CAMBRIDGE INTERNATIONAL EXAMINATIONS

Cambridge International Advanced Level

MARK SCHEME for the May/June 2015 series

9084 LAW

9084/31 Paper 3 (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 2015 series for most Cambridge IGCSE®, Cambridge International A and AS Level components and some Cambridge O Level components.

® IGCSE is the registered trademark of Cambridge International Examinations.

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, but indicative marks per question attempted on Paper 3 are shown in brackets.

Assessment Objective	Paper 1	Paper 2	**Paper 3**	Paper 4	Advanced Level
Knowledge/ Understanding	50	50	**50 (13)**	50	50
Analysis/ Evaluation/ Application	40	40	**40 (10)**	40	40
Communication/ Presentation	10	10	**10 (2)**	10	10

© Cambridge International Examinations 2015

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 2015

Section A

1

Specific performance is a discretionary remedy in the law of contract. Explain the nature of specific performance as a remedy and discuss the conditions that limit the exercise of a court's discretion in cases of breach of contract.

Specific performance is one of a range of equitable remedies that can be awarded when a court considers that compensation of the claimant in the form of damages would not be adequate. It is a remedy that can be awarded to compel performance of a contract, but is seldom used today for this purpose.

Damages must be inadequate on their own. SP is not granted, therefore, if the contract was one for goods or services that are easily replaced. Hence, today, the decree is reserved almost exclusively to contracts for the sale of land and other goods of a similarly unique nature.

The remedy should not cause greater hardship to the defendant. Equitable remedies are based on the notion of fairness.

The claimant must have acted equitably himself. If the contract was obtained by unfair means, the remedy is defeated.

The contract must be suitable for SP. SP is never awarded in the case of contracts for personal services, where an infringement of personal freedom may be infringed, or one involving continuous duties, as that would be too much for the court to police.

Mutuality of remedy is required. It is also a condition that such a remedy could be granted against either party. Hence it is never granted if one party is a minor.

Pure factual recall will receive marks limited to a maximum within band 3.

2

The postal rule of acceptance is no longer of any real significance to the formation of valid contracts. Critically assess the truth of this statement.

Candidates should set the question in the context of the general rule of offer and acceptance, i.e. that a contract is formed once a firm offer has been communicated by offeror to offeree and that an unconditional acceptance has been communicated by offeree to offeror, and explain that the posting rule has arisen as an exception to the general rule.

Postal acceptances take effect from posting rather than communication, due to the inevitable delay between posting and receipt (*Adams v Lindsell*). Candidates may outline the circumstances under which the rule applies (specified or reasonable means of acceptance (*Henthorn v Fraser*), posting in proper manner (*Re London & Northern Bank*), and properly addressed and stamped (*Holwell Securities v Hughes*) and briefly explain the effects of letters of acceptance that never arrive (*Household Fire Insurance v Grant*) or cross with letters of revocation (*Byrne v Van Tienhoven*).

Does the rule still have any real significance in today's world of instantaneous, electronic communications?

The rule was extended to cover acceptance by telegram, now telemessages (*Cowan v O'Connor*), but what about fax, email or mobile phone messaging?

© Cambridge International Examinations 2015

It would appear, however, that where acceptances are made by an instant mode of communication, the posting rule is inapplicable, as the acceptor will know at once that they have not managed to communicate with the offeror and will need to try again (*Brinkibon v Stahag Stahl GmbH*).

So does the rule have any real significance today? Even in today's society, many offerors will still want written, signed evidence that an offer has been accepted and may make it a specific requirement of the offer itself, in which case the rule clearly applies even today.

The present day significance of the rule must be assessed even if band 3 marks are to be achieved and a critical view must be expressed to achieve band 4.

3

Explain why the doctrine of promissory (equitable) estoppel came into existence and assess whether it can be said to prevent parties from enforcing contractual rights.

Candidates are expected to set the question in context by saying that this is an equitable doctrine introduced by the *High Trees* Case as a means of mitigating undue hardship (at least temporarily) that would result from the strict application of the rules of consideration in the law of contract (particularly the rule in Pinnel's case).

The rule itself should be stated and explained and conditions of application considered. Candidates should then, using relevant case law, go through situations in which the doctrine did not apply because of attempts to use it as a 'sword rather than a shield' (e.g. *Baird Textile Holdings v Marks & Spencer; Combe v Combe).*

General responses lacking focus on the specific question will be limited to maximum marks within band 3.

© Cambridge International Examinations 2015

Section B

4

Advise Jamila and the shop owner of their respective legal rights and liabilities in this matter.

