CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2013 series

9084 LAW

9084/31 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 should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

Cambridge will not enter into discussions about these mark schemes.

Cambridge is publishing the mark schemes for the May/June 2013 series for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level components and some Ordinary Level components.

CAMBRIDGE
International Examinations

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

© Cambridge International Examinations 2013

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

© Cambridge International Examinations 2013

Section A

1 It has been frequently argued that people should be able to make valid and enforceable contracts from the age of 16.

Critically assess the value of the current rules relating to the formation of contracts by minors and explain why you think that this change to the law has never been made. [25]

Candidates should detail the rules which provide that only executed contracts for necessary goods and services can be enforced against minors at common law (and even then only actions for a reasonable price can be entertained) and that all other contracts are voidable at the minor's option. Candidates might point out that case law is commonly a century or more old and involves 18–21 year olds who would be considered adults today. Candidates should reflect on whether or not the law, as it relates to minors and contracts, is out of step with today's society.

The age of majority has indeed been reduced and reflected by the law, but does the law need to be updated now that many 16 and 17 year olds are in full-time employment, that 16 and 17 year olds are far from naïve in the world of modern education and communication and that society's expectations of young people have changed. Candidates should reflect on the Law Commission's proposal in 1982 that all contracts should be binding on the over 16s and explore why they have not actually been enacted.

Candidates are expected to critically analyse existing rules and make reasonable suggestions as to the reasons why proposals haven't been enacted to achieve Band 4 marks.

2 Innocent parties to a breach of contract who claim damages are entitled to be restored to the financial position that they would have been in if the contract had been performed.

With reference to decided case law, discuss the extent to which this assertion is true. [25]

The main thrust of any candidate response must be the analysis of the three principal limitations on the recovery of losses in this context: causation, remoteness and mitigation.

Causation in contract should be clearly explained and the effect of intervening acts explored (e.g. County Ltd v Girozentrale Securities). The defendant must have been the direct cause of the claimant's loss.

Remoteness should be defined and explained. It would clearly be unfair to make defendants compensate for losses that could not have been foreseen as a real danger. Key cases of Hadley v Baxendale, The Heron II and Victoria Laundries (Windsor) Ltd v Newman Industries should be outlined, compared, contrasted and conclusions drawn.

Complainants are expected to make reasonable efforts to mitigate or minimise losses suffered. In fairness to all, courts will dismiss claims where there have been no reasonable steps taken to keep losses down to a minimum (Pilkington v Wood; Brace v Calder).

Better candidates will also consider the means of calculating loss and distinguish between expectation and reliance loss and comment thereon.

© Cambridge International Examinations 2013

3 The effects of the breach of a contractual term can be many and varied.

Critically assess the extent to which analysis by the courts, based on conditions and warranties alone, provides just outcomes to the parties in dispute. [25]

Traditionally, the law has sought to classify terms according to their importance and the effects of breach have varied accordingly. Our courts have classified terms according to the intentions of the parties to the contract at the time that the contract was made, as in different situations the same term can have very different significance. The traditional view has been to classify terms as conditions (very important terms) and warranties (collateral to the main purpose of the contract: S.61 SOGA 1979). Breaches of condition have been traditionally perceived as so significant as to enable the innocent party to repudiate the contract and claim damages; breaches of warranty give rise to actions in damages only.

It was in the *Hong Kong Fir case* (a brief outline can be credited) in 1962 that the expression 'intermediate' or 'innominate' term was used for the first time, thus challenging the traditional approach to the terms of a contract. The Court of Appeal suggested that all terms do not lend themselves to the traditional form of legal analysis in that they could not be clearly defined as either conditions or warranties at the time of contract formation: the effect of the breach should depend on the importance of the breach. In *Schuler AG v Wickman Machine Tool Sales Ltd* the House of Lords held that the use of the word 'condition' was only an indication of intention and that it was important to look at the contract as a whole and whether a strict interpretation of the meaning of the term would create a very unreasonable result.

Candidates are expected to critically assess whether a change in approach was really necessary to reach Band 4.

© Cambridge International Examinations 2013

Section B

4 Consider the extent, if any, to which Mahmoud and Aardvark Finance are legally bound by the document that Farooq got him to sign. [25]

Mistakes do not generally affect the validity of contracts. As a general rule, a person who signs a document is bound by its contents, regardless of whether the document was read or understood (*L'Estrange v Graucob*).

Candidates are expected to explore the one key defence to liability: the plea of non est factum (not his deed), a defence reliant on proof that at the time of signing the document, there existed a belief that the document was of a fundamentally different nature to what it actually was.
A successful plea will generally render the contract void. The effect of Mahmoud acting in a professional capacity and the bearing that this might have should also be considered.

Candidates must focus discussion on the mistake as to the nature of the document (*Saunders v Anglia Building Society*) and the presence or not of fraud to induce the signature.

The issue of rectification as a possible remedy might also be addressed briefly.

Vicarious liability consequent to the relationship of employer/employee between Mahmoud and Aardvark Finance should also discussed but no lengthy discussion is required.

A clear, compelling conclusion must be drawn.

5 Discuss Noah's potential liability towards Abraham for the £3 000 that he still owes even if he paints the house as requested. [25]

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 Noah from his contractual liability. Noah contracted to pay £15 000 by fifteen equal instalments and he has defaulted on the last one. Clearly, unless the doctrine of equitable or promissory estoppel is invoked, Noah would be liable for the £3 000 unpaid. However, Abraham has promised to forego the £3 000 due if Noah paints his house. Whether or not Noah completes the painting, would the court consider the promise to perform that act sufficient fresh consideration in return for the promise to forego the £3 000?

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?

Candidates are expected to debate the issues and draw clear, compelling conclusions, fully supported by case law references.

© Cambridge International Examinations 2013

6 Using case law to support your views, consider Tim's legal position if John was to charge him the usual price and Tim was to refuse to pay him. [25]

Candidates should recognise the intended issues as being the intention to create legal relations and valuable consideration and both should be addressed.

Candidates should recognise that social and domestic agreements are not generally intended to be legally binding (*e.g. Balfour v Balfour*); however, it is a rebuttable presumption (e.g. *Simpkins v Pays*). If the presumption stands there is nothing further to debate, but candidates must consider the alternative view that there was an intention to be legally bound in this instance because of the professional capacity in which John was asked to act and then move on to address consideration.

Candidates may then briefly outline the rules of consideration, and should emphasise that oral agreements will only be legally binding as contracts if an element of exchange is present. This element of exchange is evidenced by valuable consideration. Was there an implied promise made to pay for the service when it was requested by Tim? Were these gratuitous acts of friendship or were the actions taken in circumstances that would give rise to a belief that they would be paid for?

Issues must be fully discussed and clear compelling conclusions drawn.

© Cambridge International Examinations 2013