CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2013 series

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 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 The impact of exclusion clauses on the consumer of goods and services in England and Wales is no longer of any significance.

Critically analyse the statutory controls that exist over the use of exclusion clauses and assess the truth of this statement. [25]

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 and 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 evaluate the success or otherwise of the legislation and draw clear conclusions supported by example wherever possible.

© Cambridge International Examinations 2013

2 Innocent parties to a breach of contract are entitled to a measure of damages that will place them in the position they would have been in if the contract had been performed.

Using case law to support your views, assess whether there are any general limitations to this rule. [25]

This is a general question on the limitations on the recovery of damages and thus that is where the focus should lie, even if some limited credit is given for an explanation of what damages are and what their purpose is.

It is anticipated that the principal limitations that should be addressed are: causation, remoteness and mitigation.

A defendant will only be held liable for losses actually caused by their breach; a break in the chain of causation and no liability exists (*County Ltd v Girozentrale Securities*).

Fairness also dictates that a defendant should not be expected to accept liability for losses deemed too remote from the breach. The rules set down in *Hadley v Baxendale* need to be outlined and discussed. The development of these rules should then be traced through cases such as *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd, The Heron II and Wroth v Taylor.* The net result is that losses that arise from special circumstances are not recoverable unless the defendant knew of such circumstances and that defendants can be held liable for losses far greater than might have been expected as long as they are of a type that could have been reasonably contemplated.

Claimants have a duty to limit the losses that they suffer and will not be able to recover the full extent of a loss suffered if the court feels that reasonable steps could have been taken to reduce that loss (*Pilkington v Wood; Brace v Calder*).

© Cambridge International Examinations 2013

3 The conditions on which the doctrine of promissory estoppel is applicable are abundantly clear, even if its scope is not.

Analyse the circumstances under which the doctrine of promissory (or equitable) estoppel might be applicable and discuss the limitations on its use by the courts. [25]

The doctrine of equitable or promissory estoppel must be set in the context of consideration and the Rule in Pinnel's case that the payment of a lesser sum than that due does not provide valuable consideration for either express or implied promises to forego the remainder due. This equitable doctrine provides one way of making such a promise binding in situations when it is considered the only just outcome.

Candidates should explain its alleged origins (*Hughes v Metropolitan Railway Co*) and outline the case in which the doctrine was first enunciated in detail*: Central London Property Trust Ltd v High Trees House Ltd.*

Conditions on its application to be discussed are:

- Need for a pre-existing contract
- A clear and unambiguous promise not to enforce full contractual or legal rights
- The promisee must have acted in reliance on the promise in the sense that it influenced conduct (*Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd*)
- It must be deemed inequitable for the promisor to enforce his strict rights (*D&C Builders v Rees*)
- Usually prevents rights from being exercised for a period of time and does not destroy them entirely (*Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd*)
- Cannot be used to create new rights or extend scope of existing rights already held (*Combe v Combe*).

© Cambridge International Examinations 2013

Section B

4 Consider Jamal's potential legal liability to Hanif and discuss any remedies that might be awarded against him. [25]

Candidates should identify the crux of the issue as potential misrepresentation. Misrepresentation should be identified as a vitiating factor, which if deemed actionable, has the effect of rendering the subsequent contract voidable at the misrepresentee's option.

The main issue to be discussed is what amounts to an actionable misrepresentation and whether Hanif would have any grounds for avoiding any contract to purchase the business.

Principle areas for debate are whether or not silence can amount to misrepresentation and, if so, in what circumstances and what its effects are, and what effect a deliberate attempt to mislead would have. Would the maxim of caveat emptor apply here? Does a duty to disclose information given the type of relationship between the parties and the sort of situation?

Potential remedies would be dependent on the class of misrepresentation committed and the full range ought to be addressed as there are suggestions in the facts that any of the three types may have been committed.

Informed debate followed by clear, compelling conclusions is expected. General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.

5 Using case law to support your views, consider Norman's legal rights and liabilities as a consequence of his attendance and actions at the auction. [25]

Candidates should introduce their response by explaining that contracts can only result from agreement represented by firm offer to contract on certain terms and a corresponding unconditional acceptance of such terms. Candidates are not expected to display precise knowledge of how rules of offer and acceptance relate directly to auction sales, but will be credited if knowledge is disclosed.

In the case of the chairs, candidates should debate whether or not Norman knew that they were for sale only on the condition that offerees were only willing to pay a minimum price (*Barry v Davies*). Had the terms been communicated in the catalogue perhaps?

Norman appears to have offered (he bid) to buy the table and the auctioneer seems to have accepted the offer made (he banged the hammer down to Norman so there would appear to be a binding contract unless an effective revocation or withdrawal of offer was communicated prior to acceptance taking place (*Warlow v Harrison*). Why didn't the auctioneer hear or see Norman's attempts to withdraw his offer to buy?

The advertising of the intention to hold an auction of goods (as in the catalogue seen by Norman) is probably a mere invitation to treat and not a firm offer to sell anything (*Harris v Nickerson*) and thus no contract results until someone either offers to sell or offers to buy and there is a corresponding unconditional acceptance of the price stated. As the writing desk was apparently withdrawn from the potential sale, there was no offer made to sell so no contract could result.

Whatever conclusions are drawn by candidates, they should be clear, compelling and result from a detailed application of principle to facts. General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.

© Cambridge International Examinations 2013

6 Using case law to support your views, discuss the contractual liability of Noah for the losses claimed by Yanick. [25]

The focus of responses to this question is expected to be remedies for breach of contract in general and the principle of remoteness of damage in particular.

Candidates should recognise that the award of compensation in the form of damages is a common law remedy and is thus a remedy which should be awarded as of right to those able to establish that a breach of contract has occurred. Types of damages do not need to be considered. Candidates should then highlight that, once actionable breach has been established, the role of the judge is to establish the measure of damages to be awarded.

The remoteness of damage principle must be identified, explained and illustrated by reference to case law (*Hadley v Baxendale*, *Heron II (Koufos v Czarnikow), Victoria Laundry v Newman Industries).* Candidates are expected to recognise that actionable losses are those arising naturally from a breach or those that the party in breach might have anticipated given the knowledge that he possessed at the time. These principles must be applied to the loss of profits and clear, compelling conclusions drawn.

The issue of mitigation of loss should be addressed. The decision in *Brace v Calder* indicates that there is a duty imposed on those suffering loss to take reasonable steps to minimise them. Candidates should assess whether Yanick ought to have taken the opportunity to hire machinery and thus keep his business operational. Undoubtedly cost would have been a factor.

General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.

© Cambridge International Examinations 2013