Candidates should recognise the principal issue raised by the scenario as concerning potential misrepresentation and terms of a contract. Candidates might introduce responses with a definition and discussion of representations (and misrepresentations) and how such representations become terms of a contract.

Candidates are expected to analyse the issue on both the basis of misrepresentation and breach of contractual term.

It should be explained what Jamila needs to prove to establish an actionable representation, whether it would be better to sue for negligent rather than fraudulent misrepresentation and whether or not she might be compensated for the lost business.

Candidates should consider the likelihood of the type of telephone supplied becoming an express term of contract, given the significance of the qualities of the cell-phone to Jamila. It should be debated whether the term was a condition, warranty or innominate and consequently what remedy might be available for its ultimate breach. A reasonable conclusion might be that the type of cell-phone was of great importance, but as Jamila did not seek to rescind the contract straight away, it might be considered a mere warranty and give rise to a right to damages only.

Informed debate followed by clear, compelling conclusions is expected. Generalised responses or ones limited to factual recall are to be awarded a maximum mark within band 3.

5

Advise Carlos whether or not he might successfully claim for the injuries and loss suffered as a consequence of his accident, using case law to support your views.

The question posed requires candidates to address the issue of the incorporation of exclusion clauses in contracts through the use of notices and tickets and the extent to which liability can be excluded by businesses.

In order for the parties to any contract to be bound by particular requirements or limitations, these must become terms of the contract and the parties must be reasonably aware of them at the time that the contract is made. Candidates might briefly define terms, but no detail is required regarding the nature and importance of terms in this contract.

The first issue to be addressed is whether the exclusion clause did become incorporated to the contract made when the swimmer entered the arena on this particular day. If the term was to be incorporated by notice then the notice must be prominently displayed so that the other party's attention is drawn to it at the time that the contract is made (*Olley v Marlborough Court Hotel, Thornton v Shoe Lane Parking)*. Candidates need to discuss this issue and draw conclusions. If candidates conclude that insufficient notice was given by the sign by the ticket office, incorporation by notice on an entrance ticket needs to be discussed (*Thompson v LMS Railway, Chapelton v Barry UDC)*. Was the ticket in question a mere receipt or a contractual document? What is the effect of failing to read terms? Candidates might also consider whether this term might have been incorporated by a course of dealing, given the number of times that the skaters must have trained at the arena. Discussion and conclusions are required.

© Cambridge International Examinations 2015

The second issue surrounds the validity of the term in question. Candidates should recognise the relevance of the Unfair Contract Terms Act 1977. It would appear that the cleaners employed at the ice rink had been negligent. S2(1) UCTA provides that clauses excluding or limiting liability for death or personal injury resulting from negligence are ineffective.

Hence, candidates should conclude that even if the term became incorporated, S2(1) UCTA would negate its effect. The owners of the arena would appear to be liable but to what extent?

Candidates should then explore whether a claim for £30,000 for the lost sponsorship would be likely to succeed.

How would personal injuries be measured for compensation purposes? And what of the loss of Carlos's place in the Olympic team; could that be subject to compensation?

The issues of potential mitigation and remoteness should also be discussed and clear, compelling conclusions drawn.

6

Advise CFM whether or not they might succeed if legal action was to be brought against TC in respect of the above issues.

Candidates might introduce responses to this question by outlining the need for not only agreement, but also for intention that the agreement should be legally binding and potentially lead to legal consequences. Distinctions should be drawn to highlight presumptions ordinarily made by the courts as regards social or domestic agreements and commercial agreements.

Candidates should recognise that being a commercial agreement in this case, courts might ordinarily presume a definite intention to create legal relations unless there is evidence to the contrary (*Esso Petroleum v Customs& Excise Commissioners*).

Discussion of the findings of the court in *Rose & Frank v Crompton Brothers* might lead candidates to deduce that there was no intent in the present case on the basis of what would appear to be an honourable pledge clause that negates the necessary legal intent. Candidates might conclude therefore that CC selling vehicles to another dealership in the locality does not amount to an actionable breach of contract.

The refusal to respond to an order placed under the agreement requires further and separate discussion. Candidates might correctly deduce from *Rose & Frank* that a claim might be upheld on the basis that an order on terms set out in a separate agency agreement and had been accepted, but not honoured.

Informed debate followed by a clear, compelling conclusion is expected. Generalised responses or ones limited to factual recall are to be awarded a maximum mark within band 3.

© Cambridge International Examinations 2015