

Example Candidate Responses

Paper 3

Cambridge International AS & A Level

Law 9084

For examination from 2017

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Introduction

The main aim of this booklet is to exemplify standards for those teaching Cambridge AS & A Level Law 9084, and to show how different levels of candidates' performance (high, middle and low) relate to the subject's curriculum and assessment objectives.

In this booklet candidate responses have been chosen from June 2018 scripts to exemplify a range of answers.

For each question, the response is annotated with a clear explanation of where and why marks were awarded or omitted. This is followed by examiner comments on how the answer could have been improved. In this way, it is possible for you to understand what candidates have done to gain their marks and what they could do to improve their answers. There is also a list of common mistakes candidates made in their answers for each question.

This document provides illustrative examples of candidate work with examiner commentary. These help teachers to assess the standard required to achieve marks beyond the guidance of the mark scheme. Therefore, in some circumstances, such as where exact answers are required, there will not be much comment.

The questions and mark schemes used here are available to download from the School Support Hub. These files are:

June 2018 Question Paper 33
June 2018 Paper 33 Mark Scheme

Past exam resources and other teacher support materials are available on the School Support Hub:

www.cambridgeinternational.org/support

How to use this booklet

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

Example Candidate Response – high

Examiner comments

Question Part

Q1		Misrepresentation is where an untrue statement of fact induces a party to enter into a contract. ①
		There are 3 requirements to show that a contract is actionable for misrepresentation. This includes that there must be an untrue statement, it must be a statement of fact, and the statement must have induced the party to enter the contract.

① A good start. A brief definition of misrepresentation, which is clear (this is often better than a very long and sometimes less accurate one). This is followed by the main elements of misrepresentation without being over lengthy and wasting time on unnecessary matters.

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

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

How the candidate could have improved their answer

This was an excellent response, which used a wide range of illustrative detail and sound definitions. Three maxims were identified and explained, each remedy was explained with a relevant case, including the more recent Anton Pillar and Mareva injunctions.

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

Common mistakes candidates made in this question

Candidate who fared less well in this response often made the mistake of offering responses based on custom and the Anglo Saxon system of law, rather than concentrating on the creation of Common Law and the way in which Equity was formed to solve problems. Poorer responses also contained far too few example citations for the maxims and particularly the remedies. Concepts such as trust, mortgages and deserted wives' equity could also have been used.

Often candidates were not awarded marks because they misread or misinterpreted the questions.

Lists the common mistakes candidates made in answering each question. This will help your learners to avoid these mistakes and give them the best chance of achieving the available marks.

Question 1

Example Candidate Response – high

Examiner comments

Question Part

Q1		<p>Misrepresentation is where an untrue statement of fact induces a party to enter into a contract. ¹</p> <p>There are 3 requirements to show that a contract is actionable for misrepresentation. This includes that there must be an untrue statement, it must be a statement of fact, and the statement must have induced the party to enter the contract.</p> <p>² Silence does not amount to misrepresentation. The traditional rule is that sellers are not obligated to volunteer information to buyers, or correct buyers' misunderstanding in it will prevent ^{prevent} the sale from taking place. However, there are 5 are exceptions to this rule. This includes contracts <i>uberrimae fidei</i>, subsequent discovery, partial revelation, fiduciary relationships, and voluntary assumption of responsibility.</p> <p>In the these cases, silence would amount to an misrepresentation. Contracts <i>uberrimae fidei</i> means contracts which require 'utmost good faith', requires parties parties to disclose all relevant information that may affect the other party's decision to ^{the other party's decision to} enter into a contract. The basis is that it is hard for parties to gain information before the contract is made. The Examples of the contracts are contracts made with insurance companies. In the case This is shown in the case of <i>International Management Group UK Ltd v Shimmonds</i>, in this case, ³</p> <p>IMG had rights to televise the Sahara Cup but it was cancelled in the year 1999 and they claimed insurance for it. However, in the following year, IMG had information that the Sahara Cup will ^{was} will be cancelled again as India did not allow their team to participate, but they IMG did not disclose this information to the insurance company. The ⁴</p>
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¹ A good start. A brief definition of misrepresentation, which is clear (this is often better than a very long and sometimes less accurate one). This is followed by the main elements of misrepresentation without being over lengthy and wasting time on unnecessary matters.

² The candidate moves straight into the issues required in the question, i.e. whether silence amounts to misrepresentation, stating right away that it does not (it would be more accurate to say that it 'normally' does not). There is a good point of evaluation explaining why (may prevent sales).

This is followed by a succinct list of exceptions to the general rule.

³ Understands that with the exceptions silence may amount to a misrepresentation. Explains contracts *uberrimae fidei*, with a short evaluative comment on the reason for it.

⁴ Case to illustrate contracts *uberrimae fidei* with a good level of detail to explain the case, without being overly lengthy.

Example Candidate Response – high, continued

Examiner comments

Question Part

		<p>courts therefore held that the claimant should not be allowed to claim the insurance due to misrepresentation. However, contracts requiring 'utmost good faith' tend to favour insurers and burdens consumers. This is shown in ^{the case of} <u>Lambert v Co-operative Insurance</u>. In this case, the claimant tried to claim insurance for her ^{her} general ^{general} liability ^{liability}, however the defendant refused to pay on the basis that her husband has been convicted of dishonesty before. The courts allowed the insurer to be excluded from their liability in this case although the insurer never asked for the information on the claimant's husband in the past. Silence will also amount to misrepresentation in cases of subsequent falsity. This is where a true statement is made but becomes false when the contract is made and is not communicated to the other party. This is shown in the case of <u>With v O'Flanagan</u> where a doctor tries to sell his medical practice to a buyer stating that it is worth £200 per year. This was true at the time but the doctor fell sick and lost most of his patients. The court therefore held the contract to be had actionable misrepresentation.</p> <p>The partial revelation of information is also considered misrepresentation. This is when the parties it only discloses half of the true statement which leads others to mis mis understand the situation. This is shown in the case of <u>Dimmock v Hallet</u> where the party selling a land stated that the land was let out but did not state that the tenants were leaving soon. This was held to be misrepresentation by the courts.</p> <p>When parties have a relationship</p>	
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5 Another case which illustrates a counter argument that the doctrine could favour insurers.

