**UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS**

**GCE Advanced Level**

# MARK SCHEME for the May/June 2012 question paper

# for the guidance of teachers

## 9084 LAW

**9084/32** Paper 3, maximum raw mark 75

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

Mark schemes must be read in conjunction with the question papers and the report on the examination.

- Cambridge will not enter into discussions or correspondence in connection with these mark schemes.

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**Mark Scheme**

**Assessment Objectives**

Candidates are expected to demonstrate:

**Knowledge and Understanding**

- recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation

**Analysis, Evaluation and Application**

- analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules

**Communication and Presentation**

- use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

**Specification Grid**

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives.

| Assessment Objective | Paper 1 | Paper 2 | **Paper 3** | Paper 4 | Advanced Level |
|---|---|---|---|---|---|
| Knowledge/Understanding | 50 | 50 | **50** | 50 | 50 |
| Analysis/Evaluation/ Application | 40 | 40 | **40** | 40 | 40 |
| Communication/ Presentation | 10 | 10 | **10** | 10 | 10 |

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**Mark Bands**

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

**Band 1:**

The answer contains no relevant material.

**Band 2:**

The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
*OR*
The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

**Band 3:**

The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.
*OR*
The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules.
*OR*
The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

**Band 4:**

Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.
*OR*
The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

**Band 5:**

The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

**Maximum Mark Allocations:**

| Question | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| Band 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Band 2 | 6 | 6 | 6 | 6 | 6 | 6 |
| Band 3 | 12 | 12 | 12 | 12 | 12 | 12 |
| Band 4 | 19 | 19 | 19 | 19 | 19 | 19 |
| Band 5 | 25 | 25 | 25 | 25 | 25 | 25 |

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## Section A

**1 Contracts are sometimes induced by unilateral mistake.**
**Critically examine the circumstances under which a unilateral mistake might affect the validity of a contract and discuss the impact of such a mistake on the parties to the contract.**

Candidates should introduce their response by stating that mistakes do not generally invalidate contracts as both parties are expected to take sufficient care when entering into a contract that their consent to the eventual agreement is not induced by their error. However, candidates should point out that a fundamental mistake can render the contract void if it undermines the consent of the parties such that there is no true consensus idem.

The question posed asks for focus on unilateral mistake, but some credit will be given for mentioning the other types of operative mistake (common and mutual mistakes).

Candidates should indicate that unilateral mistake is only operative if one party intends to contract with a particular person and would not have contracted with the other party concerned had his or her true identity been known; in other words, the identity of the other party must have been of material importance to the formation of the contract (*Phillips v Brooks, Lewis v Avery*). Case law suggests that this generally happens as a consequence of fraudulent misrepresentation of identity in face to face situations (*Cund v Lindsay, King's Norton Metal Co v Edridge Merrett & Co, Shogun Finance v Hudson*). Candidates should explain that such misrepresentation would only render a contract voidable and that to render the contract void (and thus render any transfer of a voidable title void) a fundamental and operative mistake needs to be established.

Responses based purely on factual recall without critical examination of the rules will be limited to maximum marks within band 3.

**2 The postal acceptance rule is now out of step with the electronic age and no longer serves a useful purpose in the law relating to the formation of contracts. Discuss**.

An **outline** of the essentials of a valid contract may serve as an introduction; emphasis is expected on the formation of contract and the rules relating to the communication of acceptance.

Binding contracts require definite offer and corresponding, unconditional acceptance. The general rule is that, in bilateral contracts, the fact of acceptance must be communicated such that the offeror is aware that his offer has been accepted. Needless to say, the rule has always applied to oral communication, but an exception in the form of the posting rule was needed to cover situations where an inevitable time delay would be experienced between an offeree communicating acceptance and the offeror becoming aware that the offer has been accepted, such as when letter post is used. Candidates should detail the posting rule and case law discussed *(e.g. Henthorn v Fraser, Household Fire Insurance v Grant, Byrne v Van Tienhoven etc.)*.

Candidates should emphasise and discuss the fact post needs to be the proper means of acceptance for the rule to apply – properly stamped and addressed and posted in the proper manner – and that if not the proper means then letter effective upon receipt.

Candidates MUST address the key issue of the question: does this rule really serve a useful purpose in today's age when electronic business communication has almost exclusively superseded the use of postal communication. Does the rule apply to fax, email and variations on a theme?

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The issues must be discussed fully and clear, compelling conclusions must be drawn. Responses limited to factual recall of principle will be restricted to marks below band 4.

**3 Damages are a common law remedy for breach of contract which can be obtained by a claimant as of right.**

**Critically assess the limitations on the award of damages for contractual losses.**

Candidates might introduce their responses by stating that damages were the only remedy available at common law but that such entitlement would simply be to put a party in the position that would have been held had the contract been performed.

Today there are three significant limitations on awards of damages: causation, remoteness and mitigation. Candidates are expected to analyse all three.

The first limitation is that a defendant will only be liable to pay damages to another if the breach of contract was an effective cause of a complainant's loss. A chain of causation between breach and loss should exist and the question always arises whether or not intervening acts break the chain and candidates need to discuss this issue (*County Ltd v Girozentrale Securities, Quinn v Burch Bros (Builders) Ltd*).

