

**Social Science-Specific Marking Principles  
(for point-based marking)****1 Components using point-based marking:**

- Point marking is often used to reward knowledge, understanding and application of skills. We give credit where the candidate's answer shows relevant knowledge, understanding and application of skills in answering the question. We do not give credit where the answer shows confusion.

From this it follows that we:

- a** DO credit answers which are worded differently from the mark scheme if they clearly convey the same meaning (unless the mark scheme requires a specific term)
- b** DO credit alternative answers/examples which are not written in the mark scheme if they are correct
- c** DO credit answers where candidates give more than one correct answer in one prompt/numbered/scaffolded space where extended writing is required rather than list-type answers. For example, questions that require  $n$  reasons (e.g. State two reasons ...).
- d** DO NOT credit answers simply for using a 'key term' unless that is all that is required. (Check for evidence it is understood and not used wrongly.)
- e** DO NOT credit answers which are obviously self-contradicting or trying to cover all possibilities
- f** DO NOT give further credit for what is effectively repetition of a correct point already credited unless the language itself is being tested. This applies equally to 'mirror statements' (i.e. polluted/not polluted).
- g** DO NOT require spellings to be correct, unless this is part of the test. However spellings of syllabus terms must allow for clear and unambiguous separation from other syllabus terms with which they may be confused (e.g. Corrasion/Corrosion)

**2 Presentation of mark scheme:**

- Slashes (/) or the word 'or' separate alternative ways of making the same point.
- Semi colons (;) bullet points (•) or figures in brackets (1) separate different points.
- Content in the answer column in brackets is for examiner information/context to clarify the marking but is not required to earn the mark (except Accounting syllabuses where they indicate negative numbers).

**3 Calculation questions:**

- The mark scheme will show the steps in the most likely correct method(s), the mark for each step, the correct answer(s) and the mark for each answer
- If working/explanation is considered essential for full credit, this will be indicated in the question paper and in the mark scheme. In all other instances, the correct answer to a calculation should be given full credit, even if no supporting working is shown.
- Where the candidate uses a valid method which is not covered by the mark scheme, award equivalent marks for reaching equivalent stages.
- Where an answer makes use of a candidate's own incorrect figure from previous working, the 'own figure rule' applies: full marks will be given if a correct and complete method is used. Further guidance will be included in the mark scheme where necessary and any exceptions to this general principle will be noted.

**4 Annotation:**

- For point marking, ticks can be used to indicate correct answers and crosses can be used to indicate wrong answers. There is no direct relationship between ticks and marks. Ticks have no defined meaning for levels of response marking.
- For levels of response marking, the level awarded should be annotated on the script.
- Other annotations will be used by examiners as agreed during standardisation, and the meaning will be understood by all examiners who marked that paper.

**Annotations guidance for centres**

Examiners use a system of annotations as a shorthand for communicating their marking decisions to one another. Examiners are trained during the standardisation process on how and when to use annotations. The purpose of annotations is to inform the standardisation and monitoring processes and guide the supervising examiners when they are checking the work of examiners within their team. The meaning of annotations and how they are used is specific to each component and is understood by all examiners who mark the component.

We publish annotations in our mark schemes to help centres understand the annotations they may see on copies of scripts. Note that there may not be a direct correlation between the number of annotations on a script and the mark awarded. Similarly, the use of an annotation may not be an indication of the quality of the response.

The annotations listed below were available to examiners marking this component in this series.

**Annotations**

Annotation	Meaning
	Unclear
	Accurate
	Benefit of the doubt
	Subordinate clause / consequential error
	Incorrect point
	Evaluation
	Dynamic, Horizontal Wavy line that can be expanded
Highlighter	Highlight
	Two statements are linked
	Not answered question
Off page comment	Off Page Comment
	Repeat
	Indicates that the point has been noted, but no credit has been given.
	Indicates that the point has been noted, but no credit has been given
	Correct point
	Dynamic, Vertical Wavy line that can be expanded

**Guidance on using levels-based mark schemes**

Marking of work should be positive, rewarding achievement where possible, but clearly differentiating across the whole range of marks, where appropriate.

The marker should look at the work and then make a judgement about which level statement is the best fit. In practice, work does not always match one level statement precisely so a judgement may need to be made between two or more level statements.