6 Explains the exception of subsequent falsity due to a change in circumstances, with a case to illustrate the point.

7 A sensible explanation of partial disclosure, where the statement is half true, but what is left unsaid amounts to a misrepresentation, with a case to illustrate this.

Example Candidate Response – high, continued

Examiner comments

Question Part

which ~~is~~ is built on trust such as a solicitor and his client, this is known as a fiduciary relationship. Parties in the relationship ~~has~~ have a duty to honestly disclose relevant information to each other.

also
~~silence~~ Silence will amount to misrepresentation when there is voluntary assumption of responsibility. This is where a party assumes responsibility for an aspect of the contract and the other party relies on this assumption. In the case of Hamilton ~~and~~ v Allied Domecq, the claimant had rights to mineral water and wished to expand his business. The defendant was a potential buyer who hired a representative to engage in ~~legal~~ contractual negotiations. The claimant expressed that he plans to sell his goods to the catering sector ~~the first~~ and later in shops but the defendant sold the water commercially and the business failed. The court held that as there was no ~~representation~~ representation made by the defendant that they would follow the claimant's marketing strategy, there was no misrepresentation.

In determining whether ~~there~~ there is misrepresentation in a contract, the courts will also look at whether the statement made was of fact or opinion. If the statement was an opinion, it will not amount to a misrepresentation. This is shown in the case of Bisset v Wilkinson where ~~the~~ a party gave an opinion that the land sold could house up to 2000 sheep. However both parties were aware that the land had never been used for sheep farming before and therefore the courts held that statement to be an opinion.

8 The candidate explains that a fiduciary relationship may lead to an exception to the general rule, since there is a duty to disclose.

9 Explains the idea of voluntary assumption of responsibility, with a case to illustrate it.

10 There could be an argument that a statement of opinion does not amount to misrepresentation, since it illustrates the point that the maker of the statement in this case was silent over the actual facts, but if merely explaining the facts of the case of Bisset v Wilkinson, then the candidate is wandering away from the main point of the question.

How the candidate could have improved their answer

- This was a pleasing answer, in that the candidate had clear focus on whether a misrepresentation will arise when a person merely remains silent. Time was used sensibly at the beginning, by going straight into the main point of the question. However, the candidate did drift away from the question towards the end of the response, especially on the last page.
- The case of *Fletcher v Krell* would have been very useful in illustrating the general rule, and would have been helpful in analysing why a party to a contract is generally allowed to remain silent without this giving rise to a misrepresentation.
- This answer was very good on knowledge and understanding, which is required for high marks in the first assessment objective. Some evaluation was present, but to improve the answer and gain higher marks for the second assessment objective, more evaluative comments were needed. For example, more could have been said about why full disclosure is needed in contracts *uberrimae fidei* or why a fiduciary relationship is an exception to the general rule of silence. A fuller explanation of *With v O'Flanagan* could have included some evaluative comments too.
- The candidate could have discussed freedom of contract, and said more about *caveat emptor*, the bargaining position of the parties, and competition between sellers. The conclusion, in particular, could have been fuller, maybe referring back to the exceptions to the general rule in the second paragraph of the answer.

Example Candidate Response – middle

Examiner comments

Question Part

1.	<p>A misrepresentation is a vitiating factor which can render a contract voidable, where to put the parties back into the position as if had the misrepresentation not relied upon. It refers to a false statement of existing fact or law which ^{addressed} induced that party misled and which materially induced the party to enter into a contract. A caution step must be taken in differentiating between a promise and a representation which leads to different legal consequences, remedies.</p> <p>A promise is the maker of the statement which accepts or appears to accept obligation to do or not to do something whereas representation refers to the maker of the statement asserts the truth and invites reliance. Generally, a remedy under the representation that has made in false is easier to be obtained compared to the promise made which courts are reluctant to declare a bad bargain by saying the terms of the contract has been breached.</p> <p>actionable misrepresentation. An representation must be a statement of fact, and not mere opinion. This was seen in the case of Bisset v Wilkinson, where the statement regards to how many sheep the land could support was a mere opinion which carries no legal weight. This is best illustrated by inserting the obiter made in Smith v Land and House Property Corporation. If the facts are not well known to both parties, it would be regarded as an opinion. However, if one party knows the fact but than another, the opinion was made will be justified as a statement which the material facts can prove the valid whether it is true or false.</p> <p>Next, a half-truth statement also constitutes an actionable misrepresentation. representation must be the one made has to the party misled. In Peek v Perry, it was held that the claimant was not a representative and so was entitled to the payment. The innocent effect must also be proven which invites reliance.</p>
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1 It is good to begin with a definition of misrepresentation, but it needs to be accurate. It should be a statement of fact, not one of law.

2 Since the question is about silence and misrepresentation, there is no need to discuss what may amount to a misrepresentation, or consider remedies.

Example Candidate Response – middle, continued

Examiner comments

Question Part

		to be acted upon by the parties misled.	
			3
		In general rule, silence does not amount to a misrepresentation & centers with the maxim of <i>caveat emptor</i> , yet the buyers beware. Nevertheless, the application of this rule may be too harsh and so there are certain circumstances where the maker of the statement must disclose all the information. First, the contracts made in <i>uberrimae fidei</i> . This is best seen in the insurance contracts where the insurer is in stronger position to know all the relevant facts.	4
		Next, the change in circumstances which led to which led to subsequent falsity. In <i>With v O'Flanagan</i> , the vendor of medical practice held that it was worth £200 per annum. Nevertheless, he did not disclose the fact that the medical practice had become almost worthless due to the intervening events at the time of the formation of the contract. The case may be decided otherwise provided that the misrepresentation has been withdrawn to discontinue the continuing representation effect.	5
		Moreover, if the statement appears half-true, which led to the misrepresentation of what was left unsaid. In <i>Bimbow v Hallett</i> , the vendor of the only state that the farm on the land was let but did not tell that the tenants were about to leave & is considered as a misrepresentation. In this scenario, it is said that there is the party knows the fact best which induced the other party to rely on the statement made.	6
		Finally, in cases involving fiduciary relationship such as doctor-patient relationship, and the cases involve partnership the statement must be made with care which will can	7

3 The candidate addresses the main point of the question here, and explains *caveat emptor*.

4 A very brief explanation of an exception to the general rule, contracts *uberrimae fidei*.

5 The case of *With v O'Flanagan* used to illustrate subsequent falsity due to changed circumstances, with a short evaluative comment.

