

Question 1 (Alexander): 40 Points – 40%	40 Points
Contract law	
A sends an email message to B, a metalworks company, informing them that there is copper to be found in a remote location in the North of England, and A would be willing to mine it for B but would require a £1 million payment from B. The deadline for B to accept A’s offer to do the work is 4th January, otherwise A will contact other potential collaborators.	
<p>As background to the answer a discussion of <u>Offer and Acceptance</u> at common law: that is, a statement by one party (offeror) of a willingness to enter into a contract on stated terms and be bound by those terms if these terms are in turn accepted by the other party/-ies (offeree(s)).</p> <p>Mention consideration to form binding contract</p> <p>Acceptance must be unqualified, absolute expression of assent to the terms proposed by the offeror. No acceptance by silence. Extra credit 1</p>	<p>1</p> <p>1 EC</p> <p>1 EC</p>
<p>a) B accepts on 2 January by post but then sends an email with the revocation of acceptance on 3 January. Are A and B bound by a contract?</p> <p>The “general rule” in the English common law of contract is “that a contract is formed <i>when</i> acceptance of an offer is communicated by the offeree to the offeror”. (<i>Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels-gesellschaft mbH</i> [1983] 2 AC 34, at p 41)</p> <p>The postal rule is an exception to this general rule, and provides that a contract is formed when a letter of acceptance is posted, and applies only when it is reasonable to use the post. This means that an offer can no longer be revoked once the acceptance has been posted (<i>Re Imperial Land Co of Marseilles (Harris’ case)</i> (1872) LR 7 Ch 587), and it is generally irrelevant that it never arrives, or arrives late, although, the rule will not apply if loss or delay is due to the fault of the offeree, who has, for example misaddressed it.</p> <p>The issue is whether B’s acceptance by post on 2nd January of the offer made previously by A via email is valid if, after accepting the offer by post, B then communicates on January 3rd via email a revocation of B’s acceptance. According to the postal rule of English common law B’s acceptance of A’s offer on January 2nd is a valid acceptance that cannot be revoked by B afterwards by email (even if the email reaches A before B’s initial acceptance by post). B cannot revoke the acceptance of A’s offer, unless A agrees to release B from the obligation.</p> <p>b) B accepts on 3 January by email (there is a contract in this scenario), the two work out the details and B pays A £1 million by internet bank transfer. After the payment, it turns out that, unbeknownst to A or B,</p>	<p>1</p> <p>2</p> <p>2</p> <p>2</p>

<p>the copper deposits were not in England, but in Wales, and other companies are already working on them to the exclusion of A and B.</p>	<p>1</p>
<p>A and B have formed a contract – but do the facts of the question vitiate or undermine the validity of the contract. Yes. Because it was a common mistake in which both parties made the same mistake about a fundamental or operative fact of the contract – that is, that there were copper deposits to be mined in England (not Wales, as it turned out) and that no other firms had begun mining the copper to the exclusion of A.</p>	<p>2</p>
<p>This type of mistake would make the contract void <i>ab initio</i>.</p>	<p>2</p>
<p>If the contract is void, no property will pass between the parties – as the parties must be restored to their original positions before the contract was formed (including refunding any damages). This means that A would have to refund B the £1 million in order to restore the parties to their original position just before the contract was initially formed.</p>	<p>1</p>
<p>They could discuss whether the common mistake of contract was <u>Res extincta</u> – the subject-matter of the contract no longer exists (mining the copper in England and that it is already being mined by other firms), and/or <u>Mistake as to quality</u> – that renders the contract’s subject-matter essentially different to what it was believed to be (a mining project in Wales, as opposed to England)</p>	<p>2</p>
<p>c) Based on b), would the issues be different if A had known that the deposits were in Wales and inaccessible, but nevertheless entered into business with B and accepted payment from B?</p>	
<p>The best answer is that because A knew that the deposits were in Wales and thus misrepresented to B that the deposits were in England.</p> <p>Some credit can be given for stating that it was a unilateral mistake on B’s part for not knowing that the deposits were in Wales and were inaccessible.</p>	<p>1</p>
<p>Better answer is that because A made a statement to B to induce B to enter into the contract that deposits were in England and could be mined – when both facts were untrue. This is misrepresentation.</p>	<p>2</p>
<p>Misrepresentation is a false statement of fact or law by the representor which induces the representee to enter into the contract</p>	<p>1</p>
<p>3 types of misrepresentation 1) Innocent, 2) Fraudulent, or 3) Negligent</p>	<p>1</p>
<p>Facts of case are such that at a minimum it was at least an ‘innocent’ misrepresentation and probably a negligent misrepresentation, but ok to say it was intentional too.</p>	<p>1</p>
<ul style="list-style-type: none"> • <u>Misrepresentation’s effect on contract: Voidable</u> – contract exists but may be set aside (avoided) by the representee • Remedy usually rescission or damages • Requirements: <ul style="list-style-type: none"> • False statement of fact or law, not opinion • Inducement / reliance 	<p>2</p>

