



A Level **Law**

7162/3A

Report on the examination

Version: 1.0
June 2025

Further copies of this report are available from aqa.org.uk

AQA retains the copyright on all its publications. However, registered centres for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to centres to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Introduction

As in previous years, explanation, analysis/ evaluation, and application were of very variable quality across the full range of answers. There were consistently strong answers to the lower value questions, with the exception of Question 06, where many students displayed little understanding of statutory instruments and many others did not attempt an answer at all. However, answers to the higher value questions, particularly Questions 10 and 11, struggled to maintain the progress in knowledge, understanding and ability to construct comprehensive, logical and accurate arguments of which there seemed clear evidence in the responses to last year's examination Paper and which were commented on in the previous Report.

As also in previous years, so in the examination this year it was evident that the persistent issues affecting the quality of student responses and on which comment has frequently been made remain largely unresolved. In particular:

- in examining a scenario-based question, it is important for students to make a decision at the outset about what rules are required to be explained, analysed and applied to propose a solution as to liability. It will usually be discovered that the solution does not require laborious rehearsal of all the elements of a valid contract. Rather, the likelihood is that the task will be to deal, say, with some aspect of formation and/or discharge or some aspect of terms or a vitiating factor or some combination. The facts may be very clear, for instance, that a contract is in existence. If so, it is totally unnecessary to spend time establishing that. The existence of the contract can be affirmed in a sentence or two. For example, realistically, the facts in the scenario in Question 10 could only be interpreted as establishing that a contract existed between Gabriel Ltd and Foxton Ltd. The essence of the task was to determine how, and with what legal consequences, the contract had been or could be discharged.
- students should always carefully observe the specific details of the instruction. For example, if, as was the case in Question 08, the instruction specifically calls for a discussion of the application of the *Consumer Rights Act 2015*, that cannot be interpreted as an invitation to discuss, additionally or (worse still) alternatively, the possible application of the rules on misrepresentation. This is so, even if, as actually was the case with Question 08, misrepresentation might have afforded a cause of action for Deeta.
- yet again (and, essentially, this is almost exactly the same comment that was made in the previous Report) it is important to understand the meaning and application of the equitable remedy of rescission and to distinguish it clearly from the common law remedy of treating the contract as at an end because of a 'repudiatory' (fundamental) breach. Rescission is not a universal expression for termination of a contract by an innocent party who has been the victim of a breach of contract. Yet this was exactly how it was treated by many students in this year's examination when answering Questions 10 and 11. It is an equitable remedy which may be awarded at the discretion of a judge where, say, there has been a misrepresentation or there has been economic

duress. Its effect will be to treat the contract as void from the outset, so that it is as if the contract had never been made. It will be unavailable unless both parties can be restored to their original position and may also be defeated by an issue such as delay. By contrast, at common law, the innocent victim of a 'repudiatory' (fundamental) breach of contract will be able to 'treat the contract as at an end' ('elect' to do so) and will also be able to sue for damages. The effect of that election by the innocent party will be that the contract terminates from the time of communication of the election. Until that time, all rights and obligations remain enforceable

- also, yet again, whilst statutory remedies are very important – for example, those for breach of *Consumer Rights Act 2015* terms – so, too, are common law remedies, whether in the context of breach of statutory terms or not. In particular, it is necessary for students to be able to deal with damages as a remedy in a little more detail than is expressed in the simple assertion that “the claimant will be entitled to claim damages” or the conclusion that the amount of the damages will be, effectively, the whole of the contract price (unless, of course, that is genuinely true!). In particular, claims for damages may raise issues of the measure of damages and/or remoteness of damage, as did Questions 8, 10 and 11 in the examination.

Question 01

This question required students to select the statement which is false. The correct option was option D:

The only remedy for negligent misrepresentation is damages.

A very large proportion of students selected this as the correct answer, clearly aware that, in addition to damages, the remedy of rescission is also available for a negligent misrepresentation. Of the remaining students who selected an incorrect option, the choice was relatively evenly divided between options B and C, with a much smaller number choosing option A. All three options, A, B and C contained a true statement. As with negligent, so with fraudulent misrepresentation, the remedies include rescission and damages (option A). Rescission is an equitable remedy which a court may consider it inequitable to award where there is significant delay in making the claim (option B). A distinguishing feature of innocent misrepresentation is the restricted availability of remedies (option C).

Question 02

This question required students to select the statement which is true. The correct option was option B:

A term cannot exclude liability for breach of a term as to reasonable care and skill imposed by the *Consumer Rights Act 2015*.

Once again, a very large proportion of students selected this as the correct answer. In doing so, they understood the operation of the *Consumer Rights Act 2015* s57 in prohibiting exclusion or limitation of liability in relation to breach of s49 in a contract for services. Of the remaining students who selected an incorrect option, the choice was relatively evenly divided between options A and D, with a much smaller number choosing option C. All three options, A, C and D contained a false statement. It would be reasonable to suppose that the 2015 Act would take the same view of attempts to exclude liability for breach of terms in contracts for supply of goods as in those for the supply of services. To that extent, the statements in options A and B would have to contradict each other, as indeed they did, if one had to be true but the other false. However, option A was the wrong choice to represent the approach of the 2015 Act which, of course, is represented by option B. The relatively small number of students choosing option C strongly indicated that most understood that the general validity of exclusion clauses does not usually depend on the nature of the term (that is, as a condition or warranty) allegedly broken. Option D should have been treated as rather incomprehensible. How could a 'term' not be incorporated into a contract and yet affect the liability under it?

Question 03

This question required students to select the statement which 'best describes' how a by-law might be used. The correct option was option D:

To set out rules for a local area.

This option was chosen by a very high proportion of students, who correctly understood the relatively local, non-national application of by-laws. Incorrect option choices were mostly distributed between option A and option C, with only a very small proportion of students choosing option B. Options A, B and C all described functions generally within the province of statutory instruments, rather than by-laws, including option C, which would probably be achieved by an Order in Council, a specific form of statutory instrument.

Question 04

This question required students to select the statement which is false. The correct option was option C:

Judges' pay is determined by government.

The question was clearly found to be challenging by students, of whom rather less than half chose the correct option, in sharp contrast with the much higher proportion of correct choices in all of the other MCQs. Option C was a false statement, and so the correct choice, because protection of judges' pay from political interference is a way of protecting judicial independence. In the UK, judges' pay is set by an independent body (the Senior Salaries Review Body) which advises the government. It is paid from the Consolidated Fund and so not subject to annual parliamentary budgets. The most common incorrect choice was option B, which asserted that judges can review the legality of a government decision. This was

unquestionably a true statement since judges can review the legality of a government decision through judicial review, though the power has come under intense scrutiny at times in recent years, particularly from government itself. Options A and D were chosen by small, almost equal numbers of students. A was a true statement because, amongst other reasons, it would threaten the integrity of the whole of the justice system if it were otherwise. D was a true statement simply because that is the system established by the *Constitutional Reform Act 2005*.