6 The candidate describes the exception of a half true statement, which is left unsaid amounting to a misrepresentation. This is illustrated with a case.

7 Explanation of a fiduciary relationship.

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

How the candidate could have improved their answer

- Regarding the assessment objective of knowledge and understanding, the focus of the answer was sound. The case of *Fletcher v Krell* would have especially helped to explain the general principle of a party being allowed to remain silent. Fuller explanation of the exceptions would have resulted in a more rounded answer, especially regarding contracts *uberrimae fidei* and fiduciary relationships.
- There was just a little evaluative comment, and much more of this would have fulfilled the criteria for the second assessment objective. Examples could have included a discussion on freedom of contract, more on *caveat emptor*, i.e. why buyers need to make their own enquiries, and the need for a seller to compete with other sellers in the market place.

Example Candidate Response – low

Examiner comments

Question Part

1		Misrepresentation is an untrue statement of fact which induces the other party to enter into contract. The ¹
		In order for it to be misrepresentation, it must be an untrue statement. In one case, the Mere silence would usually not amount to misrepresentation. The buyer has the responsibility to ask whatever that he wants to know. Even if the buyer one party knows that the other has misunderstood, there is no responsibility for the party to correct th ² other. In one case , a woman did not mention being divorced during an interview. This may be a factor which her employer may consider when hiring her. The court held that her silence did not amount to misrepresentation.
		The statement must also be a statement of fact for it to be considered as misrepresentation. In Wilset v Bisset v Wilkinson, defendant had sold a piece of land to claimant who intended to use it for farming. Defendant expressed his view that the land could hold 2000 sheep. However, this was not the case. Both claimant and defendant knew that the land had not been used for sheep farming before so neither knew exactly how many sheep it would hold. The courts held that expression of personal view does not amount to misrepresentation. ³
		The statement must induce the other party to enter into contract. ⁴ In one case, a solicitor wanted to sell his law firm to a buyer. He told the buyer that the law firm would make £300 a year and was welcomed to check documents to verify this. Had the buyer checked the documents, he would have found out that it was only £200. Regardless that the buyer had means to find out if it was true, the court said the buyer had relied on the solicitor's word which made him sign the contract. Therefore, it was held to be misrepresentation.

¹ The answer begins with a brief definition.

² An explanation of the general principle that silence will not normally amount to a misrepresentation.

Explains the facts of Fletcher v Krell to illustrate the point.

³ The use of Bisset v Wilkinson is less relevant, illustrating the point that the statement must be one of fact, not opinion.

⁴ This paragraph on inducement is not relevant to the focus of the question.

Example Candidate Response – low, continued

Examiner comments

ion Part

There are four types of misrepresentation: fraudulent misrepresentation, negligent misrepresentation at common law, negligent misrepresentation at statute and innocent misrepresentation. Fraudulent misrepresentation is when a defendant has cheated the claimant on purpose. The misrepresentation was done knowingly.

Negligent misrepresentation is laid out in *Hedley Byrne v Heller Partners*. After *Hedley Byrne v Heller*, the innocent misrepresentation was no longer misrepresentation that was not fraudulent. Innocent misrepresentation is what the innocent party is not at fault at all. The defendant will have to prove reasonable grounds that he had believed that the false statement was true and had not tried to defraud claimant at all.

5

There are remedies that can be used for ^{misrepresentation} rescission. The main remedy is rescission. It aims to put parties at the position before the contract was made and put an end to it. Rescission will be awarded when it is suitable. There are four bars to ~~rescission~~ rescission.

The first bar to rescission is affirmation. Once claimant finds out that there is misrepresentation, he can choose to affirm or make the contract void. Secondly, a delay in making the misrepresentation actionable by law will also cause claimant to lose the right to rescission. In *Leaf v International Galleries*, claimant had realized that the painting was not by Constable five years after the contract was made. For the five years, both parties believed that the painting was a genuine one by Constable. The court held that the remedy of rescission would not be applied as it would be unfair to the defendant.

Rescission will also not be applied when it is not possible to put claimants back into their original position. In one case, claimants raised action for rescission after a mine had been 'worked out.'

5 The question is not about remedies at all, so the explanation of them here is not relevant.

Example Candidate Response – low, continued

Examiner comments

Question	Part
	<p>There was nothing left to mine. The court held that rescission was not applied as it is impossible to return the mine to its original state. The The last bar to rescission is that if the contract is passed on to the 3rd party, rescission will not be available.</p> <p>6</p> <p>Generally, silence will not amount to misrepresentation. This is due to the fact that the parties have the responsibility to ask what they want to know. They are not entitled to any information.</p>

6 A brief conclusion restating the general principle that silence does not generally amount to a misrepresentation.

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

How the candidate could have improved their answer

- The candidate showed that they understood the basic principle of silence not generally amounting to a misrepresentation, and explained this usefully through the case of *Fletcher v Krell*. However, to improve the answer they needed to go on to explain that there was a range of exceptions to this basic principle. These include contracts *uberrimae fidei*, fiduciary relationships, subsequent falsity from change in circumstances and half true statements. These exceptions are not difficult concepts and can be useful areas in which to elaborate the basic premise of silence not generally amounting to a misrepresentation.
- A further improvement could have been through including evaluation of the general principle, such as discussion of the idea of freedom to contract, the need to compete with other sellers, and the need for the exceptions, such as the lack of opportunity for an insurer to find out information about clients in forming contracts *uberrimae fidei*, or the level of trust needed in a fiduciary relationship.

Common mistakes candidates made in this question

- The most common mistake with this question was to be very good on factual comment, but needing to include further evaluation of the main point raised in the question, that is whether silence can amount to a misrepresentation actionable in law. Some candidates made the general statement that it does (or does not) but could have usefully illustrated and evaluated this through the case of *Fletcher v Krell*, and then gone on to consider the reasons for the principle of *caveat emptor* and the need for competition in the market place.
- To move on from the basic principle, candidates would list the exceptions to the general principle, but failed to discuss why they were necessary. Each exception gave rise to at least some evaluation of the need for the exception, and its fairness or otherwise.
- In some answers time was spent on other principles of misrepresentation, such as remedies, which were not relevant to the question, rather than considering the main principle of silence, and the exceptions to the principle, in greater detail.