<p>Damages claim could result in claim against A for return of the £1 million plus costs and related damages, such as onsequential (ie. loss of expectations) damages, possibly punitive damages</p>	<p>1</p>
<p>Other Remedy: Equitable remedy of rescission: unmaking of the contract to bring the parties back into the position they were in before entering the contract</p> <p>Subject to bars: 1) affirmation by claimant when it discovers misrepresentation, 2) lapse of time (depends on facts), and 3) if restitution is impossible. In this question, restitution might be possible requiring A to repay B the £1 million.</p>	<p>1-2 EC</p>
<p>Extra credit: Discuss difference between the contract being 'void' and 'voidable' in respect of how it affects what remedy a party can seek as a result of breach</p> <p>Void does not permit passing of money/property to third party – Claimant can sue third party for return of property</p> <p>Voidable allows third party to keep title to money/property – and claimant's only remedy is against the party who disappeared.</p>	<p>1-2 EC</p>
<p><u>Unilateral mistake – (alternative answer – not the best answer so some points)</u></p>	
<p>B made a unilateral mistake</p>	
<p><u>If mistake</u>: original contract between B and A void and A is required to refund the £1 million, plus any damages.</p>	<p>1</p>
<p>Mentions implication for 'void' or 'voidable'</p>	<p>1</p>
<p>Assessment of damages for mistake. For unilateral mistake, some credit can be given for arguing that the contract was void <i>ab initio</i> based on B's unilateral mistake by accepting A's offer based on the mistaken fact that there were deposits in England and sending the £1 million to A.</p>	<p>2</p>
<p>Extra credit – as a matter of the law of equity, unjust enrichment would require that A provide restitution (refund the £1 million), but not with damages, as equitable remedy of restitution for unjust enrichment only leads to compensation for claimant – this case return of the £1 million plus interest.</p>	<p>2</p>
<p>d) Based on b), would the issues be different if the copper had been in England, but due to a natural disaster involving a landslide has become completely inaccessible without any fault of either party?</p>	
<p>Discuss what if the copper was in England, but due to a natural disaster no more access to copper with no fault to either party.</p>	<p>1</p>

<p>Frustration of contract would apply to vitiate the contract. A contract may be discharged by frustration if there is a change in the circumstances of the contract after it has been made – makes it impossible to perform the contract or deprives the contract of its commercial purpose.</p>	<p>2</p>
<p>Frustration can happen because of war, natural disasters, destruction of the object, or when it becomes illegal to perform the contract. It is fault of neither party. It could not have been predicted at the time of signing. Each party is discharged of all future obligations. Neither party can sue for breach.</p>	<p>1</p>
<p>What about B’s payment of £1 million to A to mine the copper? Because no breach of obligation, cannot claim for damages under contract breach. But equitable remedies might be available at discretion of court: Unjust enrichment – return of the payment, rectification and accounting for profits</p>	<p>1</p>
<p>Also, allocation of loss rule would apply in which parties share any losses and if A had spent money or resources in pursuing the project could keep some of the £1 million to compensate itself for expenditure or reliance costs.</p>	<p>2</p>
	<p>1-2</p>
<p>e) A mines the copper and delivers it to B, but A does not receive payment. B then quickly sells the copper to C, closes down the business and disappears. A would therefore like to get the copper back from C.</p>	
<p>A mines the copper and delivers to B, but A received no payment. B quickly sells the copper and disappears.</p>	
<p>No mistake or misrepresentation. A case of breach of contract involving 1 of the parties not honouring important terms of the contract (paying the £1 million). Straight forward remedies for contractual breach would apply. Would entitle A to sue B for compensatory damages (the £1 million plus any consequential damages or losses, to put the plaintiff in the position he/she would have been had there been no breach.</p>	
<p>The outcome and availability of <u>remedies</u> depends on the type of contract <u>term</u> that was breached.</p>	
<p>No exclusion from recovering related losses arising from an act that breaches contractual obligations. What type of damages – Compensatory damages that includes: Expectation damages; Reliance damages; Loss of amenity; Distress; Loss of a chance; and Restitutionary damages</p>	
<p>In assessing the claim for damages must assess Limiting factors: Causation/Remoteness; Mitigation; Contributory Negligence. The facts in (d) would probably not justify mitigating factors. Full damages would be justified.</p>	
<p>Total Question 1</p>	<p>40</p>