Question 05

This question required students to select the statement which is true. The correct option was option C:

The burden of proof in a criminal trial is usually on the prosecution.

This option was chosen by a very high proportion of students, who clearly understood the general incidence of the burden of proof in a criminal trial, despite the fact that it is sometimes reversed. Incorrect options chosen were mostly distributed between options B and D, with a very small proportion of students choosing option A. The statement in option A was false because there are now extremely few civil law trials in which juries are used. The statement in option B was false because, overwhelmingly, criminal prosecutions are brought by the State but rarely by victims. The statement in option D was false because the standard of proof described was the standard generally applied in a criminal trial not a civil trial, which requires proof on the balance of probabilities.

Question 06

This question required students to explain how statutory instruments are made and to give two examples of matters that might be dealt with using a statutory instrument. If no examples were given, answers could not reach Band 3 (4-5 marks) in quality but could reach the maximum for Band 2 (2-3 marks).

Recognising that statutory instruments are a form of delegated legislation was an obvious place to start and many students did this. The explanation could then be developed by outlining how the delegation of power occurs (Parliament delegates law-making power by means of a parent or enabling act) and then identifying to whom the power is delegated (in the case of statutory instruments the delegation is usually to a government minister, though sometimes to an appropriate equivalent body). These three points were enough to explain how statutory instruments are made. However, other creditworthy points relevant to how they are made were related to further aspects of the process, such as 'laying before' Parliament subject to affirmative or negative resolution procedures.

Creditworthy examples could have been general or specific. General examples related to the nature/purpose of a statutory instrument – for example, to add detail to primary legislation; to modify primary legislation; to set commencement dates for provisions in primary

legislation; to deal with emergencies. Specific examples related to a particular statutory instrument or (some part of) its content. A combination of general and specific examples drawn from the same area could be regarded as two examples – for example, statutory instruments can deal with supplying detail to supplement primary legislation (general), and an example of a statutory instrument that does this (specific), say, Construction and Use Regulations for Road Vehicles to supply detail for primary legislation on Road Traffic.

Some students were clearly well-prepared for this question, and wrote confident, concise answers gaining high, often maximum, marks. Inevitably, however, there was a considerable degree of variation in the knowledge displayed about the details of the process, and of the ability to choose appropriate, sufficiently creditworthy examples (rather than to make vague, highly questionable suggestions). Sometimes, answers focused on the value attributed to the use of statutory instruments, for example in saving Parliamentary time, rather than on the process but were redeemed by appropriate examples, even if inspired by that rationale. More significantly, many students wrote answers for which little or no credit could be given. For example, those who wrote about by-laws under the guise of statutory instruments may have gained a small amount of credit by recognising that delegated legislation was involved, or perhaps an enabling or parent Act. Others seemed to confuse statutory instruments with statutory interpretation and so wrote irrelevant accounts of the various ‘rules’ on interpretation. Many answers suggested, in some other way that was never entirely made clear and that certainly presented no valid account of the meaning or creation of statutory instruments, that they would be used in trials to assist in the resolution of legal disputes. A very considerable number of students made no attempt at all to answer this question.

Question 07

In this question, students were informed that Alex had bought a pair of shoes from BriteStore but soon decided that he did not like them and so gave them to his friend, Cal. A few weeks after, Cal found that the shoes were falling apart, and he wanted BriteStore to replace them. By this time, he and Alex were no longer friends. Students were asked to refer to the rules on privity of contract and suggest why BriteStore would not be under any obligation to Cal to replace the shoes.

The traditional privity of contract rule provides that a third party to a contract who has no association with that contract and provides no consideration for any promises made cannot enforce any obligations under it (or, indeed, be bound by any) (***Dunlop v Selfridge***). The simple response, then, might be that Cal was a third party and so could have no rights under the contract between Alex and BriteStore. In that case, Cal’s only recourse would have been to a plea to Alex to exercise his (Alex’s) rights against BriteStore, so that Cal could benefit by them. Yet since they were no longer friends, this would have been an unlikely outcome.

However, this ignores the fact that there have always been (sometimes quite tortuously elaborated) exceptions to the rule. The major exception of general application is now found in the *Contract (Rights of Third Parties) Act 1999*. This states that a third party can enforce a term in a contract if:

- the third party is expressly identified in the contract by name, as a member of a class or as answering a particular description; and
- the contract expressly states that the third party may enforce the term or the term purports to confer a benefit on the third party

Realistically, this would be the only exception to the privity rule on which Cal might seek to rely if he wished to claim against BriteStore in his own right. Any attempt to justify the suggestion that BrightStore would be under no obligation to him to replace the shoes would have to be careful to consider the *1999 Act* and explain why it would not assist Cal. This would not be an onerous burden since, in truth, he did not fulfil any of the requirements stated in the *1999 Act*.

Most students were able to provide responses which were at least moderately creditworthy, and many were able to achieve marks in Band 3. Broadly speaking, creditworthy answers fell into one of three categories:

- those which accurately explained and applied both the traditional privity rule and the exception to it created by the *Contract (Rights of Third Parties) Act 1999* – Band 3 quality answers
- those which accurately explained and applied the traditional rule and, additionally (in some cases), made reference to a relevant element in the exception without clearly articulating the exception or its application – Band 2 answers
- those which identified some relevant element without succeeding in providing any accurate explanation or application – Band 1 answers

The Mark Scheme allowed for a reasonably generous interpretation of the requirements of the *1999 Act*, which did not have to be accurately named provided only that it was clear that the student understood that the exception derived from a (relatively) recent statute the purpose of which was to deal with the privity issue. Further, answers which suggested that the sole qualification imposed by this legislation was to be ‘expressly identified in the contract by name’ were given full credit. Equally, full credit was given to those answers which asserted that the sole qualification was that ‘the term purports to confer a benefit on the third party’ – this option was much more evident in answers than the equally creditworthy statutory alternative that ‘the contract expressly states that the third party may enforce the term’. Inevitably, these qualifications were rarely quoted word for word but some greater precision than, for instance, ‘the third party must be *mentioned* in the contract’ would have been desirable.

