CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2014 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 2014 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 2014

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 2014

Section A

1 The requirement that there should be an intention to create legal relations is unnecessary because English Law has the test of consideration to determine the boundaries of contract. Critically analyse this view.

Candidates should explain the terminology contained in the question; both the intention to create legal relations and consideration to determine the boundaries should be defined.

It is indeed true that generally, agreements are not legally binding as contracts, if promises contained therein are neither put into the form of a formal deed nor supported by valuable consideration given in return. Courts seem only to consider intent to create legal relations if offer, acceptance and consideration are established, so is there truth in the assertion?

Suitable case law such as *Balfour v Balfour, Simpkins v Pays* and Rose *and Frank Co v J R Crompton Bros* should be considered and discussed in the light of the assertion.

Candidates must evaluate the success or otherwise of the legislation and draw clear conclusions supported by example wherever possible. Factual recall only will limit marks to the maximum allocated in Band 3.

2 Contracts entered into by minors may be declared either valid or voidable by the courts. Explain the types of contract that generally fall into each of these categories.

Evaluate the legal rules in terms of fairness to and impact on both the minor and any adult party to the contract.

Candidates might introduce their response by explaining that minors are those people under the age of 18 when they enter a contract. Some might add that the age of majority used to be 21, but this was reduced to 18 by the Family Law Reform Act 1969. Candidates should proceed to explain that special rules exist primarily to protect relatively immature people in society from unscrupulous adults who might otherwise try to take advantage of that immaturity when making contracts with them.

Candidates should emphasise that the basic common law rule still remains: contracts do not bind minors except in exceptional circumstances. Candidates are then required to explain the types of contract that fall into the stated categories.

Valid (bind both parties)	**Voidable (by the minor)**
Contracts for necessary goods & services	Contracts involving long term interests in land, shares or partnerships
Contracts of service for the minor's benefit	

Necessaries should be explained as per Sale of Goods Act 1979 and should be examined to clarify what would amount to a necessary good or service that a minor has committed to purchase. Case law must be examined, such as *Nash v Inman, Chapple v Cooper* and *Fawcett v Smethurst.*

© Cambridge International Examinations 2014

Candidates must also consider whether a minor is bound by a contract of service (employment). The general rule should be explored, namely that these will normally bind as long as they are beneficial to minors to the extent that they involve training. Again, case law such as *Clements v London & NW Railway Co, De Francesco v Barnum, Doyle v White City Stadium* and *Cowern v Nield* ought to be explored.

As far as voidable contracts are concerned, candidates should explain that these are never voidable by the adult involved, and that they will bind the minor unless expressly avoided either before or within a reasonable time after the minor's 18th birthday. Case law such as *Corpe v Overton* and *Steinberg v Scala* could be examined.

Candidates are required to evaluate the fairness of these rules, so an examination of the effect of the rules on adults who contract with minors is essential.

Is it fair that minors are only bound to pay for necessary goods and services (and even then, only a reasonable price)? What about the adult's ability to recover the goods sold from the minor?

Is it fair that minors should be able to escape contracts of employment just because no training is provided?

Should minors be able to avoid long term contracts at a whim? How fair are the available remedies?

Factual recall without evaluation of the fairness of the rules will result in maximum marks allocated within Band 3.

3 There are sufficient remedies to ensure that an appropriate solution is available for every breach of contract. Using suitable example case law, critically assess this statement

Cursory examination of the remedies available for breach of contract might indeed suggest that there is a solution for every sort of breach. However, closer examination discloses two main gaps in provision, in relation to: *interests protected* and to *practicalities.*

Candidates might be expected to consider the extent to which interests could be considered to be inadequately protected by an award of damages as a consequence of the limitations imposed by the principles of causation, remoteness and causation.

In addition, candidates could consider how measures of damages are achieved in the respective interests of the parties. Expectation and reliance losses might be contrasted here.

The law focuses mainly on one type of loss, namely: financial loss to the innocent party to the breach. In general, the law ignores mental distress, anxiety and inconvenience caused by breach.

Candidates might also explore how equitable remedies might prove to be more suitable remedies in some circumstances.

Factual recall without critical assessment required by the question will be awarded the maximum marks allocated within Band 3. Case law should be explored reasonably extensively for answers worthy of Band 4 marks.

