1. What is the effect of including an "honour clause" in a written agreement? (2)
An "honour clause" has the effect of rebutting the normal presumption of an intention to create legal relations in a commercial agreement (1). Its effect is to render the agreement binding in honour only so that it will not be a legally binding contract. (1)

2. What is the consideration to support a unilateral promise? (1)
The consideration to support a unilateral promise is performance of the act requested (Carlill v Carbolic Smoke Ball). (1)

3. Why were the chocolate wrappers held to be part of the consideration in Chappell v Nestle? (1)
The chocolate wrappers were held to be part of the consideration because they were requested by Nestle, i.e. submitting the chocolate wrappers was part of the act they requested in exchange for their promise. (1)

4. Pao On v Lau Yiu Long is authority for two propositions relating to what can constitute consideration. Explain these propositions (4).
(a) Pao On is authority for the previous request device i.e. the past consideration rule can be avoided if it is possible to find a previous request which carried with it an understanding or implied promise to pay (or give some protection) (1). Any act or promise which follows thereafter will not be past consideration in relation to that implied promise or understanding. The later express promise will merely fix the amount of the payment or the exact form of protection (1).
(b) Pao On is also authority for the fact that performance or promising to perform an existing contractual duty owed to a third party can be a good consideration to support a promise (1). Therefore the Ps' promise to perform the contractual duty owed to the Fu Chip Company (to retain some of the shares for one year) could be a good consideration to support the Ds' (majority shareholders) promise to indemnify them against losses in that period. (1)
5. What was the difference between the approach of the majority of the Court of Appeal in *Ward v Byham* and the approach of Denning LJ in that case? (2)
The majority of the CA in *Ward v Byham* sought to establish that the promisee had provided consideration by going beyond her legal duty (1), whereas Denning LJ considered that the mere performance of an existing legal duty should be a good consideration if it was, as here, of factual benefit to the promisor. (1)

6. Identify which of the following statements are true and which are false. [6]. [1 point for each statement correctly identified as true or false.]
   (a) The result of *Williams v Roffey* is that it is no longer necessary to provide consideration to support an alteration promise if duress is absent.
      False
   (b) *Williams v Roffey* is authority for the fact that an alteration promise is enforceable if there is a factual benefit arising to the promisee.
      False (not factual benefit to promisee and not all alteration promises)
   (c) *Williams v Roffey* is authority for the fact that an alteration promise to pay more money is enforceable if there is a factual benefit arising to the promisor from making that promise.
      True
   (d) *Williams v Roffey* has no application to promises on the formation of contracts.
      True
   (e) Promissory estoppel has no application to promises on formation of contracts.
      True
   (f) Promissory estoppel only applies where there is no consideration to support an alteration promise.
      True (Although it will tend only to be utilised in respect of alteration promises to accept less which are not supported by consideration. This is because alteration promises to pay more are likely to be supported by consideration if factual benefit is easily demonstrated (e.g. Coote’s argument (1990) 3 JCL 23). In some cases this may turn on whether factual benefit is identified subjectively or objectively.)
7. Can an alteration promise be enforced in the absence of consideration? (2)
Yes, if it is either (a) granted by a deed (1) or (b) the promisor is prevented from going back on his promise because of the operation of the doctrine of promissory estoppel (1). (Note: compare the position in New Zealand which suggests that an alteration promise may be enforceable based solely on the promisee’s reliance on that promise - Antons Trawling Co Ltd v Smith, CA of New Zealand, 2003.)

8. What are the requirements in order for the defence of promissory estoppel to operate? (3)
(i) Promise to forgo (alter) rights under an existing contract (1) i.e. alterations only.
(ii) Intended to be acted upon and in fact acted upon (no requirement of detrimental reliance) (1)
(iii) Inequitable for the promisor to go back on his promise (1).
(The promise or representation must also be clear and unequivocal.)