Question 2

Example Candidate Response – high

Examiner comments

Question 2 Part

		whether The question requires to discuss the doctrine of consideration is contributed by the decision in Williams v Roffey Brothers. The decision in William case suggest that an extra element known as practical benefit can be provided ^{it} can constitute a sufficient consideration. A consideration is the reason and badge to enforce the promise. ^{by} Mutual exchange of consideration.
1		Roffey Brothers enter into a contract to refurbish the buildings with a penalty clause. William is the subcontractor of the project but he faced financial difficulties which will hinder the progress of the work. Roffey Brothers promised to pay extra incentive if William can finish the work on time. but by the time William
3		completed the job, Roffey Brothers refused to pay and he was not ^{not} paid by Williams.
		The court held that William has provided practical benefit in which Roffey Brother should pay for his work.
		So, the practical benefit can be clearly defined in this case as the practical benefit is the extra element provided by the ^{William} to avoid the hassle which affects the progress of work. Roffey brothers can benefit from the completion ^{completion} of work by
4		Williams as he can save the cost and time to look for a new contractor. Further, Roffey brothers can avoid the penalty clause since the work is completed on time. Alternatively, it can be argued that William is only performing his contractual
5		obligation. However, William has done ^{done} beyond provided factual benefit to Roffey Brothers based on the discussion above. Hence, the ^{practical} benefit can be a consideration in exchange for the money promised by Roffey Brothers.
6		R Roffey Brothers ^{who} is the promisor gives promise - voluntarily suggests that there is no economic duress by William. In order to constitute a practical benefit ^{consideration} the practical

1 No time wasted in unnecessary explanations of basic consideration. A clear statement of the requirements of the question and a brief definition.

2 Probably a general penalty, rather than a penalty clause (but credit for the explanation in general).

3 A clear outline of the facts of Roffey.

4 Clearly explains the practical benefit obtained: avoidance of breach and paying of the penalty, by the work being finished on time, and not having to engage a new contractor.

5 An evaluative point in the form of an alternative explanation.

6 Reference to absence of economic duress.

Example Candidate Response – high, continued

Examiner comments

Question Part

benefit given must not be affected by economic duress. This is clearly illustrated in William case.

- 7 The decision in William case has developed doctrine of consideration for ^{determining} duty to per whether there is practical benefit provided and without economic duress which can
- 8 constitute a consideration. In Hartley V Ponsonby, Stilk V Myrick, had a substantial number of crew left the ship, the captain promised to give them money if they successfully sail the ship back to the shore. The reduced number of crew needs to endure higher risk so they are considered to enter a second contract with new conditions which is the high risk. Therefore, the services provided by the crew is above and beyond the existing contractual duty and the court held that the captain must pay extra to the crew as there is presence of practical benefit which leads to ^{providing} consideration.
- 9 This is because the captain's lives can be saved if the sailor bring the ship back.

- 10 However, in Hartley V Ponsonby, the court held otherwise stating that the crew is not subjected to the extra pay given the similar facts as ~~Stilk V Myrick~~. For a consideration to be made up of practical benefit, there must be no economic duress. According to the Espinassi Re Law Reform Report, it may be argued that the court decision is based on public policy as the remaining sailor may blackmail the captain for extra pay. Captain is forced to pay when it concerns
- 11 ~~with his life~~. However in Campbell Report, the committee agreed that it is only because the sailor had not provided practical benefit as ~~the~~ only a few sailor leaves the ship and the remaining one does not face ~~greater risk so~~ they did not do anything beyond their contractual duty.

7 Explains the background, through case law, of performance of an existing contractual duty.

8 Case name is incorrect (was correct before erasing) but the case is clearly known and facts carefully explained, therefore credit is awarded.

9 Links this case to Roffey via evaluation.

10 Again, the case names reversed, but the meaning is obvious.

11 Good evaluative points.

Example Candidate Response – high, continued

Examiner comments

Question Part

		Start from the
		Question arises whether <i>Hartley v Bosnby</i> can be decided differently as if they can prove there is no economic duress in modern times, maybe the sailor can get extra pay. This shows that if there is no economic duress suggesting a valid practical benefit which constitute a consideration in this case <i>Williams</i> case undoubtedly affected the decision concerning establishment of practical benefit.
		Apart from existing contractual duty, In <i>Pinnel's</i> case, the court would have held that Pinnel ^{Cole} would win the case had there been no technicality. This affirms the practical benefit provided by <i>Williams</i> case. Cole As a general rule, the
12		part payment of debt done by Cole is not satisfactory of whole sum and Pinnel can claim from him. However, Cole pay the debt earlier than the due date (he paid at 1 st of October but the due date is 1 st of November), which clearly show that he has to ^{avoid} help Pinnel by the avoidance of trouble that that might happened. This suggest a practical benefit is provided by Cole. So if it is not for technicality, Cole would have won the case.
		In <i>Re Selectmove</i> , the court found in favour of Inland Revenue and even though there is practical benefit provided by the defendant. As the defendant negotiated
13		that the balance should be paid in installment to Inland Revenue as it is easier for the purpose of tax collection, ^{in earlier negotiations} it was rejected by the court. May have cited that there is no practical benefit in this case but the true reason is that the earlier negotiation is not conducted properly. as the Hence, the practical benefit provided has not constitute a practical benefit which gives consideration.

12 Extends the discussion to part payment of a debt (*Pinnel's* case) with good evaluative points.

13 Discusses the very relevant case of *Re Selectmove*, which followed *Roffey*. It covers practical benefit well, but misses the point that this was probably, to some extent, a policy decision.

Example Candidate Response – high, continued

Examiner comments

Question Part

In MWB and Dimes, Exchange V Rock Advertising, the practical benefit have held by the court is that defendant is willing to pay for the balance in instalments and interest incurred. Therefore, this contributes to the contract as consideration is given as proper negotiation is caused not.