© Cambridge International Examinations 2014

Section B

4 Advise Burnage Bantams of its contractual liability to pay for the additional policing.

Candidates should explain consideration and why it is necessary to support a valid contract in English Law before proceeding to examine this requirement.

Candidates will receive limited reward for a detailed examination of all the rules of consideration: they should identify the crux of the issue as the reality of consideration. In particular, the focus of the candidate's response should comprise a detailed exploration of the question of whether or not the performance of a duty already owed to someone can amount to real, valuable consideration to make a promise made by that person binding in law.

The scenario suggests a need for candidates to consider whether or not the police force in question has provided real consideration for the promise to pay for policing at football matches. Is policing a public duty? Can policing therefore amount to real consideration of particular value to the football club? Did the club cause a greater need by deciding to switch match day?

Before drawing conclusions, candidates should consider case law such as *Collins v Godefroy, Glasbrook Bros v Glamorgan CC* and *Harris v Sheffield United FC.*

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

5 Advise Dodge as to the potential liability of Elecgo for the losses he has sustained.

Candidates should recognise that the principal issue of this scenario concerns a potential case of a contract induced by misrepresentation.

Candidates should define misrepresentation as an untrue statement of fact that materially induces the person to whom it is made to enter into a contract, and should explain that it would render a contract voidable at the option of the person so induced. Candidates should then explore the elements (and associated case law) such as untrue statement of fact or opinion (e.g. *Bisset v Wilkinson, Edgington v Fitzmaurice* and *Dimmock v Hallett*) and inducement (e.g. *Redgrave v Hurd* and *Attwood v Small*).

The four types of misrepresentation should ideally be defined and briefly explained before moving on to apply principle to the scenario.

If Dodge is to avoid the contract with Elecgo and is to obtain any sort of compensation, he will need to establish inducement by means of misrepresentation of fact. He is induced by the salesman's 'opinion' that the Ampere model will suit Dodge's needs. Dodge will need to prove that the untrue statement was an actual inducement (even if not the sole reason) to contract. Could the salesman be considered an expert or would he have said anything to obtain a sale? The ruling in Edgington v Fitzmaurice would appear to favour Dodge in this instance.

Assuming that an active misrepresentation is established, candidates can then turn their attention to remedies. Whether the salesman was acting innocently, negligently or fraudulently, Dodge would be entitled to avoid the contract. Rescission of the contract would involve the cars being returned to Elecgo and the price paid for the vehicles to Dodge.

© Cambridge International Examinations 2014

However, Dodge will still be out of pocket in terms of his business set-up costs. Candidates should recognize that only if fraud or negligence can be established, will compensation be possible as of right in addition to Dodge rescinding the contract.

If the salesman was innocent, damages can only be obtained if considered by the court to be equitable in the circumstances (e.g. *Howard Marine & Dredging Co v A Ogden & Sons*). If it can be established that the misrepresentation was made negligently under the Misrepresentation Act 1967 or fraudulently, Dodge will definitely be able to claim damages.

It is not essential that the measure of damages be discussed, but candidates will receive credit if they do.

Candidates should be suitably rewarded for considering that a representation might become a term of the contract and if it then turns out to be untrue, a remedy for breach of a contract term would exist.

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

6 Advise both parties of their respective contractual rights and liabilities in this situation.

Candidates should introduce their responses by identifying the crux of the issue in this scenario as relating to the breach of an express term of a contract and the likely measure of damages that may result from it.

Initial discussion might be based on the formation of a contract, but no credit will be given for a detailed explanation and analysis of the elements of valid contracts. Focus must then be turned to terms of a contract. The difference between express and implied terms can be credited if discussed, but the main thrust of the response should be the nature of the term that has been broken and the possible consequent remedies.

Conditions, warranties and innominate terms should be discussed, and remedies should be examined in detail. Appropriate case law should be explored, such as *Bunge Corp v Tradax Export SA, Hong Kong Fir etc.*

The term has been broken on six separate occasions due to failures to either repair or replace computers within 24hrs. It will be for the court to determine whether the contractual term is a condition, warranty or innominate term, but candidates must demonstrate clearly what they understand the outcome might be, whatever the court's conclusion. The key issue for Gerard & Co is whether the delay in performance by Frederick was 'of the essence' because, if not, it will not amount to substantial failure to perform the contract and thus not justify termination.

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

© Cambridge International Examinations 2014