Question 2 (Alexander): 30 Points – 30%	30 Points
Constitutional / public law	
Does Brexit represent a breakdown of UK constitutional law? Does it undermine the idea of Parliamentary Sovereignty? Critically discuss the relevant principles and concepts from the lectures and readings, giving particular attention to the merits and faults of the UK legal system. Suggest ways to improve, including comparison with other types legal systems.	
<p>Does Brexit represent a breakdown of UK constitutional law?</p> <p>Discuss the competing theories of UK constitutional law: the primacy or sovereignty of parliament and the Crown (as represented by the Crown’s ministers who are the Crown’s Ministers) – and the Royal Prerogative.</p> <p>Also, discuss importance of courts (Judges v Crown/Queen in Parliament’ – the rule of law and other judicially develop concepts. Mention 1 of the Brexit Supreme Court cases in which Parliament could require that it vote to trigger the UK’s Brexit process (not just the power of the Prime Minister based on convention or royal prerogative to do so)</p> <p>Parliament/the Crown and the EU – how affect Brexit affects international law obligations, particularly to EU.</p> <p>Discussion of European Convention on Human Rights (not affected by Brexit) but relevant because it is ultimately interpreted/decided by EU courts (not UK courts). Sovereignty of EU law over UK law.</p> <p>Does it undermine the idea of Parliamentary Sovereignty? Parliament having an internal fight between the Prime Minister/Cabinet (Ministers of the Crown) and</p> <p>Discuss the weaknesses of UK constitutional law – no written constitution, but precedent of court decisions interpreting the scope of Royal Prerogative and division of powers between Prime Minister (acting for Crown) and Parliament.</p> <p>No accessible documentation or statutes that divide or allocate powers between Crown/PM/Ministers, Parliament and the courts. Unlike European constitutional democracies</p> <p>In Brexit case, UK supreme court asserts judicial review to interpret the law and tell the Prime Minister that he cannot prorogue Parliament for an unjust reason. Balanced discussion of the facts as described in lecture and readings</p> <p>Critically discuss the relevant principles and concepts from the lectures and readings, giving particular attention to the merits and faults of the UK legal</p>	<p>3</p> <p>3</p> <p>2</p> <p>1</p> <p>1</p> <p>2-3</p> <p>2</p> <p>3</p> <p>3</p>

<p>system. Suggest ways to improve, including comparison with other types legal systems.</p> <p>Parliamentary sovereignty may neglect fundamental rights (eg., human rights) but Parliament has enacted a Human Rights Act 1998.</p> <p>The role of referendum and the ‘people’s vote’. UK not has experience referendums/initiatives. How to reconcile with Parliamentary sovereignty</p>	
Total Question 2	30

Question 3 (Fiocchi Malaspina): 30 Points – 30%	30 Points
Common law and law of equity	
Illustrate the historical development of the common law and equity (20%) and explain what is a trust and its legal function (10%).	
<p>a) Illustrate the historical development of the common law and equity</p> <p>Common law</p> <ul style="list-style-type: none"> • Origin of common law: Battle of Hastings (1066), William the Conqueror (1028-1087): the entire territory of the kingdom belonged to the king • Separation between royal and ecclesiastical jurisdiction (king’s sovereignty, autonomy from the Church, king’s control over ecclesiastical power) • Centralisation of administration: territorial partitioning and organisation (feudal land law: King, tenants-in-chief, subtenants, subjects) • Centralisation of justice: through the writ-system and the royal courts. Royal courts (Curia Regis) and their competences: King’s Court administered all of the King’s financial, legislative and judicial affairs. Court of Exchequer: responsible for fiscal and financial matters; Court of Common Pleas: responsible for disputes between private parties, which did not involve a direct interest of the King; Court of King’s Bench: criminal, feudal and civil cases • Definition of writs = a formal written order from the Royal Chancery that directs a form of legal action. Types of writs: Writ of right (breve de recto); Writ praecipe quod reddat; writ of debt; writ of covenant; writ of trespass • Rule of precedent. Origin and binding decisions. «Stare decisis», «to stand by a decision» 17th century Judge Hale (1670). It emerged gradually: originally the reference to precedents by advocates in a trial was not binding in itself, 	<p>Total: 20</p> <p>1</p> <p>1</p> <p>1</p> <p>2</p> <p>3</p> <p>2</p>