14 As a conclusion, Williams case has affected the doctrine of consideration by ~~taking care~~ giving guidelines which is practical benefit which can be a consideration by the party. However the practical benefit must be reasonable which means it can avoid the trouble and hassle for another party without economic loss.

14 Conclusion on the benefit involved in these cases.

Total mark awarded =
21 out of 25

How the candidate could have improved their answer

- The candidate began very well by not wasting time on unnecessary explanations of what may amount to consideration in general. Instead they stated clearly the specific aspect of consideration raised by the question, that is the development of consideration in the form of practical benefit in *Williams v Roffey*.
- It would have been better to explain the basic principles of the two 'sailor' cases before going into the facts of *Roffey*. It would also have been good to give the two cases their correct names, rather than reversing them, but credit was nevertheless given for the case detail, since the facts and principles were explained and discussed very well. There was good comparison with the principles of part payment of a debt (*Pinnel's case*), and also with more recent cases, following *Roffey* (*MWB v Rock Advertising* and *Re Selectmove*), which was exactly what was needed to provide a rounded answer to the question. Further brief comparison could have been made with the principles of promissory estoppel, via *High Trees*. On the whole, however, this was a very good response.

Example Candidate Response – middle

Examiner comments

Question	Part
Q2	<p>Consideration is the benefit given to a promisor and a date detriment to the promisee.</p> <p>1 consideration is given to make a promise given in exchange binding.</p> <p>It is stated the consideration must not be past which mean that consideration cannot be something that has already occurred. However, there are two exceptions to this which is where ^{past} consideration is given on the request of promisor and in the bill of Exchange Act 1882. S.27 of the act states that antecedent debt or liability is consideration for the receipt of a bill of exchange.</p> <p>In the case of</p> <p>Consideration also has to be sufficient but need not be adequate. This is shown in Thomas v Thomas where the defendant promised to allow the claimant to live in ^{the} house provided she paid £1 per year and maintained that the house was clean. The court held that this was sufficient consideration to uphold the promise even if it was not adequate.</p> <p>Consideration must also have economic value and can be a promise not to sue. The performance of ext existing ^{existing public} duties do not amount to consideration unless the party</p> <p>4 When above their call of duty. This is shown in Glasbrook Bros v Glamorgan County Council where the defendant promised to pay £2500 if the police protected their mine for the whole day till the strike was over. Court held that this went beyond the ^{public} duties of the claimant</p>

1 A definition of consideration attempted but not entirely accurate.

2 Past consideration is not relevant to the question.

3 Sufficiency and adequacy of consideration is of marginal relevance to the question.

4 The heart of the answer begins here, with performance of an existing duty.

Credit for existing public duty, explained through case law, although less relevant than existing contractual duty.

Example Candidate Response – middle, continued

Examiner comments

Question Part

		and therefore was sufficient consideration for the defendant to uphold their promise.
5		The pre performance of existing contractual duty duties also does not amount to consideration. This is shown in the case of <i>Stilk v Myrick</i> where the captain promised to pay extra wages to the crew members who sailed the ship back to land after two members abandoned ship. The courts held that there was no consideration as the crew members were merely performing their contractual duties. However, in the case of <i>Hartley v Ponsonby</i> half of the crew deserted the ship and the captain offered extra pay to the crew members that sailed the ship back to land. Courts held that there was consideration in this case as the extra risk was not not within their contractual duties.
6		This principle was applied in the case of <i>Williams v Roffey Brothers</i> which led to the creation of the law that if a performance of a contractual duty imposes an additional benefit to the other party, it would be sufficient consideration to make the promise made in return to be binding.
7		The contractual duties to provide goods and services are different to contractual duties to repay debt. In <i>Pinnel's case</i> , the courts held that it was not for the technicality of the case, it was valuable consideration for a debt be paid earlier in a smaller sum in full and final settlement of the debt. This led to the rule that a debt can be settled using a

5 Explanation of the principles of existing contractual duty through case law.

Good sequence of cases, and good comparison between the two most relevant cases.

6 The previous explanation leads nicely into *Roffey*. However, the explanation of *Roffey* is very brief indeed.

7 Good comparison with part payment of a debt in *Pinnel's case*.

Example Candidate Response – middle, continued

Examiner comments

Question Part

		<p>smaller sum: If there is sufficient consideration. Exceptions to Pinnel's case includes the disputed claims, unliquidated claims, composition agreements, and payments of debt by a 3rd party.</p> <p>For disputed claims, it is sufficient consideration for a party to ex accept a smaller sum of the debt as settlement as it relieves both parties from having to dispute the existence or value of the debt. In unliquidated claims, accepting a smaller sum would relieve parties from having to solve the problem through legal proceedings. As for composition agreements, there is no consideration for parties to accept the smaller sum but courts will still enforce them.</p>
8		<p>When a payment is made by a 3rd party, the creditor cannot sue for the remaining debt. This is shown in the case of <u>Hirachand Pannamchand v Temple</u>. In this case the court held that upholding the creditor's claim would amount to fraud of the 3rd party.</p>
9		<p>Waivers and promissory estoppels are doctrines that uphold promises without consideration. An example of a waiver is in <u>Charles Rickford v Oppenheim</u>. In this case the claimant granted the defendants an extra extension for the 3 months and therefore could not claim for those months as it acted as a waiver to the defendant. However, the claimants could still claim for the delay out of the extension given.</p>

8 This section is all true, but stated in very factual terms, rather than relating it to Roffey in any way.

9 A brief evaluative point on promissory estoppel.

Example Candidate Response – middle, continued

Examiner comments

Question Part

An example of a promissory estoppel is in *Hughes v Metropolitan Railway Co* where the claimant applied for a promissory estoppel to make their landlords promise to not take into account their negotiating period within the period that was given to them to repair the premises. The court upheld the claim.

- 10 A promissory estoppel can only be given if, there is pre-existing contractual relationship between the parties, there is a promise, the parties rely on that promise, and if it is ~~not~~ inequitable to enforce strict legal rights.

- 11 In conclusion, the decision in *Williams v Roffey Brothers* ~~imposed the development of~~ ^{imposed the development of} promises that were made without ~~any~~ any consideration given in return to be binding ~~so~~ if it is inequitable for the promisor to go back on their word.