In Band 2 answers, the additional element related to the exception usually concerned an assertion that the privity rule might be avoided if the third party was named in the contract or the contract was for the third party’s benefit but without any obvious reference to either as a specific exception derived from statute or common law. Alternatively, it was sometimes related to a creditworthy account of the principle that might be derived from a case such as ***Jackson v Horizon Holidays***. Simple identification without supporting explanation of exceptions such as agency or collateral contracts were not usually creditworthy. A very small proportion of answers contained no creditworthy material. Such answers were commonly based on a fanciful attempt to explain why, even if in principle Cal could rely on enforcing obligations against BriteStore, none would have been broken or be subject to remedies, for

reasons such as legitimate ‘wear and tear’ or failure to make a claim within a relevant time period.

Question 08

The facts in the scenario for this question were that Deeta had bought a suitcase from Emma Travel having consulted Emma herself about suitcases that would comply with the size requirements to be taken into the passenger cabin of an aeroplane. Emma had shown Deeta a rack of suitcases fronted by a notice which informed shoppers that they were compliant, and Deeta had bought one. However, at the airport, the suitcase was deemed too large, and she was refused permission to take it into the passenger cabin. She had to pay £25 to have it stored in the hold. In truth, Emma had not noticed that the suitcase had been incorrectly displayed on the rack at Emma Travel. The task for students was to advise Deeta as to her rights and remedies against Emma Travel under the *Consumer Rights Act 2015*, including any associated common law remedy.

Under the 2015 Act, Emma Travel was clearly a trader and Deeta was a consumer. The contract was one for the supply of goods by way of sale, and so subject to terms as to satisfactory quality (s9), fitness for purpose (s10), and description (s11). Deeta had specified the purpose for which she required the suitcase and Emma Travel had (supposedly) responded accordingly. Emma’s conduct on behalf of Emma Travel could be taken expressly to acknowledge the purpose (s10) and be part of the description of the goods (s11) but also, implicitly, to incorporate a description of the maximum dimensions of the suitcase (though it was unnecessary for students to recognise this aspect of description). It was undeniable that Emma Travel was in breach of s10 and s11 but also, almost certainly of s9, too. There was no suggestion that the suitcase was in any other way of unsatisfactory quality but, given Deeta’s very clearly expressed requirement in relation to size compliance, that purpose was highly significant in considering ‘satisfactory’ quality.

Consequently, if she acted quickly enough on return from holiday (so that no more than 30 days had elapsed since purchase), Deeta could exercise her short term right to reject, return the suitcase and ask for a full refund (s19(3)(a), s20, s22). Alternatively, or if out of time for short term rejection, she could request a replacement suitcase conforming to the agreed description (repair would be irrelevant) (s19(3)(b), s23), or, ultimately, if neither of the previous remedies were available or succeeded, exercise either the right to a price reduction or, more likely, to final rejection (s19(3)(c), s20, s24). Additionally, Deeta could seek to recover damages at common law to compensate for the £25 that she had to pay to store the suitcase, arguing that such loss was a reasonably foreseeable consequence of the breach by Emma Travel on the facts known to Emma about Deeta’s purpose in buying the suitcase.

In general, there were many ‘good’ answers to this question, whilst most students wrote answers that were at least of ‘satisfactory’ quality. Structurally, answers tended to concentrate a little more on analysis of the terms and a little less on analysis of the remedies. They were particularly weak in dealing with the common law remedy of damages. Stronger answers established that the contract was one for supply of goods under the 2015 Act and that the relationship of trader/consumer existed between Emma Travel and Deeta. They then usually recognised that terms relating to fitness for purpose and description were in issue. They were

more likely to deal with fitness for purpose via s10 than via s9, though many did deal additionally or alternatively with s9. Few, however, explained that in the precise circumstances revealed by the facts in the scenario, the obligations as to fitness for purpose as an element of satisfactory quality under s9 would align almost perfectly with the obligations as to fitness for purpose imposed by s10. Weaker answers often omitted discussion of the status of the contract and the designation of the parties and moved directly to discussion of terms. When doing so, they were more likely to concentrate on one term only, whether relating to fitness for purpose or description. Some students were confused about the nature of the trader/consumer contract under the 2015 Act, which they incorrectly identified as one for the provision of services by Emma Travel. This seemed to be based on the interpretation of Emma's conduct in leading Deeta to the rack of suitcases and assuring her of their description and suitability as constituting a 'service' somehow separate from the essence of Emma's conduct as part of the process of 'selling' the suitcase. Understandably, this then led to the unfounded suggestion that Emma Travel may have been in breach of a requirement to exercise reasonable care and skill under s49 of the 2015 Act.

As indicated above, answers were of much more variable quality when dealing with the remedies for breach. Most students understood that the 2015 Act provided a series of remedies which would become available in a certain sequence and might be dependent both on time elapsed and on trader response to consumer choice. However, analysis and application of these remedies was not always comprehensive or accurate. Of the many that argued that Deeta would be able to take advantage of the short term right to reject, a significant proportion incorrectly stated the period of time during which it could be exercised or made no reference to that period at all. Equally, many who did correctly identify the time period made no use of the information in the scenario as to the amount of time that would probably have elapsed between Deeta's purchase of the suitcase and her return from holiday. This represented a missed opportunity to apply the rules more comprehensively to the facts. Where students raised the issue of repair or replacement (the second in the sequence of remedies provided by the statute), they often sensibly dismissed repair as irrelevant but also dismissed replacement, apparently on the basis that the replacement required would be of a suitcase of the same specification as that already supplied. This ignored the statutory requirement for a replacement which would be 'in conformity' with the terms of the contract, not one which was identical with the one already supplied. Many answers did succeed in reaching the stage of the right to a price reduction or the final right to reject, though the fact that the consumer could exercise only one or the other was not always evident. Much weaker answers drew no distinction between the short term and the final right to reject and advised simply that Deeta would have the right to reject, sometimes combining this with a statement about the presumption that a failure of the goods to conform to one of the terms at any time within six months was to be regarded as a failure from the outset, though rarely adding the proviso that this would be subject to contrary proof by the trader. The treatment of the possible recompense for the £25 payment to store the suitcase was by far the weakest component of most answers. It was not uncommon for this to consist of little more than a simple assertion that Deeta could sue to recover the £25 as damages. Few answers enquired further whether the loss was too remote (*Hadley v Baxendale*).

It is necessary to emphasise that the question specifically instructed students to deal with the rights and remedies under the *Consumer Rights Act 2015*, and with any associated common law remedy (which could only have been damages). It is true that Emma Travel made a statement

of fact (representation) about the compliance of the suitcase with luggage restrictions for airlines that induced Deeta to buy the suitcase. It is also true that the statement became part of the terms of the contract. Since the statement was false, it was a misrepresentation and also amounted to a breach of the terms of the contract. Had the instruction in the question simply asked for consideration of Deeta's rights and remedies, discussion of both misrepresentation and breach could have been equally creditworthy. As it was, though, the significant proportion of students who dealt with misrepresentation here secured only a small amount of credit for doing so.