<p>but rather as a custom; decisions taken by Exchequer are considered binding (16th-17th century); equity is binding (17th century); in the 19th century: a single precedent has an absolute binding force for a lower judge</p> <p>Equity</p> <ul style="list-style-type: none"> • Origin of Equity and its definition: Court of Chancery: Chancellor received jurisdictional powers by the King (14th century); the chancellor judged “according to conscience”. • Chancellor (mostly clergymen) was influenced by canon law, and indirectly by Roman <i>ius commune</i>). From the 15th century it became complementary to the common law royal courts • The development of the principles of equity jurisdiction was parallel to the common law jurisdiction • Earl of Oxford’s Case (1615): Court of Chancery issued a common injunction prohibiting the enforcement of a common law order. Case established that in the event of a conflict between common law and equity, equity would prevail. • <i>Judicature Acts</i> 1873 and 1875/consequences (every court would now possess the power and have the duty to decide cases in line with common law and equity) • Maxims of equity (Equity will not suffer a wrong without a remedy; He who comes to equity must come with clean hands; He who seeks equity must do equity; Equity regards as done that which ought to be done; Equity follows the law; Equity will not permit a statute to be used as an instrument of fraud; Equity looks to substance not form; Equity acts in personam; Equality is equity; Delay defeats equity; Equity imputes an intention to fulfil an obligation; Where the equities are equal the law prevails; Where the equities are equal the first in time prevails) 	<p>4 (+1 if detailed)</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>2</p>
<p>Extra points: references to the historical differences between common and civil law; and/or to English legal history (Magna Carta, Act of Supremacy, Act of Habeas Corpus; Bill of Rights); William Blackstone</p>	<p>+ 2</p>
<p>b) Explain what is a trust and its legal function.</p> <ul style="list-style-type: none"> • the historical relationship between trust and equity (trust as an invention of equity). The “use” and its function <p>historical development of trust: Developed in the context of the Crusades (1095-1291). English households were frequently deprived of their male heads for years and in some cases even decades. For the management of their land, knights transferred the ownership of their property in their absence into the hands of a trusted relative or friend, in order to be able to act in their place, managing the estate until their return. Under the strict rules of the common law: all the rights of the knight ceased once the knight has transferred the legal</p>	<p>Total: 10</p> <p>3</p>

<p>ownership of his property to a third party. There was therefore no <i>legal</i> way for the knight to protect his family from an unscrupulous friend or family member.</p> <ul style="list-style-type: none"> • comparison with civil law (fiducia, fideicommissum, Treuhand) 0.5 • definition of trust: “A trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestuis que trust), of whom he may himself be one, and any one of whom may enforce the obligation.” 2 • parties of the trust. Settlor: the person transferring their property over for the benefit of the third party; trustee: The person in receipt of the property is the person to whom the settlor entrusts the property. The trustee is the legal owner of the property; beneficiary: holds the beneficial, or equitable, title to the property, equitable owner. 2 • different types of trust (private/public; fixed/discretionary; charitable; Express; resulting; constructive; statutory; lifetime) 1 • Trusts and other concepts (contract; agency) 0.5 • Modern uses of trusts (trusts for the protection of family assets; to make provision for family members and other dependants; for inheritance tax-planning purposes; for the protection of creditors; as a method of holding property; private and public purpose trusts; for pensions and investments. 1 	
Extra points: terminology of wills; the Hague Convention on the Law Applicable to Trusts and on their Recognition	+ 2
Total Question 3	30
Total Points	