⊗ of ~~doctrines~~ the doctrine of consideration by allowing...

10 Factually correct, and some evaluation, but not clearly related to developments in the doctrine following Roffey.

11 Attempt at evaluation, but not really accurate.

Total mark awarded =
15 out of 25

How the candidate could have improved their answer

- A definition was attempted, but it would have been better if this had been accurate. Some irrelevant material followed, e.g. past consideration. The focus of the question was whether consideration could be found in the performance of an existing duty. The irrelevant material was ignored in the marking process, but it did mean that there was less time later to explain more relevant material in the detail required.
- The candidate did show understanding of existing duty and went on to explain it well, with a good sequence of cases. However, explanation of the facts of *Williams v Roffey* was very brief, with no detail of what may have amounted to consideration in the further contract, e.g. the practical benefit of finishing on time, and thus not paying extra charges or seeking a new contractor. The question required the candidates to discuss the impact of the decision in *Roffey*, so to improve the answer an evaluation of the case was needed.
- There followed explanation of part payment of a debt and promissory estoppel, which were good points, but to improve the answer, evaluation of the development of the doctrine consideration was needed, with reference to the decision in *Roffey*.

Example Candidate Response – low

Examiner comments

Question Part

2		Consideration is needed when forming a contract. A contract made without consideration will not be enforceable. In order to sue on a contract, consideration must exist. ¹
		In Williams v Roffey Brothers, Roffey had contracted William to do carpentry work for them. They were building flats. After realizing that Williams was unable to complete the work on time due to financial problems, Roffey offered an additional £10300 on top of the original offer which was £80000. Roffey's agreement with the flat owners included a penalty fee if work was not completed on time. After Williams had completed the work, ² Roffey refused to pay the additional £10300 promised. The court held that there was sufficient consideration for Williams' additional payment due to the penalty clause in Roffey's contract with the flat owners. Therefore, Roffey was required to pay the £10300 as well.
		Consideration after the contract is made is usually not binding. In Roscorla v Thomas, Thomas had sold a horse for £30 to Roscorla. After the sale, Thomas promised Roscorla that the horse was sound. This was not the case as the horse turned out to be vicious. The court held that statements made after the ³ contract was made were not binding. In Combe v Combe, a couple was going through a divorce. The husband had promised to pay the wife divorce proceedings. In return, the wife chose not to sue for alimony. When the wife wanted to enforce the husband's promise, she held that she had provided consideration for by not suing. The court held that there was no consideration as she was never told by her husband to not sue.
		In Pinnel's case, ^{the defendant} Coler ^{a bond} bought shares for £865 ^{for a bond} and for was due payment of £565 3d on 1 November. The claimant sued for payment and the defendant held that he had reached a settlement with claimant on 11 October. The court held that

¹ A comment on consideration but no definition.

² Begins the answer with facts of Roffey, but this is very brief, with no discussion. Development of this case is needed, given that it is the main issue of the question, and this is the only reference to it, apart the conclusion.

³ Past consideration is not relevant to this question.

Examiner comments

- 4 Pinnel's case could be useful in comparing part payment of a debt with the principles of Roffey, but here it is a partly accurate description of facts.
- 5 An attempt at evaluation via an anecdotal example of the difficulties with consideration.
- 6 The case of High Trees could be useful in comparing promissory estoppel with Roffey, but the point is not made here, just an account of facts.
- 7 Conclusion attempted, but not entirely convincing, given the lack of evaluation in the response.

Total mark awarded =
10 out of 25

How the candidate could have improved their answer

- The candidate began with a comment on the need for consideration. A better approach would have been to use a working definition of consideration, such as the one by Pollock, approved by Lord Dunedin in *Dunlop v Selfridge*. They then went straight into an explanation of *Williams v Roffey*, which was sensible, as no time was wasted at this point on superfluous material. However, given that this case was the focus of the question, a much fuller explanation was needed, especially around why the second contract in the case was upheld. They could have explained that normally performance of an existing duty would not amount to consideration, but instead, here, the court accepted the practical benefit obtained and the avoidance of either breaching the contract or using further contractors.
- Following this was some irrelevant material on other aspects of consideration, not required by the question. Instead, the candidate could have usefully explained and discussed other cases involving the performance of an existing duty, which led to the decision in *Roffey*, such as *Stilk v Myrick* and *Hartley v Ponsonby*. This series of cases formed a key part in the development of this aspect of consideration.
- The candidate went on to explain very briefly Pinnel's case, regarding part payment of a debt, and *High Trees*, regarding promissory estoppel. However, in both instances, it was very much a brief outline of facts, rather than showing understanding of the link to *Roffey*. They both needed development, and analogies drawn with the concept of practical benefit forming consideration. The answer needs evaluative links between the cases and principles, in order not to appear fragmented and to form a coherent discussion.

Common mistakes candidates made in this question

- Many candidates (not necessarily those selected here) spent far too long introducing the answer with a very general explanation of the concept of consideration. Where there is an explanation or definition of consideration, it needs to be accurate (e.g. the one given in *Currie v Misa*, or the simpler one given in *Dunlop v Selfridge*). That is totally acceptable as an introduction.
- Some candidates introduced the whole spectrum of principles of consideration and while marking is positive, this does not gain marks, so wastes time that could be much better used in addressing the points raised in the question.
- Often an answer was quite detailed, but completely factual, explaining the facts of cases, but without any analysis of principles. A good example would be where candidates gave a detailed explanation of the two 'sailor' cases, *Stilk v Myrick* and *Hartley v Ponsonby*, even quoting how many sailors abandoned the voyages, etc, but failing to compare the cases or analyse the reasoning behind the judgements. More evaluation, as in linking *Roffey* with later cases, or part payment of a debt, would always enhance a response.