Question 09

This question consisted of two components. The first component, worth 10 of the 15 marks available in total, required students to examine the view that law has an important role to play in balancing conflicting interests. The second component, worth the remaining 5 marks, required students to discuss the extent to which this balancing role can be seen in the context of the rules on misrepresentation in contract.

In examining the view that law has an important role to play in balancing conflicting interests, a possible strategy that could have been adopted by students was to explain and analyse:

- the meaning of an 'interest' in this context, including the different categories of interest, for example: public and private, business, and personal, collective, and individual, multi-layered/overlapping interests
- the concept of a 'balance' of interests, which cannot simply mean in all cases some kind of equal apportioning of 'goods' but must be dependent on context
- some of the mechanisms by which the law seeks to achieve a balance of interests, especially in substantive law and in rules governing the legal process
- areas of law selected as illustration, identifying the conflicting interests involved, the balance ideally to be achieved, and the mechanisms by which the law seeks to achieve it. Though it would be perfectly reasonable to refer to the law of contract here, it might be advisable to look also at other areas of substantive law, so as to extend the range of illustrations and enlarge the scope of the analysis.

On average, answers to this part of the question tended to be 'satisfactory,' rather than 'good' or 'excellent,' though, of course, a relatively small proportion of answers was much stronger. The latter responses were generally characterised by the attempt to introduce a philosophical approach, dealing, say, with the views of von Jhering and Pound on the nature of the interests with which the law is concerned, and with the views of Bentham, and sometimes Marx, on the aims that the law does and should pursue. Even amongst these stronger answers, few devoted any attention to the abstract issue of what might constitute a balance or what mechanisms might be used to achieve it, though these aspects often partially emerged in the discussion of specific examples.

Where those examples were drawn from the law of contract, they most often dealt with the operation of the *Consumer Rights Act 2015* and with the treatment of terms purporting to exclude or limit liability for breach of contract. In both cases, the emphasis was on the allegedly opposed interests of traders/commercial undertakings and consumers, though the

treatment was generally rather limited and superficial. When attention was devoted to other areas of substantive law, it was most successful in dealing with examples drawn from the law of tort, where the elements of the tort of nuisance, in particular, provided fertile ground to explore the balance between both private and public interests, and the adjustment of the balance could be mediated through manipulation of remedies restraining or enjoining conduct (injunctions) or providing for financial recompense. Examples were also often drawn from criminal law, where answers might debate the balance achieved between the interests of accused and victim, and the wider public interest, in making available to the accused pleas such as insanity and voluntary or involuntary intoxication. In this context, it was perhaps surprising that self-defence or defence of others was not cited and analysed more often.

Weaker answers tended to avoid developing any theoretical framework. Consequently, the quality of such answers depended almost entirely on the range and depth of analysis of the examples they examined, which were very variable. Predominantly, the approach was descriptive rather than analytical, with little attempt to place the detail of the examples within the context of concepts such as the meaning of balance and the methods of achieving it. It was not unusual for such answers to do little more than briefly examine one example only in that descriptive form. In some instances, answers ignored this part of the question and moved immediately to the second part concerning misrepresentation. Occasionally, some credit for the first part could be awarded to such answers because some analysis of a more general kind also emerged, but this was relatively rare. A very particular weakness of the failure to answer the first part of the question was that, inevitably, it undermined the foundation for the second part of the question.

In relation to the second part of the question, it was important to recall that the elements of misrepresentation in contract are usually considered to comprise:

- an untrue (false) statement of fact by one party to a contract which induced the other party to enter into the contract
- the degree of dishonesty involved: was the maker fraudulent, negligent, or innocent as to the falsity
- the remedies available: damages and/or rescission dependent, for example, on the degree of dishonesty

So, within the general concept of misrepresentation as a vitiating factor, and within the specific elements above of actionable misrepresentation, there was ample opportunity to evaluate the extent to which the law had sought, and achieved, a suitable balance of interests. For example, there are clearly public and private interests invested in making legally enforceable agreements (contracts). To what extent, then, is an appropriate balance created and preserved by even allowing for an action in misrepresentation, viewed, perhaps, in the context of freedom of contract? Are the rules on, say, statements of fact or inducement to enter the contract drawn in such a way as to make an acceptable contribution to preserving a balance? Are the designations of, and distinctions between, the different kinds of misrepresentation clear and supportable in terms of balance? Does the adjustment of range of remedies available by reference to the degree of culpability of the maker of the false statement permit an appropriate balance to be achieved?

In answering this part of the question, most students opted to deal with the balance represented by the way in which the degree of culpability of the maker of the statement (that is, whether the misrepresentation was fraudulent, negligent or innocent) is used to adjust the range of remedies that are, or may be, awarded. Accurate accounts which encompassed all three kinds and their remedies, and so were able to indicate clearly how the remedies available could vary with the level of culpability (subject to relevant judicial discretion) were likely to be judged at least of 'good' quality, whilst those which were more limited in range and/or accuracy would tend to fall within the 'satisfactory' or 'limited' categories. Some students did approach the answer by reference to the requirements to establish a misrepresentation, but this approach was usually a little less successful because the answers did not really engage with the balance issue itself, so that the discussion remained factual and descriptive rather than evaluative. This was also true of much weaker answers that adopted the culpability/remedies approach. Very few answers sought to develop any other approach. The relatively limited amount of time available to students to answer this part of the question constitutes a strong reminder that it was very important to establish an appropriate framework for this specific evaluation when answering the first part of the question.

Question 10

The facts in this scenario indicated unequivocally that there was a contract between Gabriel Ltd and Foxton Ltd by which Gabriel Ltd had undertaken to supply Foxton Ltd with a lorry of an agreed specification for a period of two days' hire for the sum of £2000. Foxton Ltd's reason for entering the contract was to obtain a suitable lorry to make a delivery of machinery to a client to an agreed deadline. However, shortly before Gabriel Ltd was required to supply the lorry, almost all of its lorries were vandalised, leaving only one which might have been suitable to fulfil the contract with Foxton Ltd. Choosing to allocate that lorry to a different (longstanding) client, Gabriel Ltd gave advance notice to Foxton Ltd that it would not be able to supply a suitable lorry.

Clearly, these facts required students to deal with the issue of discharge of contract, analysing how the contract had been or would be discharged and with what consequences for Gabriel Ltd and Foxton Ltd. The two possibilities were that there had been or would be a discharge by breach by Gabriel Ltd and for which it would be liable in some way, or a discharge by frustration, for which neither would be culpable but which would require appropriate financial adjustments to be made, according to statutory requirements.