The second limitation is remoteness of damage. Candidates must discuss case law such as *Hadley v Baxendale, Victoria Laundries v Neman Industries, The Heron II and Balfour Beattie Construction (Scotland) v Scottish Power plc* and draw conclusions that losses are recoverable if they would arise from the breach naturally according to the usual course of things and if the loss was within the reasonable contemplation of the parties when the contract was made. The concepts must be explored and conclusions explained.

Mitigation is the third limitation: claimants are expected to take reasonable steps to minimise the impact of a breach of contract. Losses sustained due to a failure to take such steps will not be recoverable (*Pilkington v Wood, Brace v Calder, British Westinghouse Electric Co Ltd v Underground Electric Railway Co of London Ltd*).

Responses based purely on factual recall without the necessary significant analysis and assessment will be limited to maximum marks within band 3.

## Section B

**4 Using relevant case law, discuss Onslow's potential liability towards Mycroft for the £1000 that he still owes, even if he does decorate Mycroft's house.**

Part payment of a debt does not discharge the debt, even if the creditor agrees to forego the outstanding amount because no consideration is given for the promise to forego payment. However, there are exceptions to this somewhat harsh common law rule: in *Pinnel's Case*, it was recognised that payment of a lesser sum could discharge a larger debt if the mode of payment is changed (as the original contract would then be discharged by accord and satisfaction).

Candidates need to consider whether the circumstances of this case would allow the courts to discharge Onslow from his contractual liability. Onslow contracted to pay £12000 by twenty-four equal instalments and he has defaulted on the last two. Clearly, unless the doctrine of equitable or promissory estoppel is invoked, Onslow would be liable for the £1000 unpaid. However, Mycroft has promised to forego the £1000 due if Onslow decorates his house. Whether or not

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Onslow completes the decorating, would the court consider the promise to perform that act sufficient fresh consideration in return for the promise to forego the £1000?

Candidates may also consider the position should the doctrine of equitable or promissory estoppel be invoked. Are all the conditions present for the doctrine to be deemed applicable?

In view of the fact that the arrangement appears to have been between friends, intention to create legal relations must also be addressed and the standard presumptions & rebuttals explored (e.g. *Balfour v Balfour, Meritt v Meritt, Simpkins v Pays*). Does it make any difference that the friend sells in a business capacity?

Candidates are expected to debate the issues and draw clear, compelling conclusions, fully supported by case law references. Responses based purely on factual recall will be limited to maximum marks within band 3.

**5 Discuss the contractual liability that the owners of the car-park would have towards Ronaldo if he returns to his car some days later to find that (a) it has been damaged whilst being parked by a car-park employee and (b) its soft-top roof has been cut open by a gang of youths who have entered the car-park as trespassers.**

Candidates should contextualise the problem by saying that terms do not bind contracting parties unless incorporated into the contract. The ways in which incorporation might take place (by signature, by reasonable notice or by a course of dealing) should then be identified and explained. The problem essentially hinges on whether reasonable notice was given to incorporate the exemption clause into the contract. In general, notice of the existence of such terms must be given either before or at the time that the contract is made and if notice is contained in a document like a ticket, then the document must be one in which a person might expect to find terms of contract mentioned.

Cases such as *L'Estrange v Graucob* and, to a lesser extent, *Olley v Marlborough Court Hotel, Thornton v Shoe Lane Parking* and *Chapelton v Barry UDC* should be explored, the decisions applied to the problem and clear, compelling conclusions drawn.

Candidates must also assess the car-park's liability for its employee's negligence in the light of Unfair Contract Terms Act 1977. How might the acts of trespassers be dealt with?

Candidates must discuss the issues, draw a clear, compelling conclusion and advice given should be clear, concise and conclusive.

**6 Advise Romperwear and Sarah of their respective rights and liabilities under the contract and of the likelihood of Romperwear obtaining any remedies that may enable them to enforce the contract and to obtain compensation.**

Candidates are not required to know anything about contracts in restraint of trade.

There are two issues that require attention in this question. The first addresses the possible equitable remedies that Romperwear could seek against Sarah if the contract is valid and the second concerns the possible penalty clause in the contract and the measure of potential damages payable in the event of breach.

Candidates should address these issues in turn.

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Should Romperwear wish to sue for damages, the question of liquidated damages arises. Does the amount of £10,000 per breach stated in the contract mean that Sarah would be liable to pay £20,000 damages? Candidates should discuss the difference between liquidated damages and penalty clauses in terms of both definition and effect (*Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd).*

Romperwear may wish to seek an equitable remedy instead. Candidates should emphasise that, unlike damages, these are only awarded at the courts' discretion. Discussion of equitable principles is not required here. Specific performance is one conceivable remedy, but would not be granted for a contract of personal services such as this one. That leaves an injunction. This is one of those borderline cases where, if awarded, an injunction can be used to bring about the same effect. This is exemplified in the case of *Warner Bros v Nelson*. However, more recent cases, such as *Page One Records v Britton* and *Warren v Mendy*, suggest that the courts are watching out for the use of injunctions as a way of achieving specific performance by the back door and the general view is that Romperwear are unlikely to obtain an injunction to stop Sarah working for their rivals unless it would leave Sarah with some other reasonable means of making a living.

If candidates choose to discuss the relative remedies for breaches of differing contractual term, credit will be given.

Advice given should be clear, concise and conclusive.

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