Question 5

Example Candidate Response – high

Examiner comments

Question Part

(5)		<p>In identifying the potential contractual liability of Suneeta to Tamara and also Uma. We have to look into whether the acceptance sent by Tamara is valid and if yes, Suneeta has to sell the specialist sewing machine to Tamara and pay damages for Uma. because breach. If no, Suneeta can happily sell the specialist sewing machine to Uma and has no contractual liability to Tamara. 1</p> <p>Offer</p> <p>On the facts, Suneeta posts a letter to Tamara, offering to sell the machine for £500 and saying that she needs a reply by 31 May. Although the word "offering" was used but it does not indicate that this letter is a offer. As per Treitel, an offer is an expression of willingness to contract on a specific terms, and it will be legally binding as soon as it is accepted by the person whom it addressed to. Therefore, we can see that Suneeta actually shows willingness to contract with Tamara as she said she "wants" to sell but not "may prepared to sell" as shown in the case of Gibson v Manchester City Council. Besides that, she also made the terms certain and by saying that she wants to sell the machine at £500 as opposed to the case of Scammell v Owyer. Therefore, we can conclude that this is a letter of offer instead of a invitation to treat because Suneeta has shown her willingness to contract and also made the terms certain. 3</p> <p>Acceptance</p> <p>The offer is clearly communicated to Tamara because she has received and read it. However, Tamara does not reply immediately and only post the letter of</p>
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1 Explains Suneeta's possible liability without wasting time on an overlong narrative on general offer and acceptance.

2 Acknowledges that the question states that there was an 'offer' and elaborates on this. Rather lengthy on general offer requirements, but shows understanding of the need for a definite offer.

3 Application to the facts of the question.

Example Candidate Response – high, continued

Examiner comments

Question Part

	acceptance to Suneeta on 30 May. Is there any acceptance?
	It appears that there is an acceptance because Suneeta made it clear that she needs a reply by 31 May. 4
	However, she only receives the letter from Tamara on 1 June. But it can be said that there is still an acceptance. This is because Suneeta and Tamara communicates by using letter, post. Therefore the postal rule applies. 5
	As per <i>Adams v Lindsell</i> , it was held that there is acceptance once the letter is posted, and not at the moment when the letter is dropped into the mail box. Therefore, if Tamara has stamped correctly and addressed to Suneeta correctly, as in the case of there will be an acceptance. Irrelevant that Suneeta receives the letter or not as per <i>Howe v Lord Alford</i> & <i>Insurance v Grant</i> .
	Furthermore, the fact that Suneeta did not clearly say that she needs a "notice in writing" which actually means oral communication of acceptance is needed. The acceptance is said to be communicated and sent to Suneeta. This is illustrated in the case of <i>Holwell Securities v Price</i> . 6
	However, there are revocation of offer.
	Although Tamara has sent letter of acceptance to Suneeta on 30 May, but she hears from a mutual friend that Umma has agreed to buy the machine from Suneeta. We can say that the offer has actually been 7 revoked by Suneeta before 31 May and the revocation of offer has been communicated to Tamara. This is because the mutual friend who acts like the mutual acquaintance in this case has conveyed the

4 Identifies the need for a valid acceptance.

5 Explains the postal rule based on *Adams v Lindsell*, and some of the conditions for it to operate.

6 Considers, on the facts, whether any other factor makes the postal rule inapplicable, based on *Holwell v Hughes*.

7 Discusses revocation of the offer, with communication via a third party. Bases this on *Byrne v Van Tienhoven*.

Example Candidate Response – high, continued

Examiner comments

Question	Part
	<p>message of rec revocation of offer to Tamara. Therefore, the letter of ter revocation of offer is came before the letter of acceptance of Tamara sent to Suneeta. is It can be said that the offer is revoked successfully and the acceptance sent by Tamara to Suneeta is is not valid because there is no offer to be accept. This situation is different from the case of Van v. The Lover.</p> <p>Therefore, we can conclude that there is no contract between Suneeta and Tamara because the offer has been revoked before Tamara sends the letter of acceptance. Therefore, the agreement con there is no contract as per The Enymedon, there must be a valid offer and acceptance in order to form a legally binding contract.</p> <p>In a conclusion, is Suneeta has no contractual liability to Tamara. And hence, she is able to sell the specialist sewing machine to Umma. on the facts, Tamara Although it is is not clear on the facts, but we can see that Suneeta has agreed to sell the machine to Umma on on 1 June and also. is Umma has agreed to buy the machine from Suneeta. We can conclude that there is a valid offer and acceptance between Suneeta and Umma and also both parties therefore there is a contract between both of them and Suneeta is able to sell her specialist sewing machine to Umma.</p>

8 Application to the facts and a brief consideration of liability to Umma.

Total mark awarded = 20 out of 25

How the candidate could have improved their answer

- The relevant principles of offer and acceptance were outlined briefly and applied sensibly. The main issues were identified, i.e. acceptance, particularly the postal rule, and revocation of an offer being communicated via a third party.
- The postal rule was applied to the facts. It would have been good to discuss further whether the post was a reasonable method of communicating acceptance here. The candidate could also have considered whether anything in the facts may have made the postal rule inapplicable, such as a requirement of a reply by 31st May. Reference to *Henthorn v Fraser* would have been useful.
- Regarding revocation, *Dickinson v Dodds* would have been most helpful as a starting point for a discussion on the validity of the communication via a third party.

Example Candidate Response – middle

Examiner comments

Question Part

5		<p>In order to assess Suneeta's potential contractual liability to Tanara and Uma, the elements of contract of offer, acceptance, consideration, intention and capacity must be satisfied to establish a contract.</p> <p>Firstly, in regards to Tanara, Suneeta whether Suneeta's letter was an offer or invitation to treat depends on the intention of parties. According to <i>Gibson v Manchester City Council</i>, 'may be willing to sell' is an invitation and the process of negotiation does not constitute an offer or an agreement. Furthermore, On the other hand, according to <i>White v Carter</i>, offer must be clear, definite, certain. As Suneeta's letter clearly states she is offering to sell the machine, and is definite on price and deadline, it is an offer. According to <i>Taylor v Laird</i>, offer must be communicated. As Tanara responds by posting a letter, offer is communicated.</p> <p>Secondly, as it is an agreement between friends, it is a social and domestic agreement. The general rule is that there is no intention to create legal relations unless clear contrary evidence. It has to be queried if Suneeta and Tanara are corresponding in a business context and their closeness to determine if the agreement is legally binding.</p> <p>Assuming it was in a business context, acceptance is a unilateral, unqualified agreement to all the terms as stated in <i>Tinn v Hoffman</i>. Tanara's response is unconditional and amounts to acceptance. Secondly, the general rule is that acceptance must be communicated as in <i>Felthouse v Bradley</i>. However, an exception is the postal rule where if a letter is properly stamped, addressed and addressed, the moment it is mailed amounts to acceptance. According to <i>Adams v Lindsell</i>, acceptance is when the letter is sent, not received. As the letter is sent on 30 May, there is acceptance of Suneeta's offer by Tanara. However, it has to then be queried if Suneeta's requirement by a reply constitutes the exception to the postal rule under <i>Holwell Securities Ltd. v Hughes</i>, that where there has to be communication of acceptance. However, as it is merely a 'in notice in writing'. However, as Suneeta merely states a deadline, the postal exception does not apply. Thus, Suneeta is bound by the agreement she has made with Tanara even though she receives the letter on 1 June.</p>
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1 Identifies the need for a clear offer.