Though students could have pursued (and did pursue) a variety of approaches to establish a solution to the issues of liability, it is suggested that the most efficient would have been to establish:

- the nature of the most important term(s) of the contract between Gabriel Ltd and Foxton Ltd. These would be Gabriel Ltd's obligation to supply a suitable lorry for two days and Foxton Ltd's obligation to pay £2000. These were express terms, fundamental to the contract and so conditions
- the consequences of breach of a condition: such breach would be a repudiatory (fundamental) breach allowing the innocent party to elect to treat the contract as at an end from the time of that election, and to sue for damages, or, where feasible, to elect to insist on performance and sue for damages

- the nature and consequence of Gabriel Ltd's advance notice that it would not supply the lorry (ignoring, initially, Gabriel Ltd's explanation that it could not do so because of the vandalising of its fleet of lorries): such notice would be an anticipatory breach of the term requiring supply of the lorry (a condition), and so notice of an intended repudiatory breach, allowing Foxton Ltd to terminate the contract immediately or to wait until the due date for supply had passed, when there would be an actual breach. A duty to mitigate loss would apply after termination, whether for anticipatory or actual breach, but perhaps not when Foxton Ltd initially refused to terminate
- what further claim might be made by Foxton Ltd: clearly, Foxton Ltd could recover any (entire or part) payment made to Gabriel Ltd in anticipation of the supply of the lorry. Strictly speaking, as based on a total failure of consideration, this would not be 'damages but an aspect of 'restitution' or 'quasi-contract' (a rationale not expected to be provided by students). Additionally, Foxton Ltd might seek damages. The main purpose of an award of damages for breach of contract is to put the innocent party in the position that would have resulted had the contract been properly completed. The significance to Foxton Ltd of the completion of its contract with Gabriel Ltd lay in the financial consequences of Foxton Ltd's completion of its further contract with its client for the delivery of the machinery, or the failure to do so. The details of that further contract were not disclosed in the facts of the scenario but it may be speculated that, on being enabled fully to complete its contract with that client, Foxton Ltd would probably have made an identifiable financial profit and would have avoided any financial loss resulting from a failed deadline. It seems, at the very least, that Gabriel Ltd ought reasonably to have been aware, and perhaps even was aware, that Foxton Ltd was making the delivery of machinery to a schedule, so that elements of profit and loss would be in issue as a claim for possible damages
- as an alternative to discharge by breach, the possibility that the contract was discharged by frustration: this entailed considering the meaning of frustration and the selection of physical impossibility as the most likely explanation, based on the fact that the damage caused by the vandalism had rendered it impossible for Gabriel Ltd to supply a suitable lorry
- the consequences of discharge by frustration as dictated by the *Law Reform (Frustrated Contracts) Act 1943*. The facts in the scenario did not indicate whether Foxton Ltd paid any sums of money in advance or was contractually required to do so, or whether Gabriel Ltd incurred any expenses in preparation, or whether either gained any benefit. However, any sums paid by Foxton Ltd before the date of frustration would be recoverable and any sums payable would cease to be (s1(2)), subject to deduction of a 'just' sum not greater than the total paid or payable to compensate Gabriel Ltd for any expense incurred. Additionally, under s1(3), if either Foxton Ltd or Gabriel Ltd received a 'valuable benefit' prior to discharge, the other could be required to pay a sum not exceeding the value of that benefit
- the possibility, however, that Gabriel Ltd's claim of frustration would fail because the frustration was 'self-induced' on account of the decision to allocate elsewhere the lorry that was possibly suitable. However, particular note should have been taken of the doubts about the evidence on this point that were inherent in the facts in the scenario: "One of the undamaged lorries *might* have been suitable for Foxton Ltd's delivery," not *was* suitable
- by way of conclusion, that a claim of discharge by frustration might succeed (with the consequences analysed and applied) but that, if it did not, then the contract would have

been discharged by the decision of Foxton Ltd to elect to accept Gabriel Ltd's repudiatory breach, whether anticipatory or actual (with the consequences analysed and applied).

In answering the question, most students did indeed understand that the scenario dealt with discharge of contract, and that this would be either by breach or by frustration, whichever way around they chose to deal with those two kinds of discharge. Consequently, the variation in quality of responses was rarely attributable to a lack of perception of the broad elements but was generally concerned with the ability of students to perceive the full range of issues raised and to move from definition/explanation (AO1) to more detailed analysis of the relevant rules (AO3), and then to convincing application to the facts (AO2). A significant structural problem also emerged in many answers which tended to affect the development of logical and comprehensive explanation/analysis and application. This was that, whether starting with breach or with frustration, a point was reached in the analysis when the alternative method of discharge might intrude. At this point, and without yet having concluded the explanation, analysis, and application of the method of discharge in which they were currently engaged, students often succumbed to the temptation to divert their attention to an analysis of the alternative method. Frequently, the result was incomplete analysis of both and confused conclusions, especially as to remedies.

Relatively few answers engaged in a comprehensive treatment of those issues, though many dealt strongly with some aspects whilst treating others superficially or omitting them completely. So, for example, students frequently discussed express terms but did not consider their nature as conditions, warranties, or innominate terms (***Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha***). Similarly, they correctly identified Gabriel Ltd's advance notice to Foxton Ltd of the intention not to supply a lorry as an anticipatory breach but then failed to go on to consider the election available to Foxton Ltd (to terminate for breach or to insist on waiting for the time for performance – ***Hochster v De La Tour***) in consequence of that anticipatory breach. In turn, this often meant that little attention was paid to the election actually made by Foxton Ltd, and to any consequences in relation to the duty to mitigate (***White and Carter (Councils) Ltd v McGregor***).

On the whole, explanation, analysis and application of frustration tended to be more accomplished than that of breach, particularly in relation to the meaning and scope of frustration (***Taylor v Caldwell***, ***Condor v The Barron Knights***), though sometimes students preferred to select frustration of the common venture as the basis for the claim, rather than impossibility of performance because of the unavailability of the subject matter. The major weakness in the treatment of frustration centred on the significance of the fact that Gabriel Ltd did not seek to fulfil its contract with Foxton Ltd by providing the lorry which *might* have been suitable. Many students dealt fully and appropriately with the rules on 'self-induced' frustration and their application to the facts (***Maritime National Fish Ltd v Ocean Trawlers Ltd***), including going on to consider the *Law Reform (Frustrated Contracts) Act 1943*, whatever their conclusion about whether frustration could be established. However, many who raised the issue of self-induced frustration interpreted the facts as definitely excluding a claim of frustration and so did not go on to deal with the 1943 Act at all. Still weaker answers on this aspect missed the self-induced frustration issue completely. Answers sometimes presented an interesting and creditworthy alternative explanation for 'self-induced' frustration, namely that Foxton Ltd was at fault for failing to make sufficient arrangements to protect its fleet of vehicles from vandalism.