Once a best-fit level statement has been identified, use the following guidance to decide on a specific mark:

- If the candidate's work **convincingly** meets the level statement, award the highest mark.
- If the candidate's work **adequately** meets the level statement, award the most appropriate mark in the middle of the range (where middle marks are available).
- If the candidate's work **just** meets the level statement, award the lowest mark.

**Assessment objectives****AO1 Knowledge and understanding**

- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

**AO2 Analysis and application**

- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

**AO3 Evaluation**

- Evaluate legal concepts, principles and rules.
- Communicate legal argument coherently on the basis of evidence.

**Section A****Table A**

Use this table to give marks for each candidate response for Question 1, and 2

Level	AO1 Knowledge and understanding 12 marks	AO2 Analysis and application 5 marks	AO3 Evaluation 8 marks
	Description	Description	Description
4	<b>10–12 marks</b> Accurate and detailed in most relevant areas. Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.		
3	<b>7–9 marks</b> Mostly accurate but may not be detailed in some relevant areas. Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	<b>4–5 marks</b> Mostly focused and reasoned analysis throughout. The analysis is supported by effective and well-developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.	<b>6–8 marks</b> Mostly focused and reasoned evaluation of most of the relevant issues. Effectively supported by relevant material. Coherent argument
2	<b>4–6 marks</b> Some accuracy but lacks detail in relevant areas. Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology	<b>2–3 marks</b> Some reasoned analysis. The analysis is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.	<b>3–5 marks</b> Some evaluation, reasoned at times, of some of the relevant issues. Supported by some relevant material. Some coherent argument.
1	<b>1–3 marks</b> Limited accuracy. Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	<b>1 mark</b> Limited analysis. The analysis is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.	<b>1–2 marks</b> Limited evaluation of a relevant issue. Limited or no use of relevant material. Limited or no argument.

<b>Level</b>	<b>AO1 Knowledge and understanding 12 marks</b>	<b>AO2 Analysis and application 5 marks</b>	<b>AO3 Evaluation 8 marks</b>
0	<b>0 marks</b> <ul style="list-style-type: none"><li>• No creditable content</li></ul>	<b>0 marks</b> <ul style="list-style-type: none"><li>• No creditable content</li></ul>	<b>0 marks</b> <ul style="list-style-type: none"><li>• No creditable content</li></ul>

Question	Answer	Marks
1	<p><b>Advise Graham of the damages he might recover from ABL.</b></p> <p>Use Table A to mark candidate responses to this question.</p> <p>AO1 out of 12 marks.</p> <p>AO2 out of 5 marks.</p> <p>AO3 out of 8 marks.</p> <p><b>Indicative content:</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <p>Common Law remedies:</p> <ul style="list-style-type: none"> <li>• Damages are a sum of money paid by the defendant to the claimant</li> <li>• Aim is to compensate the claimant for the loss suffered as a result of the breach</li> <li>• Claimant must choose between: <ul style="list-style-type: none"> <li>– Expectation loss – awarded for the loss of bargain.</li> <li>– Reliance loss – awarded for out of pocket expenses</li> </ul> </li> <li>• Speculative damages <ul style="list-style-type: none"> <li>– The courts are reluctant to grant speculative damages</li> <li>– In exceptional cases damages may be awarded for damage to reputation, <i>Addis v The Gramophone Co</i>, <i>Chaplin v Hicks</i> and damage for mental distress, <i>Jackson v Horizon Holidays Ltd</i>, <i>Jarvis v Swan Tours</i></li> </ul> </li> <li>• Limitations on recovery of damage: <ul style="list-style-type: none"> <li>– Causation. Losses are only recoverable if they were caused by the breach of contract.</li> <li>– Remoteness. Used as a way of establishing which losses can be the subject of compensation. <i>Hadley v Baxendale</i> two part test further developed in <i>Victoria Laundry Ltd v Newman Industries Ltd</i>, <i>The Heron II</i></li> <li>– Mitigation. The claimant is expected to keep their damages to a minimum and cannot claim for losses they could reasonably have avoided, <i>Pilkington v Wood</i>, <i>British Westinghouse Electric v Underground Electric</i>.</li> </ul> </li> </ul> <p><b>Credit any other relevant content</b></p> <p><b>AO2 Analysis and application and AO3 Evaluation:</b></p> <p>Graham without a fitted cooker:</p> <ul style="list-style-type: none"> <li>• Graham must choose between: <ul style="list-style-type: none"> <li>– Expectation loss – the loss of profit from customers</li> <li>– Reliance loss – he purchased food in reliance of the contract being performed</li> </ul> </li> <li>• These losses are a natural consequence of the breach and would have been in the contemplation of the parties at the time of making the contract</li> </ul>	25