2 It is true that intention is required. However, this question does not intend to create legal relations, as it does not state that the parties are friends.

3 Identifies the need to communicate acceptance and then goes on to the postal rule (*Adams v Lindsell*). Considers whether this is an exception to the postal rule *Holwell v Hughes*.

Example Candidate Response – middle, continued

Examiner comments

Question Part

Similarly, for Uma, there has been an offer and oral acceptance. It must be queried whether it there was intent as a social and domestic agreement. However, ~~as Tanveer~~ Suneeta made the offer ~~rel~~ to Uma when the offer to Tanveer had not been revoked. According to *Payne v Cave*, revocation must be ~~com~~ any time before acceptance. Furthermore, according to *Byrne & Co. v. Lean Van Tienhoven*, revocation must be communicated. Clearly, it was not.

However, according to *Dickinson v Dodds*, revocation can be done by a reliable source. It has to be queried whether Tanveer hearing from a mutual friend is a reliable source. On the other hand, *Henthorn v Fraser* states the mode must be reasonable. As they had been corresponding through letters, would a third party mutual friend be reasonable? likely not.

Thus, there is no revocation and Suneeta's contract with Uma is valid. She is bound to the contract with Tanveer.

- 4 Identifies the possible revocation of the offer.

Applies *Dickinson v Dodds* to the communication via a third party.

- 5 Very brief conclusion.

Total mark awarded =
13 out of 25

How the candidate could have improved their answer

- The candidate spent some time at the beginning of the response on discussing what might amount to a valid offer. Whilst this is not wrong, the time may have been put to better use later in the answer.
- The two main areas of acceptance, especially the postal rule, and revocation were identified. Relevant cases were cited, but the candidate could have elaborated on the detail of these cases and could have applied them more fully to the facts of the question.
- Overall, the answer was on the right lines, but very brief, especially in elaboration and application.

Example Candidate Response – low

Examiner comments

Question	Part
5	<p>In discussing Suneeta's potential contractual liability we first need to establish whether there is there a contract between the parties. A valid contract ought to consist of an offer and, acceptance, ¹ consideration, intention to create legal relations and capacity. This was established in <i>Euroymedon</i> case. Once an offer is accepted then it will be considered as a binding contract, and both parties will be bound by it.</p> <p>Acceptance is an unconditional agreement to be bound by all terms of a contract. The general ² rule states that acceptance must be communicated, this rule was established in the case of <i>Entores v Miles Far East Corporation</i>. If acceptance is not has communicated then the it will not be a binding contract. In the case of <i>Felthouse v Bindley</i> states that silence cannot amount to acceptance. Unless it was the offeree that said silence is sufficient. <i>Re Selectmove</i>. However, there are exceptions to the communication rule.</p> <p>However, there are exceptions to the communication rule one of it being the postal rule, which is used in this situation when Tamara posts a letter of acceptance. The postal rule states that acceptance takes place as soon as the letter is posted. in this situation This was established in <i>Adams v Lindell</i>. in Tam In this situation, Tamara's letter ³ only arrives after 31 May which is the when and Suneeta stated that she needed a reply by 31 May. Hence, it shows that the offer has closed Suneeta would rely on the communication rule and that</p>

¹ A very general introduction.

² Identifies the general need to communicate acceptance (*Entores* is useful here).

³ Explains and briefly applies the postal rule.

Example Candidate Response – low, continued

Examiner comments

Question	Part
	<p>she does not have a contract with Tamara as her letter she received her letter after the lapse of time of an offer.</p> <p>However Tamara will rely on the postal rule stating that she and Suneeta have a contract. This is because the postal rule states that acceptance takes place as soon as it is posted. In this situation, Tamara posted before the offer ended which is on 30 May.</p> <p>There are effects of the postal rule that it must be addressed properly to ensure that it reaches the offeror. However, if it is not sent to the offeror or even reaches the offeror then the postal rule will still apply. In this situation, Suneeta now has could have a contract with both parties, Tamara and Umma.</p> <p>In conclusion, Tamara will depend on the postal rule and Suneeta will depend on the general rule that it must be communicated and that she only has a contract with Umma. and not with Tamara. But Tamara may use specific performance so that Suneeta will give her the sewing machine instead of umma giving it to Umma. But it will not be possible as she Suneeta only has a contract with Umma and is bound by that contract only.</p>

4 Speculative application to the facts.

5 A reasonable conclusion.

Total mark awarded =
9 out of 25

How the candidate could have improved their answer

The candidate introduced the principles of offer and acceptance and explained the need for acceptance to be communicated. They then went on to the postal rule. Here more specific application would have been useful, elaborating on the facts of cases, and applying them by comparison to the facts of the scenario. There was no explanation or discussion of revocation at all. This would have greatly improved the answer.

Common mistakes candidates made in this question

- Some candidates spent a long time explaining in a narrative style the general elements of a contract and particularly of offer and acceptance. This took time away from discussing more fully the more relevant points raised by the question.
- The general issue of the postal rule was usually identified. More detailed application of the postal rule would have improved many answers, especially by discussion of whether it was reasonable to use the post, and whether the rule itself applied in these circumstances, given that a reply was required by a certain date.
- Some candidates did not go on to discuss revocation at all. Where they did do so, not all discussed the issue of communication taking place by a third party, and whether that party was reliable. Application of *Dickinson v Dodds* would be most helpful here.

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

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