Perhaps the weakest element in most answers was the treatment of possible remedies, both for breach and for frustration. Consistent with the general comments at the start of this Report, there was a very common, but mistaken, assertion that the remedy for a repudiatory breach would be rescission of the contract, returning the parties to the position prior to the making of the contract (though, even if it were thought to be true, it was rarely accompanied by any enquiry into whether this would have been possible). It was relatively unusual for an answer to explain that the remedy for a repudiatory breach would be either to elect to accept it and treat the contract as ended from the date of acceptance, or (if feasible) to elect to insist on performance but subsequently sue for breach if none was forthcoming. To some extent, this confusion could be obscured by two factors: first, by the fact that the rescission assertion often led to suggestions about recovery of any money already paid by Foxton Ltd which were accurate but based on the wrong rule; and second, by the overlapping rules concerning the general election available to the innocent party faced with a repudiatory breach and the specific election available in the case of an anticipatory (and repudiatory) breach.

There was rather greater variety in the quality of treatment of the remedy of damages. Stronger answers correctly explained the nature and aim of an award of damages for 'expectation' loss in contract and sought to establish what loss Foxton Ltd might have suffered, comparing its current situation with what would have resulted had the contract been completed. Some did also attempt to examine the remoteness issues (***Hadley v Baxendale***), trying to determine what Gabriel Ltd knew, or ought reasonably to have known, at the time the contract was made, about what losses Foxton Ltd might incur should Gabriel Ltd be in breach by failing to supply the lorry. Others speculated accurately on the possible losses but did not address remoteness at all. Many others simply settled for recovery of any money already paid and/or made very superficial general assertions that Foxton Ltd would be able to sue for (unspecified) damages.

Students who made the decision to discuss the consequences of a finding that the contract had been frustrated very often provided clear, accurate and comprehensive explanation/analysis and application of the provisions of the *Law Reform (Frustrated Contracts) Act 1943 s1(2)-(3)*, though it was also quite common for answers to stop at the s1(2) provision in respect of sums paid being recoverable and sums payable ceasing to be so. However, a significant minority of students treated the consequences of frustration as falling within the province of rescission, attributing any recovery of moneys paid by Foxton Ltd to that remedy, or argued that an action for damages would be available (even if they had cited the outcome as being governed by the 1943 Act).

Apart from the specific strengths and weaknesses of answers identified above, some additional, more general weaknesses commonly encountered included:

- the determination to expend a considerable amount of time and energy establishing what was actually all too evident in the opening sentence detailing the facts in the scenario, namely, that there was a contract between Gabriel Ltd and Foxton Ltd. It really was unnecessary to do more than affirm this in a brief sentence or two. Extensive explanation/analysis and application of the elements of formation in the *creation* of a contract added nothing to the resolution of the issues raised by the facts in the scenario,

which, on the contrary, pointed inexorably to a focus on *discharge* of the contract and its consequences

- the suggestion that Gabriel Ltd had been guilty of an actionable misrepresentation when insisting that it could not fulfil the contract with Foxton Ltd because the result of the vandalism was that it had no suitable lorries available. Apart from recalling that the facts in the scenario were ambivalent as to whether or not Gabriel Ltd still had access to a suitable lorry after the vandalism had occurred, this suggestion rather ignored the fact that Gabriel Ltd had not sought to induce Foxton Ltd to enter into any amended or additional contractual relationship, and nor had Foxton Ltd done so. Consequently, whether or not Gabriel Ltd still had a suitable lorry after the vandalism, and whether or not Gabriel Ltd intentionally, negligently, or innocently told an untruth, there was no actionable misrepresentation
- the similar suggestion that there was evidence of economic duress (some identified Gabriel Ltd as applying the duress, and Foxton Ltd as the victim, whilst others took the opposite view). Once again, irrespective of whether the conduct of either could have satisfied the elements of a plea of economic duress, neither party was contemplating modified contractual rights and obligations, or entering into any new form of contract. This rendered claims of economic duress as irrelevant as those of misrepresentation
- the attempt to deal with the issues by way of the requirements of the *Consumer Rights Act 2015*. Answers taking this approach did not recognise that, though Gabriel Ltd was clearly a 'trader' for the purposes of the *2015 Act*, Foxton Ltd may or may not have been a 'consumer', depending on the (not fully described) nature of Foxton Ltd's business. If the *2015 Act* did apply, then the contract between Gabriel Ltd and Foxton Ltd would have been one for supply of goods (as a contract for the hire of goods: s3(2)(b) and s6), for the supply of services, and also a 'mixed' contract. A contract for supply of goods by way of hire is not within the Specification and, not surprisingly, was not mentioned in answers, which tended to treat the contract as if it were a contract for supply by way of sale (and so, perhaps unwittingly, did correctly identify the common terms imposed on contracts for supply by way of sale and for supply by way of hire). There were also occasional references to services and mixed contracts. Ultimately, however, this was all largely irrelevant because the terms on which Foxton Ltd would seek to rely were terms expressly agreed between the parties (as discussed above), not terms possibly imposed by the *2015 Act*.

Question 11

The facts in this scenario dealt with two different sets of issues: first, whether there was a contract between Inga and Henry, and between Janet and Henry and, if so in either case, whether there was a breach by Henry in failing to provide a 'free' car wash in return for anyone (here, Inga or Janet) buying £100 worth of petrol from Henry's petrol station during the month of April; second, whether Kaleb could claim any remedies against Henry for Henry's apparent failure to service Kaleb's car properly, and also for Henry's delay in doing so which induced Kaleb, in the absence of access to his car, to spend money on a taxi to take him to a medical appointment.

Though any logical and reasoned approach would be acceptable, it is suggested that the most efficient way to deal with the issues arising between Inga and Henry and between Janet and Henry would have been to establish:

- the legal status of the statements made by Henry in the newspaper advertisement: though an advert is frequently regarded as containing merely an invitation to treat, the clear and detailed statements in Henry's advert specifying the nature of the conduct required from any purchaser of petrol and the benefit by way of a free car wash which Henry promised to provide in return suggested an offer from Henry which could be accepted by customer conduct alone (no reciprocal promise necessary) and so would create a unilateral contract
- whether, in principle (that is, in the absence of any prior acceptance creating a contract), the purported revocation of the offer by Henry could be a valid revocation, taking into account the requirement for adequate communication of revocation to any offeree, especially where an offer has been made to 'the world at large' through a medium such as a newspaper notice
- that if the revocation could not be valid, both Inga and Janet would be able to claim that they had fulfilled the requirements of the offer by spending at least £100 in the month of April, and so would be able to make a claim against Henry in respect of his breach by refusal to provide the 'free' car wash
- whether, if it could, in principle, be a valid revocation, it was effective in Inga's case: Inga had embarked on the conduct (the purchase of £100 worth of petrol in April) which would be the acceptance of the offer but had not completed it before the purported revocation – could *part completion* of the conduct be sufficient to stop the offeree revoking the offer until at least a reasonable amount of time had elapsed for completion to take place (the end of April?)
- that if, in principle, it could be a valid revocation, Janet's case would be different from that of Inga on the grounds that Janet had not engaged in any relevant conduct prior to the revocation and so would have no claim because no contract could possibly exist between herself and Henry
- the remedy available if Henry was in breach in the cases of Inga and Janet, or of Inga alone: had the contract been fulfilled, Henry would have provided a car wash at no additional cost to the claimants; specific performance would be a very unlikely remedy in these circumstances, where damages would be adequate recompense, the measure of damages being the price of an equivalent car wash. Note that it would be important to resist the temptation to argue that either Inga or Janet could recover any of the money paid for the *petrol* (see the discussion below of collateral contracts).

In answering this part of the question, students generally understood that the issue was the requirement for an agreement between the parties as a fundamental aspect of formation of a contract (offer, acceptance, and associated rules). Some also debated issues of consideration and intention to create legal relations which, though not central, were certainly of relevance. However, there was an enormous variation in quality of responses which was reflected especially in the degree of perception and accuracy displayed in application of relevant rules. Most students correctly interpreted Henry's newspaper advert as containing an offer (to the 'world at large', or, at any rate, to that newspaper-reading part of it) which could be accepted by anyone who bought at least £100 in petrol during April from Henry's petrol station, and in return for which Henry promised to supply a 'free' car wash (***Carlill v Carbolic Smoke Ball Co.***). They often correctly identified this as a unilateral contract, though it was not unusual for answers to suggest that a key characteristic of such a contract was that it resulted from an offer made to the world at large, rather than that acceptance did not require any reciprocal promise but merely some specified conduct, which any recipient of the offer was free to undertake or not (hence 'unilateral' not 'bilateral').

Noting the common interpretation of an advert as containing an invitation to treat (**Partridge v Crittenden**), students writing stronger answers were usually careful to distinguish between such an invitation and an offer, and to explain why there was an offer in this instance. Students writing weaker answers did not deal with the distinction or, if they did, sometimes made the unfortunate decision that the advert actually constituted an invitation to treat rather than an offer. Almost inevitably, the analysis that resulted from such a decision became confused and perhaps self-contradictory. If followed logically, it struggled to frame subsequent events in terms of offers by Inga and Janet and acceptance by Henry. More usually, such answers proclaimed confidently that Henry's advert was merely an invitation to treat but then, incomprehensibly, introduced assertions such as that he had attempted to revoke his (presumably non-existent) 'offer.' A further example of this confusion was that it sometimes encompassed the argument that, in seeking to revoke the offer (as it is properly described), Henry was actually attempting to rely on an exclusion clause which had not been brought to the attention of Inga and Janet.

From this point onwards, even students writing stronger answers seemed to find some difficulty in structuring their response appropriately. In consequence, at the very least, there were often significant gaps in the analysis and application. Weaker answers were characterised not only by omissions but by confusion and error in both explanation/analysis and application. The problem generally seemed to centre on the most effective way in which to consider acceptance of the offer by conduct in the cases of Inga and Janet whilst also taking into account the possibility that the offer had been revoked in respect of both Inga and Janet, or of Janet alone. Answers rarely attempted to stand back a little from the specific application to the two cases in order initially to establish a credible assessment of the requirements of a valid revocation of an offer. As indicated in the structure suggested above, moving then to locate the alternative possible outcomes as to the validity of the purported revocation within the facts of the scenario would have enabled students to present much more comprehensive analysis and application in relation to the specific cases of Inga and Janet.

The particular elements of the analysis and application in which difficulties were especially manifest included:

- the interpretation of the requirements for valid communication of revocation of an offer when the communication of that offer was made via remote means (for example, a newspaper advert) intended to be seen by an indefinite number of members of the public. Here, the principle must surely be that, in addition to a further newspaper advert (**Shuey v US**), any method would suffice that would be as effective as that further advert or, of course, even more effective. On the facts, would a direct notice at the entrance to the petrol station be equally or more effective in communicating the revocation than a further advert? It was strongly arguable, but rarely so argued, that it would have been
- the widespread – but contentious – assumption that failure to publish a further advert invalidated the attempted revocation, so entitling both Inga and Janet to claim breach of contract by Henry
- the frequent failure, therefore, to draw any distinction between the cases of Inga and Janet, so that the significance of the fact that Inga bought petrol on two separate dates, between which Henry attempted to revoke his offer, went unremarked

- the associated failure to recognise that, even if there were a potentially valid revocation, it might well not have been effective in Inga's case because there is authority to suggest that a person who has begun the course of conduct which will constitute acceptance of the offer must be given at least a reasonable amount of time to complete it (***Errington v Errington and Woods***)
- conversely, the simple assertion, unaccompanied by any substantial analysis, that the purported revocation was valid, so that neither Inga nor Janet entered into a contract with Henry, once again perceiving no distinction between the cases of Inga and Janet but with the opposite result from that outlined above

When students did argue that Inga or Inga and Janet had entered into a contract with Henry, many suggested that the remedy for breach of the contract would be damages, though they did not always specify the measure (which was likely to be the amount to be paid for an equivalent car wash). Some students simply asserted that they could get a free car wash, implying an order for specific performance that a court would be very unlikely to award. However, a more serious misunderstanding was revealed in the many answers that confidently asserted that Inga and Janet would be entitled to recover the money that they had paid for petrol. In making this assertion, students had clearly failed to take into account the undeniable fact that Henry had fulfilled his obligation to supply Inga and Janet with petrol in return for that money. It could not possibly be the case that they would be entitled both to the value of an equivalent car wash and, effectively, free petrol to the value of £110/£120 that Henry had provided. The question did not demand an analysis of the precise nature of the contract(s) here, merely of the issue of agreement in relation to the free car wash, so it may have been advisable not to stray into this further territory. Briefly, the contract obliging Henry to provide a free car wash might best be regarded as a collateral contract, subsidiary to the main contract for the sale and supply of petrol (***Esso Petroleum v Commissioners of Customs and Excise***). When Inga and Janet fulfilled their obligations under the main contract (paying for petrol), they also provided consideration for Henry's promise to provide a free car wash under the collateral contract. If Henry was in breach, it was a breach only of the collateral contract, not the main contract.