Question	Answer	Marks
1	<ul style="list-style-type: none"> <li>• Graham would be expected to mitigate his losses: <ul style="list-style-type: none"> <li>– Graham could have offered his customers an alternative premises, although logistical practicalities would need to be taken into consideration</li> <li>– Graham could also have sought alternative equipment, perhaps borrowing it from another restaurant</li> <li>– Graham could have made arrangements for someone else to install the cooker</li> </ul> </li> <li>• Reach a sensible conclusion taking account of possible mitigation</li> </ul> <p>Graham and the bad publicity:</p> <ul style="list-style-type: none"> <li>• Graham may seek speculative damages for damage to his reputation.</li> <li>• Traditionally there was no award for such issues as loss of reputation</li> <li>• However, he has been deprived of the opportunity to gain good publicity for his restaurant</li> <li>• Graham may <b>or</b> may not receive speculative damages in respect of the damage to reputation</li> </ul> <p>Graham and the mental distress:</p> <ul style="list-style-type: none"> <li>• Graham may claim speculative damages in respect of the mental distress</li> <li>• The general rule is that damages cannot be awarded for the mental distress</li> <li>• Traditionally there was no award for mental distress but an exception to this general rule applies e.g. loss of enjoyment. However this is usually only in respect of consumer contracts</li> <li>• Graham's contract with AB Cookers will be considered a business to business (commercial) contract and his mental distress was not as a result of loss of enjoyment</li> <li>• It is unlikely that Graham will be successful in claiming damages for his mental distress.</li> </ul> <p><b>Credit any other relevant analysis and application and evaluation</b></p>	
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
2	<p><b>Advise whether the promises made by the parties are supported by consideration and therefore enforceable.</b></p> <p>Use Table A to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p><b>Indicative content:</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Consideration definition, <i>Currie v Misa</i>, <i>Dunlop v Selfridge</i></li> <li>• Consideration must be sufficient but need not be adequate, <i>Chappell v Nestle</i>, <i>Thomas v Thomas</i></li> <li>• To be sufficient, what is promised must be real, tangible and have value in the eyes of the law, <i>Thomas v Thomas</i>, <i>White v Bluett</i>, <i>Ward v Byham</i></li> <li>• Past consideration: <ul style="list-style-type: none"> <li>– Past consideration is no consideration, <i>Roscorla v Thomas</i>, <i>Re Mcardle</i></li> <li>– Exception to past consideration, <i>Lampleigh v Braithwaite</i>, <i>Re Casey's Patent</i></li> </ul> </li> <li>• Consideration is not a pre-existing duty rule: <ul style="list-style-type: none"> <li>– Performance of an existing contractual duty is not seen as having value, <i>Stilk v Myrick</i></li> <li>– Exception to the existing contractual duty rule is where performance goes beyond the original duty – <i>Hartley v Ponsonby</i></li> </ul> </li> <li>• Part-payment of an existing debt: <ul style="list-style-type: none"> <li>– Part-payment is not valid consideration for a promise to forgo the balance, <i>Pinnel's Case</i>, <i>Foakes v Beer</i></li> <li>– Exception to part-payment, accord and satisfaction.</li> </ul> </li> </ul> <p><b>Credit any other relevant content</b></p> <p><b>AO2 Analysis and application and AO3 Evaluation:</b></p> <p>Ben's claim for the £100 bonus:</p> <ul style="list-style-type: none"> <li>• Ben's original contract is to work as a chef, so cleaning the café falls outside his pre-existing contractual duties</li> <li>• By staying behind and doing additional work, Ben provided fresh consideration for George's promise to pay £100</li> <li>• George's promise will be binding and Ben will have a valid claim for the £100</li> <li>• Consideration has no value when it has already been done at the time of the agreement</li> <li>• George's promise to pay the £100 bonus came after the cleaning had been completed</li> <li>• This would be considered past consideration</li> </ul>	25

