CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2014 series

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 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 2014 series for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level components and some Ordinary Level components.

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

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.

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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 The effect of the equitable remedy of rescission is to set a contract aside and put the parties back to the position they were in before the contract was made. With reference to case law, analyse the circumstances under which the remedy might be granted by the court and critically assess any barriers to such awards.

Candidates might introduce their responses by explaining that rescission is not a remedy generally available in contract law, and it is never deemed appropriate for the breach of contract. Its availability is almost exclusively limited to instances where it is claimed that a contract has been induced by misrepresentation and thereby enables a person to have the contract declared void for want of true consent. Candidates should be credited for explaining that historically, victims of common mistake might also have had the contract set aside by rescission in equity, but since the *Great Peace Shipping* case, the possibility has been abolished.

It should be explained that the remedy sets the contract aside and returns the parties to their pre-contractual positions. It is also available for fraudulent, negligent and innocent misrepresentation, as well as for misrepresentation under statute. Candidates might also add that the intention to rescind must be indicated either directly to the other party or by taking other reasonable action to indicate intention, if direct contact is not feasible.

Candidates then need to focus on a critical assessment of the bars to rescission. Affirmation or continuance of the contract once in full knowledge of misrepresentation prevents rescission (e.g. *Long v Lloyd* and *Habib Bank v Nasira Fufail*). Simply doing nothing does not amount to affirmation unless, having discovered the misrepresentation, no action is taken for an excessive period.

Lapse of time may operate as a separate bar for non-fraudulent cases, but as there is no strict time limit, the rules are still vague and not particularly helpful (e.g. *Leaf v International Galleries* and *Zanzibar v British Aerospace*).

If parties cannot be returned to their pre-contract state, commonly because the contractual subject matter has been destroyed or used up, rescission will be impossible. Again, the rules are not altogether satisfactory as case law (*Erlanger v New Sombrero Phosphate*) indicates that if the subject matter can be returned, but not in its original condition, the court may order return of the subject matter plus financial compensation for loss in value.

Additionally, if third party rights accrue in the subject matter in a bona fide manner before steps are taken to rescind, this too will bar rescission as a remedy (e.g. *White v Garden*).

Ill-focused, all embracing general responses, or those based purely on factual recall, will receive marks limited to the maximum allocated in Band 3. Evidence of critical assessment is required for marks to be awarded within Bands 4 and 5.

2 Acceptance of an offer must be communicated before a contract comes into existence. Critically assess any exceptions to this principle that might exist.

Candidates should set the question in context by briefly outlining the requirements of the formation of agreement as a basis for a binding contract. No credit should be given for a wider discussion of other essentials of a valid contract.

Candidates should explain that in general, it is impossible for binding contract to exist without a firm offer to contract having been communicated by an offeror to an offeree and a corresponding, unconditional assent to the terms of that offer communicated by that offeree back to offeror. In

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other words, for a contract to exist, the person who made the offer must know that his offer has been accepted (e.g. *Entores v Miles Far East Corporation*). Candidates ought to emphasise that this only really becomes an issue when parties do not deal with one another face to face.

The crux of the question is clearly the critical assessment of exceptions to the rule, but significant credit will be awarded for a detailed explanation of the ruler. The generally accepted exceptions to be covered are:

- the terms or type of offer negate the need (e.g. *Felthouse v Bindley* and *Carlill v Carbolic Smoke Ball Co*)
- the conduct of the offeror prevents communication (e.g. *Entores* and *The Brimnes*)
- the postal rule applies.

Candidates are expected to consider the application and effect of the postal rule of acceptance (e.g. *Henthorn v Fraser, Household Fire Insurance v Grant, Byrne v van Tienhoven*) and its exceptions in detail (e.g. *Holwell Securities v Hughes* and *Brinkibon v Stahag Stahl*), and to assess the rule with a truly critical eye.

Ill-focused, all embracing general responses or those based purely on factual recall will receive marks limited to the maximum allocated in Band 3. Evidence of critical assessment is required for marks to be awarded within Bands 4 and 5.

3 Critically assess the extent to which injustice may be mitigated and a balance of interests achieved in these instances. It is unjust that minors are generally able to escape liability if they enter into contracts.

Candidates should **briefly** outline the legal protection afforded to minors with regard to contracts. 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; all other contracts are voidable at the minor's option, leaving the adult, unaware that the other party to a contract is a minor with little or no comeback. Is this potentially unjust, and do the remedies afforded against minors mitigate this injustice in any way?

The equitable remedy of restitution should be defined and explored as one such remedy. If a minor fraudulently obtains goods and then keeps them in his/her possession, an order of restitution can be made to compel the minor to return them to the claimant.

Candidates should go on to explore the claimant's rights as a consequence of S3 of the Minors' Contracts Act 1987 which do not rely upon the minor's fraudulence, although it still needs to be a just and equitable course of action for the court to order the return of property acquired by the minor. If the goods have been sold or exchanged by the minor, they may have to pay for them or give up to the claimant property received in exchange. However, if the goods have been sold and the proceeds of sale spent, the minor cannot be made to pay anything, as this would effectively enforce what was an unenforceable contract.

To reach Band 4 candidates are expected to assess critically the way in which the law deals with these situations. Ill-focused, all embracing general responses or those based purely on factual recall will receive marks limited to the maximum allocated in Band 3.