In relation to the issues between Kaleb and Henry, the suggested approach is relatively straightforward. The answer could have established that:

- the contract between Kaleb and Henry was a contract for the supply of services subject to the provisions of the *Consumer Rights Act 2015*, in which Kaleb was the consumer and Henry the trader
- the *2015 Act* imposes a term on the trader to perform the service with reasonable care and skill (s49) and, where the contract does not expressly fix the time for the service to be performed, and does not say how it is to be fixed, imposes a term that the trader must perform the service within a reasonable time (s52), a 'reasonable time' being a question of fact
- in the event that Henry broke the s49 term as to performance with reasonable care and skill, Kaleb would have the right to a repeat performance of the service (ss54-55) or, if that was impossible or not done in accordance with s55, the right to a price reduction which could extend to the total price (s56)
- in the event that Henry broke the s52 term as to service within a reasonable time, Kaleb would have the right to a price reduction, as above (s54 and s56)

- additionally, Kaleb might be able to sue at common law for damages to compensate for the expense of the taxi journey, though it might be argued that such loss was too remote or that there was a failure to mitigate loss (for example, by using a less expensive form of travel than a taxi)
- additionally/alternatively, Kaleb may have the right to treat the contract as at an end and to sue for damages if breaches of either or both of s49 and s52 terms (innominate terms) were sufficiently serious. Any recovery of damages might also include damages in respect of the taxi payment, subject to the possible restrictions identified above.

Students were generally much more confident in dealing with this issue than in dealing with the relationships between Henry and Inga and Henry and Janet. Almost invariably, they recognised that Kaleb would rely on the terms imposed on a contract for the supply of services by the *Consumer Rights Act 2015*, though occasionally answers mistakenly referred instead to terms applicable to a contract for the supply of goods, dealing with satisfactory quality and fitness for purpose, and the associated remedies for breach. Stronger answers confirmed that the relationship of trader/consumer existed between Henry and Kaleb. They then explored the s49 term, emphasising what standard of care and skill might reasonably be expected of a trader engaged in a commercial business which included servicing motor vehicles, with all the attendant risks to safety associated with the use of such vehicles. Measured against the requirements of such a standard, it was not difficult to conclude that a failure to ensure that the car's lights were in proper working order was clear evidence of a lack of reasonable care and skill in the performance of the tasks. Weaker answers usually omitted any discussion of the trader/consumer relationship and focused immediately on the s49 term, which they tended to treat superficially with little analysis of what standard of care might be expected in the specific circumstances.

Once again, most students revealed at least some knowledge and understanding of the requirements of s52 as to reasonable time for performance, though few attempted any careful analysis of its application to Henry's promise to do the service 'quickly' when viewed against what might be thought to be a reasonable time for such work. Instead, it was much more common for answers rapidly to conclude that three weeks simply was not by any means capable of description as 'quickly,' and so to move onto remedies for breach.

Answers often contained strong accounts of the statutory remedies for breach of s49 (repeat performance and price reduction). This sometimes extended to clear explanation of the further statutory requirements for fulfilling the obligation to provide a repeat performance and of the related circumstances in which the right to a price reduction could be triggered. Weaker answers identified one or both statutory remedies but provided little further detail. Having dealt with price reduction in the above context, it was perhaps not surprising that students generally found little more that they could usefully add when considering the same remedy as the sole remedy for breach of s52. Many students referred to the fact that, faced with the lengthy absence of his car, Kaleb had felt it necessary to take a taxi to attend a medical appointment. However, this usually consisted simply of the assertion that Kaleb would be able to recover damages to compensate him for the payment that he had made. This meant that, save in the case of a relatively small proportion of students, answers did not discuss the issue of remoteness (*Hadley v Baxendale*) nor of the duty to mitigate. The first might have prevented recovery altogether, the second might have limited the amount recovered. This seemed to be part of the wider problem that students tended to concentrate

almost entirely on statutory remedies and did not really pay much attention to possible common law remedies. So, for instance, students rarely asked the question whether breach of either the s49 term or the s52 term was sufficiently serious to amount to a repudiatory breach, which would have entitled Kaleb to terminate the contract, sue for damages (which, in addition to any loss directly attributable to the poor quality service and delay, might also have included the taxi fare, subject to the same issue of remoteness and duty to mitigate) and engage someone else to undertake/complete the service.

It was not unusual to encounter the suggestion that Henry had induced Kaleb to enter the contract by means of a misrepresentation, namely that he would perform the service ‘quickly.’ Those making this claim did not seem to understand that, apart from the inherent vagueness of this particular statement, a statement as to intentions (a promise to perform an act, say) is not a statement of present fact. It cannot be converted into a false statement of fact simply because, as it turned out, the promise was not fulfilled. It is true that it is possible to derive a slightly different statement of fact from such a statement, namely, that at the moment when the statement is made it is in fact the present intention of its maker to carry out the promise (***Edgington v Fitzmaurice***). If it is not, then the maker misrepresents his present intention. However, students did not frame the suggestion in this way and it would be a very difficult argument to make, given the vagueness attaching to the notion of ‘quickly’ and the probable lack of convincing evidence that Henry never had any intention of performing the service ‘quickly.’ By comparison, reliance on rights and remedies under the 2015 Act was compelling.

The final part of the question invited students to ‘*assess the contribution made by different sources of law to the legal rules*’ on which Inga, Janet and Kaleb might be relying to pursue claims against Henry. Essentially, Inga and Janet would be relying on common law rules on formation of contract and remedies for breach whilst Kaleb would be seeking to rely on the rights and remedies provided by statute (the *Consumer Rights Act 2015*). Of those who attempted to answer this part of the question, many settled for a relatively simple assessment which distinguished between common law and statutory rules and considered in greater or lesser detail the contractual relationships to which they were applicable. These answers were generally judged to be ‘satisfactory,’ or ‘limited’ if more restricted in scope. However, answers which attempted to develop the assessment a little further were likely to be judged to be ‘good’ or ‘excellent.’ This assessment usually took the form of a brief analysis of the characteristics of common law and statute which afforded a basis for a comparison and contrast between them in terms of fulfilling the aims of the rules which they established. This might encompass, for example, the capacity of the common law to deal with concrete, individual disputes, perhaps modifying the rules slightly to accommodate specific facts. On the other hand, statute could develop a broader perspective and institute more wide-ranging changes, anticipating the kinds of disputes that might arise and perhaps offering rights and remedies that would not otherwise have been available. Some students completely misunderstood what the question required and wrote about sources of *advice* on law, not the sources of law themselves. Unfortunately, there was nothing creditworthy in such responses, any more than there was in those answers which simply took the opportunity to present a further account of the substantive law. There were also many students who did not attempt to answer this part of the question at all. It is worth recalling that this part of the question was worth approximately 25% of the total marks available for the question.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results Statistics](#) page of the AQA Website.