Question	Answer	Marks
2	<ul style="list-style-type: none"> <li>Consider whether the exception to the past rule applies</li> <li>Was the work done at the request of the promisor?</li> <li>Was there an implied understanding that the task should be paid for?</li> <li>Reach a sensible conclusion based on the past consideration rule or the Lampleigh exception</li> </ul> <p>Ben and the demand for the outstanding debt:</p> <ul style="list-style-type: none"> <li>Mary will claim that part payment of the debt owed is not valid consideration for a promise to forgo the balance</li> <li>Even though Mary agreed to accept a lesser amount, she can claim the remainder of the debt</li> <li>The exception of accord and satisfaction does not apply here as Mary did not accept different consideration or on a different date</li> <li>Conclude that Ben will be required to pay Mary the remaining 50%.</li> </ul> <p><b>Credit any other relevant analysis and application and evaluation</b></p>	
AO1		12
AO2		5
AO3		8

**Section B****Table B**

Use this table to give marks for each candidate response for **Question 3, 4 and 5**

Level	AO1 Knowledge and understanding 12 marks	AO2 Analysis and application 5 marks	AO3 Evaluation 8 marks
	Description	Description	Description
4	<b>10–12 marks</b> Accurate and detailed in most relevant areas. Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.		
3	<b>7–9 marks</b> Mostly accurate but may not be detailed in some relevant areas. Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	<b>4–5 marks</b> Mostly focused and reasoned analysis throughout. The analysis is supported by effective and well-developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.	<b>6–8 marks</b> Mostly focused and reasoned evaluation of most of the relevant issues. Effectively supported by relevant material. Coherent argument
2	<b>4–6 marks</b> Some accuracy but lacks detail in relevant areas. Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology	<b>2–3 marks</b> Some reasoned analysis. The analysis is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.	<b>3–5 marks</b> Some evaluation, reasoned at times, of some of the relevant issues. Supported by some relevant material. Some coherent argument.
1	<b>1–3 marks</b> Limited accuracy. Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	<b>1 mark</b> Limited analysis. The analysis is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.	<b>1–2 marks</b> Limited evaluation of a relevant issue. Limited or no use of relevant material. Limited or no argument.

<b>Level</b>	<b>AO1 Knowledge and understanding 12 marks</b>	<b>AO2 Analysis and application 5 marks</b>	<b>AO3 Evaluation 8 marks</b>
	<b>Description</b>	<b>Description</b>	<b>Description</b>
0	<b>0 marks</b> <ul style="list-style-type: none"><li>• No creditable content</li></ul>	<b>0 marks</b> <ul style="list-style-type: none"><li>• No creditable content</li></ul>	<b>0 marks</b> <ul style="list-style-type: none"><li>• No creditable content</li></ul>

Question	Answer	Marks
3	<p><b>The terms implied by the Consumer Rights Act 2015 protect against poor quality products.</b></p> <p><b>Assess the validity of this statement.</b></p> <p>Use Table B to mark candidate responses to this question.</p> <p>AO1 out of 12 marks.</p> <p>AO2 out of 5 marks.</p> <p>AO3 out of 8 marks.</p> <p><b>Indicative content:</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <p>The implied terms include</p> <ul style="list-style-type: none"> <li>• s.9 the right of satisfactory quality, <i>Rogers v Parish (Scarborough) Ltd</i></li> <li>• s.10 the right of fitness for particular purpose, <i>Grant v Australian Knitting Mills Ltd, Griffiths v Peter Conway Ltd</i></li> <li>• s.11 – the right relating to description, <i>Beale v Taylor</i></li> <li>• S.20 the right to reject</li> <li>• s.22 time limit for short-term right to reject (reject within 30 days and a refund given within 14 days)</li> <li>• S.23 the right to repair or replacement</li> <li>• S.24 the right to a price reduction or the final right to reject</li> </ul> <p><b>Credit any other relevant content including:</b></p> <p>Chapter 3 Digital Content:</p> <ul style="list-style-type: none"> <li>• s.34 digital content to be of a satisfactory quality</li> <li>• s.35 digital content to be fit for a particular purpose</li> <li>• s.36 digital content to be as described</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation:</b></p> <p>Consumer are protected:</p> <ul style="list-style-type: none"> <li>• The Act protects consumers as it makes it clear what the requirement of satisfactory quality is 'where the goods meet the standard that a reasonable person would consider satisfactory taking account of various factors'</li> <li>• Taking an objective test is beneficial to the consumer as it does not rely solely on the view of the trader</li> <li>• Protection is given to the consumer, expressly or impliedly, if they have made the trader aware of the particular purpose for which they are contracting for the goods</li> <li>• The consumer is protected as they are able to rely on the skill and judgement of the seller. However, the burden is on the consumer to make the seller aware if they have, for example, a particular sensitivity</li> <li>• Consumers are protected when buying, for example, online as the goods must be as described expressly or impliedly</li> </ul>	25

