UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2012 question paper

for the guidance of teachers

9084 LAW

9084/33 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.

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UNIVERSITY of CAMBRIDGE
International Examinations

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 Critically examine the impact of statutory controls over the use of exclusion clauses on the consumer of goods and services.

Freedom of contract dictates that the use of exclusion clauses is valid, provided that both parties are aware that they form part of a contract. This is fine in principle, as long as all parties to the contract are in a realistic position to negotiate the terms of a contract. This is commonplace in the majority of business-to-business transactions, but not so when one party is an ordinary consumer of the subject matter of the contract. Businesses tend to take advantage of the weak or non-existent bargaining power of the ordinary consumer by presenting terms of contract with a take it or leave it attitude. Hence, the need for statutory intervention in the form of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations (1999).

UCTA's main provisions under Ss1, 2(1), 2(2), 3, 6 & 7 should be outlined and impact on the ordinary consumer assessed and evaluated. Do these provisions go far enough to protect the core interests of the ordinary person in the street?

The 1999 Regulations should also be examined and distinguished from UCTA (what do they add?). Regulations 5(1), 5(3) and 6(2) are of particular significance but are they still too vague and woolly?

Candidates must assess the impact of the legislation and draw clear conclusions supported by example wherever possible to achieve marks in band 4 and beyond.

2 Critically evaluate the remedies available to a party who discovers that a contract has been founded on a fundamental mistake.

Candidates should contextualise responses by reference to the need for true consensus ad idem at the time that contracts are formed. Mistake should then be identified as one of the factors sometimes recognised as sufficient to vitiate or undermine that consent so as to invalidate the contract in some way.

The general common law view that parties to a contract should not be able to escape liability by reason of mistake, but in particular and special circumstances should be explained. Those circumstances of common mistake and cross-purposes (or mutual) mistake should be identified and briefly described. In addition, the more general rules applicable to both should be explained and illustrated: mistake to precede contract, induce the contract and be of fact.

The view that common mistakes render contracts void should be questioned as case law points very largely to circumstances involving res extincta and res sua, both of which lead many to believe that the contract is not void because mistake induced the contract, but that there was no subject matter on which to base the contract in the first place, so no contract was ever formed. The issue of qualitative mistakes (cf mistakes regarding identity) and the impact on potential remedies of the ruling in the *Great Peace Shipping* case must be discussed.

The notion of mutual or cross purpose mistake should be explored. Do contracts ever come into existence in such cases? If not, is the notion of a void contract truly relevant in these circumstances.

The question of mistaken identity of the other contracting party (unilateral mistake) and the intention to deal with someone else should give candidates the opportunity to assess whether, again, mistakes alone negatives consent or whether something more, such as fraudulent intent, is also required in order to render the contract void.

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Coverage of mistakenly signed documents and the effect of a plea of non est factum should also be given appropriate credit.

Candidates must perform a critical evaluation to achieve marks in band 4 and beyond.

3 A *quantum meruit* claim is based on restitutionary principles and is different from a claim for damages.
Using case law to illustrate your response, explain how the legal basis for these two types of claim differs and assess why it is necessary to have both.

Candidates should introduce their response with a brief definition of quantum meruit – as much as is deserved – and a brief explanation that where work has been done or goods supplied but no payment has been received and cannot be obtained under a contract an action called a quantum meruit is available under which claimants can claim a reasonable sum for what they have done. It must be explained that it aims merely to pay for performance and not provide compensation for loss and thus differs significantly from damages. It should be emphasised that such a remedy is only available where
- a contract exists between the parties
- work has been done or goods supplied as required by the contract
- no payment has been received even though it was intended
and results in a court order to pay a reasonable sum (the going rate) for the performance rendered.

Candidates might explore appropriate case law such as *Forman & Co Proprietary Ltd v Liddesdale; British Steel Corporation v Cleveland Bridge & Engineering Co Ltd; Ragalian Properties plc v London Dockland Development Corporation.*

Credit should also be given if candidates also consider the likelihood of quantum meruit awards even though prices have been fixed, for example in the case of agreed partial performance of the contract.

Candidates assess the need for both quantum meruit and damages to achieve marks in band 4.

Section B

4 Analyse the circumstances of this case and advise Aaron of his legal position and of the likely remedy to which he might be entitled.

Candidates should recognise this scenario to concern rules relating to formation of contract (invitations to treat, offers, acceptance) and its possible breach. Candidates are expected to state the general rule that there needs to be a firm offer which is accepted unconditionally. Candidates may consider invitation to treat in this instance, but should not be given more than cursory credit.

The existence of a vending machine which is switched on and in a public place suggests an implied offer to sell its contents to anyone willing to meet the conditions of sale. Meeting those conditions of sale by putting appropriate money in the machine and pressing appropriate buttons represents unconditional acceptance by conduct; whilst rules expect acceptance to be communicated to the offeror, this requirement is waived in such impersonal circumstances.

Notwithstanding the small sums of money involved, candidates are expected to debate the issues of the drink requested being sold out and the non-return of the coin which had been inserted and the issue of an unwanted type of drink being dispensed and no change given. Potential legal rights and liabilities still need to be discussed and clear, compelling conclusions must be drawn.

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Responses limited to factual recall of principle will be restricted to marks below band 4.

5 Discuss whether or not Genevieve is bound by her contract of employment with TNS. Advise TNS of available remedies that may be sought and explain whether any of them are likely to be awarded.

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 is whether Genevieve might be able to wriggle out of the contract on the grounds of a mistakenly signed contract and the second addresses the possible equitable remedies that TNS could seek against her if the contract is valid.

Candidates should address these issues in turn.

With regard to the potential issue of mistake, candidates should identify that Genevieve would need to successfully raise a plea of non est factum (must be defined). This plea is unlikely to succeed on two counts; firstly, she signed a contract of employment, which is precisely what she thought she was signing, and, secondly, there appears to have been no fraud present (*Foster v McKinnon, Saunders v Anglia Building Society)*. Candidates should conclude that the contract was, therefore, binding on Genevieve; she had simply been careless.

Television Network South does not seek compensation, so they will need 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 Television Network South is unlikely to obtain an injunction to stop Genevieve working for their rivals (or for herself) unless it would leave Genevieve with some other reasonable means of making a living.

Candidates must discuss and draw a clear, compelling conclusion.

Advice given should be clear, concise and conclusive.

Responses limited to factual recall of principle will be restricted to marks below band 4.

6 Advise Kenton of his legal position following his parents' refusal to honour their promise to him and explain the remedies that might be available to him should he decide to sue them.

Candidates should identify the key issues to this scenario: intention to create legal relations and consideration.

As the promise to be enforced is one between family members, candidates should debate whether or not they had intended to create a binding legal relationship. Could the usual presumption be rebutted in this instance because of the partnership arrangement between them? Probably.

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Valuable consideration should then be briefly explained and illustrated, before attention is turned to whether or not Kenton provided consideration sufficient to make their promise binding. Would giving up career opportunities amount to consideration? Probably not as this was not promised in return for the parents' promise.

Could the parents' be estopped in equity from going back on their promise. Candidates might explain equitable estoppel (*High Trees* case) and the conditions on which its application depends: existing contract (partnership in this case?), a promise, reliance, inequitable to enforce strict legal rights, etc.

Candidates might conclude that the parents might be stopped from altering their position, in which case the court might enforce the transfer of land through specific performance or grant damages to its value (expectation loss) and possible career loss (reliance loss).

Clear, compelling conclusions must be drawn. Responses limited to factual recall of principle will be restricted to marks below band 4.

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