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Section B

4 Using case law, advise Charlie and Eliza of their respective rights to ownership of the designer luggage.

The facts of this case suggest that Charlie has been the subject of a fraudulent misrepresentation of identity. This would render a contract voidable, as the fraud has not been discovered until after Eliza has purchased the designer luggage in good faith from Debbie. The Sale of Goods Act 1979 provides that good title passes from seller to buyer in these circumstances, so Eliza would have every legal right to refuse to hand over the designer luggage to Charlie unless Charlie pays for it.

The only circumstances under which Charlie could legally demand that Eliza returns the designer luggage to her is if she can establish that the original contract between Debbie and herself was founded on an operative unilateral mistake as to identity of the other party to the contract. This would render the original contract void, and no ownership rights would then have passed between Charlie and Debbie and consequently, again under the Sale of Goods Act, no ownership rights could be passed on to Eliza.

The decisions in *Phillips v Brooks, Lewis v Avery* and *Shogun Finance* suggest that the operative mistake will only be recognized in these circumstances if the identity of the other party was of material importance to the contract. So, in this case, Charlie would have to prove that she intended to make this contract with Debbie, and essentially would not have contracted with her if she thought that she was anyone else. If it is apparent that the identity of Dannii Minogue was only of importance when it came to making a payment, then any action based on mistakes would fail as it would then be clear that Charlie was prepared to make the contract with anyone.

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 Advise WMC of its contractual liability if it refuses to honour its promise to pay the extra wages to drivers who do not belong to the Union and to its office staff who act as bus drivers on 1 May.

Candidates should recognise that the crux of this scenario to concern valuable consideration as an essential element of the formation of valid, binding contracts. An introduction might briefly introduce all elements of a binding contract, but detailed diatribe is not to be rewarded further.

Consideration must be defined, and its essential presence explained. The definition in Currie v Misa or an accurate synthesis is acceptable. The element of exchange ought to be discussed.

Rules of consideration might be listed, but again will not be rewarded beyond what is actually required by this scenario: the reality of consideration that gives it value in economic terms. In particular, candidates are expected to review case law associated with the performance of existing duties in return for promises (e.g. *Collins v Godefroy, Glasbrook Bros v Glamorgan CC, Harris v Sheffield United, Stilk v Myrick, Hartley v Ponsonby, Williams v Roffey Bros* and *Scotson v Pegg*), and whether or not such promises consequently become legally enforceable.

Two groups of staff have been promised extra wages for performing bus driving duties on 1 May: non-union member drivers and office workers. Candidates should recognize that the liability of WMC to pay the extra wages to each of these groups hinges on whether or not each group provides consideration of real value in return for the promise. Given that both groups are already employed by WMC, the decisions in *Stilk, Hartley* and *Williams* would seem pertinent.

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The question that candidates need to ask is whether or not the workers in question are merely perfoming existing contractual duties in return for the promise (in which case no real consideration is given for the promise of extra pay unless WMC derive a substantial benefit – *Williams v Roffey*) . If they are performing duties substantially different from the norm, then valuable consideration is present and a binding liability exists (*Hartley v Ponsonby*).

It seems clear that the office staff will be entitled to the extra pay, whereas there is less certainty as regards the drivers who work extra hours. Perhaps they are simply entitled to an overtime payment?

A detailed discussion is expected, followed by clear, concise and compelling conclusions. Significant application of legal principle is required for marks beyond the maximum of Band 3.

6 Consider whether the airline is liable in contract for the losses sustained by Kylee.

Candidates should recognize the principle issue in this scenario as remedies for breach of contract and limitations thereto.

Candidates ought to debate flight delays consequent on natural causes as a potential breach of contract. Credit should be given to candidates who recognize that such delays are likely to be covered by a limitation clause in the contract of carriage, but they have no alternative but to adopt the view in this case that there is no such clause, and debate whether failure to make a flight available to passengers is a breach of contract. The reasonable conclusion is that time is of the essence and therefore a breach occurs.

Attention should then switch to a detailed exploration of principles and case law related to remedies for breach of contract, and the limitations imposed on such claims. The principles of causation, remoteness of damage and duty to mitigate and to the possible measure of damages that might be awarded must all be covered.

A person can only claim for losses caused at least in part by an alleged breach (e.g *County Ltd v. Girozentrale Securities*).

Defendants will only be liable for losses not considered too remote from their cause to have been forseeable by the defendant (e.g. *Hadley v Baxendale, Victoria Laundry v Newman Industries, The Heron II, Wiseman v Virgin Atlantic Airways* and *The Achilleas*).

Claimants owe a duty to mitigate or minimise losses sustained, and will be unable to claim losses incurred due to a failure to mitigate (e.g. *Brace v Calder* and *British Westinghouse Electric v Underground Electric Rys Co*).

Candidates should therefore consider whether:

- the airline could be liable for commission losses or would they be considered too remote from the breach causing delayed travel?
- the airline could be liable for the stress and trauma caused?
- train travel might be considered reasonable action to mitigate potential loss?

Some discussion of the calculation of the measure of damages based on reliance or expectation loss (should be defined and explained) will also receive credit.

A detailed discussion is expected, followed by clear, concise and compelling conclusions. Significant application of legal principle is required for marks beyond the maximum of Band 3.

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