Question	Answer	Marks
3	<ul style="list-style-type: none"> <li>• The Consumer Rights Act gives consumers protection when it comes to digital downloads that fail to work including digital content supplied free with goods</li> <li>• The short-term right to reject protects consumers as it allows them to reject faulty goods</li> <li>• The additional right to repair or replacement gives additional protection if the s20 right is not exercised</li> <li>• The trader is only permitted one attempt at repair or replacement and cannot demand that they keep trying, after the one attempt the consumer has the right to a refund</li> <li>• A further protection afforded those purchasing digital contents is that they are entitled to a repair or replacement if the digital content is faulty and even compensation if other downloads or devices are affected by the fault product.</li> </ul> <p><b>Credit any other relevant analysis and application and evaluation</b></p>	
		12
AO1		12
AO2		5
AO3		8

Question	Answer	Marks
4	<p><b>A contract is only discharged when the parties have performed their exact and entire obligations.</b></p> <p><b>Assess the validity of this statement.</b></p> <p>Use Table B to mark candidate responses to this question.</p> <p>AO1 out of 12 marks.</p> <p>AO2 out of 5 marks.</p> <p>AO3 out of 8 marks.</p> <p><b>Indicative content:</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• The entire/strict performance rule; entire obligation must be performed completely and in its entirety, <i>Cutter v Powell</i>, <i>Re Moore and Co. Ltd and Landauer and Co</i></li> <li>• Exceptions to the strict rule: <ul style="list-style-type: none"> <li>– Severable/divisible contract – where a contract can be seen in separate parts, non-completion of one part is not a breach of the whole, <i>Ritchie v Atkinson</i>, <i>Taylor v Webb</i></li> <li>– Substantial performance – where a party completes substantially if not precisely all parts of the contract. Payment will be required less the cost to rectify the imperfections, <i>Hoenig v Isaacs</i>, <i>Bolton v Mahadeva</i>, <i>Young v Thames Properties Ltd</i></li> <li>– Voluntary acceptance of part-performance – where one party has agreed that the other party need not complete the entire contract, <i>Sumpter v Hedges</i></li> <li>– Prevention of performance, <i>Planche v Colburn</i></li> <li>– Timing – performance must occur at the time agreed in the contract (time is of the essence), <i>Union Eagle Ltd v Golden Achievement Ltd</i></li> <li>– Tender of performance -if a party offers to perform their contractual obligations but the other party refuses, the offering party may be discharged, <i>Startup v Macdonald</i></li> <li>– Vicarious performance – performance by a third party may discharge a contract if the contract doesn't require personal performance, <i>British Waggon Co v Lea &amp; Co</i></li> </ul> </li> </ul> <p><b>Credit any other relevant content</b></p> <p><b>AO2 Analysis and application and AO3 Evaluation:</b></p> <ul style="list-style-type: none"> <li>• Entire performance is still the starting point in any dispute and, in a dispute, the court will expect exact and complete performance</li> <li>• If there is a substantial lack of performance the courts will not consider the contract complete and the strict rule will apply</li> <li>• Substantial performance allows a party to avoid the strict rule as a party can escape, for example, without completing all the required work. However, there is a problem defining 'substantial'. The strict rule is avoided</li> </ul>	25