9. What is the strongest case authority for the fact that promissory estoppel only has suspensory effect? (1)
Tool Metal Manufacturing v Tungsten Electric – authority of the House of Lords. (1)
This is the strongest authority here and therefore there are no points for any other authority cited.

10. What is the approach of the Australian courts to the enforcement of promises, as illustrated by Waltons Stores (Interstate) v Maher? (2)
The Australian courts adopt a flexible approach using estoppel in its widest sense in order to prevent “unconscionable” conduct by the promisor. (1) This means that they are not circumscribed by technicalities such as the need to only use the doctrine defensively (not as a cause of action) and only to use it in relation to alterations (not formation). (1)

11. For what propositions of law is Combe v Combe the authority? (2)
Combe v Combe is authority for the fact that in English law:
(a) promissory estoppel cannot be used in relation to formation of a contract in order to enforce a promise despite the absence of consideration; (1) and
(b) it can only be used as a defence to an action to recover the balance (go back on a promise to accept less in full satisfaction) and cannot be used as a cause of action i.e. to enforce compliance with the promise. (1)

12. How does the enforceability of alteration promises to pay more differ from the enforceability of alteration promises to accept less in English law? (4)

As a general rule, alteration promises to pay more and promises to pay less must both be supported by consideration if they are to be enforceable. However, Williams v Roffey applies to promises to pay more, thus making it easier to find this consideration since it can arise if there is a factual benefit to the promisor in making the promise to pay more (1). Coote ((1990) 3 JCL 23) argues that this means that there will always be a factual benefit in these circumstances and the promise will always be enforceable by consideration. If the promise is supported by consideration there is no need to rely on promissory estoppel and its requirements seem better suited to promises to accept less. (1)

Williams v Roffey does not apply to alteration promises to accept less (Re Selectmove) so that the consideration must be fresh consideration moving from the promise. BUT also get the mark if the decision in MWB v Rock is recognised (decided post-Textbook publication) – as this applies the practical benefit approach (Williams v Roffey) to enforce a promise to accept less/part payment. (1) However, if there is no consideration, then the promisor may nevertheless be prevented from going back on his promise using the defence of promissory estoppel (1) (N.B. promissory estoppel only has suspensory effect whereas consideration makes the promise binding for all time. In addition whereas promissory estoppel cannot found a cause of action, the presence of consideration will do so.)

13. What is the effect of duress on a contract? (1)

Duress renders the contract voidable i.e. liable to be set aside by the party affected (remedy of rescission applies subject to the bars). (1)

14. What must be shown to establish a claim based on economic duress? (4)

(a) Pressure or threat affecting business or financial interests (1) N.B. need to show the causal link between the pressure and the contract: Huyton v Peter Cremer.
(b) That threat/pressure must amount to a coercion of the will i.e. no realistic choice
but to agree because very serious consequences if do not do so. (1)
(c) Pressure or threat must be illegitimate. (1)
(d) Victim must protest at the time or shortly thereafter. (1)

15. What is the significance of the decision in *CTN Cash & Carry Ltd v Gallaher Ltd*? (3)
It addressed the question whether so-called lawful act duress can amount to illegitimate pressure. (1)
Clearly, it may be illegitimate if there is a threat to take lawful action but the advantage, which it is sought to obtain, is illegitimate (per Lord Scarman in *The Universe Sentinel*). In the absence of some sort of illegitimate purpose in making the lawful threat, it is now clear that in the context of arm’s length dealings between two commercial enterprises, it is unlikely that a threat of lawful action will amount to duress (1) (particularly where the party making the threat believes his demand is perfectly lawful). (*CTN Cash & Carry.* This would introduce too much uncertainty into commercial transactions. (1)
Of course, this leaves open the question whether a threat of lawful action against a consumer by a large commercial concern could be illegitimate pressure in some circumstances (e.g. an unconscionable threat of lawful action).

Points scored [maximum of 38] =