Question	Answer	Marks
4	<ul style="list-style-type: none"> <li>Whilst substantial may allow for the strict rule to be avoided the court will use their discretion to reach a just and fair decision through <i>quantum meruit</i></li> <li>Voluntary acceptance of part-performance appears to allow parties to avoid the strict rule but, the requirement of voluntary acceptance means that if there is no agreement the strict rule will apply</li> <li>In part-performance the voluntary acceptance (consent) must acknowledge that the defaulting party is entitled to be paid for what they have completed so far, as the agreement was made without undue influence. In the absence of such the entire rule will prevail</li> <li>The innocent party is protected in part-performance. If the innocent party has no option but to accept the work partially done, this is not considered consent to part-performance and the strict rule will be applied</li> <li>Categorising a contract as severable allows a party to avoid the entire performance. However, the defendant is required to show that each part of the contract can be discharged separately.</li> </ul> <p><b>Credit any other relevant analysis and application and evaluation</b></p>	
AO1		
AO2		
AO3		

Question	Answer	Marks
5	<p><b>Discuss the extent to which the rebuttable presumptions in intention to create legal relations lead to uncertainty.</b></p> <p>Use Table B to mark candidate responses to this question.</p> <p>AO1 out of 12 marks.</p> <p>AO2 out of 5 marks.</p> <p>AO3 out of 8 marks.</p> <p><b>Indicative content:</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <p>Social and domestic arrangements – rebuttable presumption that there is no intention to create legal relations, <i>Balfour v Balfour</i>, <i>Jones v Padavatton</i></p> <ul style="list-style-type: none"> <li>• Presumption may be rebutted: <ul style="list-style-type: none"> <li>– Where there is a reliance on the promise, <i>Parker v Clarke</i></li> <li>– Where contrary evidence to rebut can be produced, <i>Merritt v Merritt</i></li> <li>– Where financial security is at risk, <i>Simpkins v Pays</i></li> </ul> </li> <li>• Commercial and business agreements – very strong rebuttable presumption that there is intention to create legal relations</li> <li>• Presumptions may be rebutted: <ul style="list-style-type: none"> <li>– If clear words are used to show no legal intent, <i>Jones v Vernon Pools</i>, <i>Confetti Records v Warner Music UK Ltd</i></li> <li>– Where an honour pledge clause is inserted, <i>Rose and Frank Co v JR Crompton and Bros Ltd</i></li> <li>– Where the words used are not clear enough to amount to a specific promise, <i>Kleinwort Benson v Malaysia Mining</i></li> <li>– A statement indicating no previous legal liability may be seen as merely explaining the offer which is now being made, <i>Edwards v Skyways</i>.</li> </ul> </li> </ul> <p><b>Credit any other relevant content</b></p> <p><b>AO2 Analysis and application and AO3 Evaluation:</b></p> <ul style="list-style-type: none"> <li>• Uncertainty is caused when there are conflicting decisions. For example, in <i>Parker v Clarke</i> the parties relied on the agreement made with the older couple and the court found that as they had given up their security there was an intention. The daughter in <i>Jones v Padavatton</i> did a similar thing but the presumption was not rebutted – this case divided the Court of Appeal</li> <li>• There is uncertainty in gambling contracts for example the bingo, lottery cases. Whilst the cases are similar the decision vary</li> <li>• There is uncertainty as to what ‘contrary evidence’ might be needed to rebut the social and domestic arrangements presumption. There are no clear guidelines making giving advice difficult</li> <li>• The starting points for business agreements is that there is legal intent – this creates certainty</li> <li>• There may be uncertainty in terms of a ‘gentleman’s agreement’ as seen in <i>Blue v Ashley</i></li> </ul>	25

Question	Answer	Marks
5	<ul style="list-style-type: none"> <li>Uncertainty may arise when a court is deciding clarity in wording. It will be for the court to decide rather than the parties. By deciding each case on its own facts may be considered to cause uncertainty to parties</li> <li>There is uncertainty when cases fall into an 'in between' a social and commercial agreement. In such cases the presumption will vary on which side the decision is made – who has the best argument – <i>Sadler v Reynolds</i>.</li> </ul> <p><b>Credit any other relevant analysis and application and evaluation</b></p>	
	AO1	12
	AO2	5
	AO3	8