CAMBRIDGE INTERNATIONAL EXAMINATIONS

Cambridge International Advanced Level

MARK SCHEME for the May/June 2015 series

9084 LAW

9084/32 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

The innocent parties to a breach of contract are entitled to such damages as will put them in the position that they would have been in if the contract had not been broken. With reference to relevant case law, critically analyse the extent to which this statement is accurate.

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.

Generalised responses, lacking focus on the question, or those based purely on factual recall will receive marks limited to a maximum of band 3. Evidence of critical assessment is required for marks to be awarded within bands 4 and 5.

© Cambridge International Examinations 2015

2

Explain the Rule in Pinnel's Case and critically assess the extent to which hardship caused by its application may have been mitigated by more recent developments in the law.

Candidates should contextualise their response by explaining that special rules apply to contractual duties regarding debts. If money is owed and the debtor is unable to pay in full, that debtor will sometimes offer to pay a smaller sum on the condition that the entire debt is discharged. Even if the creditor agrees to this arrangement, it is only binding if the debtor provides consideration by adding some extra 'horse, hawk or robe', i.e. some extra element. The facts of Pinnel's Case may be outlined. Candidates should recognise that this approach has been confirmed in much more recent case law too *(Re Selectmove Ltd; Williams v Roffey).* Candidates are not expected to deal with exceptions to the rule but some credit may be granted.

Candidates should recognise that the rigid application of this common law principle can prove rather harsh in certain circumstances and that in such circumstances equitable doctrines have been developed in mitigation. One such doctrine is promissory estoppel.

The doctrine as expounded by Lord Denning in *Central London Property Trust Ltd v High Trees House Ltd* must then be addressed and the conditions on which its application rests explored, viz pre-existing contractual relationship, a promise to forego strict rights (*China Pacific SA v Food Corp of India)*, reliance on the promise (*Tool Metal manufacturing v Tungsten Electric*) and inequitable to enforce strict legal rights (*D& C Builders v Rees; re Selectmove*).

Candidates are also expected to evaluate the limits on the doctrine's scope. Promissory estoppel cannot be used to create entirely new rights or extend the scope of existing ones; it is a 'shield and not a sword' (*Combe v Combe*).

Generalised responses, lacking focus on the question, or those based purely on factual recall will receive marks limited to the maximum in band 3. Evidence of critical assessment is required for marks to be awarded within bands 4 and 5.

© Cambridge International Examinations 2015

3

Offers last forever in law. Examine the relevant rules that relate to the formation of contracts and consider the extent to which this statement reflects the law today.

Candidates should contextualise their response by stating the general rule that a contract cannot come into existence until there has been an offer and corresponding acceptance. Candidates should then identify and explain the rule that if an offer is withdrawn or revoked prior to acceptance then no contract can result. Discussion should then take place as to whether or not offers have a definitive life once communicated to the intended offeree(s). Candidates are expected to consider lapse of specified time, lapse of reasonable time *(Ramsgate Victoria Hotel v Montefiore)*, failure of preconditions *(Financings Ltd v Stimpson, Total Gas Marketing Ltd v Arco British Ltd),* rejection, counter offer *(Hyde v Wrench),* death of offeror / offeree *(Bradbury v Morgan), and revocation* as means of bringing offers to an end.

Candidates are expected to critically evaluate the way in which the law deals with these situations to reach band 4.

Section B

4

Consider the validity of the separate contracts made for the horse, the saddle and the riding equipment. Advise Stella of the potential remedies available to her.

The scenario invites candidates to consider the effects of common and mutual mistake on the validity of contracts. Candidates should introduce responses by highlighting the general rule of law which states that mistakes do not invalidate contracts, thus encouraging parties to take care not to make mistakes when entering contracts. Candidates should then add that if considered sufficiently fundamental that it undermined the consent given to the agreement, the contract will be declared void.

In the case of the leather saddle, candidates should consider whether this is this a case of common mistake as to the existence of the subject matter of the contract (*Couturier v Hastie, Associated Japanese Bank v Credit du Nord*). Did Stella know that Tilly owned such a saddle already? Did both parties have reason to believe that Tilly still owned and possessed the saddle when the sale was agreed? Did Tilly by implication warrant the existence of it (*McRae v Commonwealth Disposals Commission*)? If fundamental mistake is established, then the contract would be void, leaving Stella with no remedy unless a discretionary, equitable one were granted, which is unlikely (*The Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd*).

In the case of the horse, the issue would appear to be whether there was a mutual mistake as to the identity of the contract's subject matter; it does see that Tilly and Stella were talking at cross purposes and that the contract should be rendered void (*Raffles v Wichelhaus*). However, Stella might argue that it was only Tilly who was mistaken (a unilateral mistake) and that she had made a qualitative mistake about the subject matter insufficient to render the contract void.

As far as the riding equipment is concerned, unless it can only be used with the saddle that no longer exists, it would appear that the contract is valid and binding on Stella as she can still use it even if at a later date.

Whichever way candidates interpret the facts presented, legal principles must be applied to those facts and clear, compelling conclusions must be drawn to reach band 4.

© Cambridge International Examinations 2015

5

Consider CCF's contractual liability for Ranjit's injury and loss.

The principal focus anticipated is that of the communication and validity of contract terms.

Terms only bind parties if they have been made aware of their existence either before or at the time that the contract is made. Terms should be either actually communicated or constructively communicated by this time.

Was the ticket a sufficient means to communicate the existence of terms (*Thomson v LMS Rlwy; Chapelton v Barry UDC*)? Was the ticket a contractual 'note' or a mere receipt for payment? Even if adequately communicated, was the term excluding all liability valid, given Unfair Contract Terms Act 1977, S1?

Assuming negligence is proven, however, even if the exemption was deemed to have been properly and adequately communicated, the attempt to exclude liability for negligence resulting in personal injury would be absolutely void by virtue of S2 UCTA 1977. Any measure of damages thus becomes of no consequence.

Regarding personal property damage, S11 & Schedule 2 render claims subject to tests of reasonableness. The precise measure of damages might be considered.

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.

© Cambridge International Examinations 2015

6

Using appropriate case law, advise the two parties regarding their respective legal liabilities these circumstances.

The crux of this question lies in the remedies provided by the law for non-fulfillment of a contract; has a contract been breached and what remedy is available to the parties concerned? Credit will be given for discussion of the nature of the term broken.

It would appear on the face of it that Better Boats has completed its part of the bargain. The company has built and delivered the boat to its customer. It would appear, therefore, that, if nothing else, the supplier is entitled to receive payment and to bring an action for the price if payment is not made. Questions of quantification and remoteness would not arise as Better Boats would simply claim the £250 000 purchase price agreed when the contract was made. All other things being equal, such a claim would apparently succeed as long as Levi accepted delivery of the boat. Had he rejected delivery on the grounds that it was too late, time being of the essence to the contract, (i.e. if he repudiated the contract) then such liability to pay the agreed price may not exist.

So what of the compensation agreed in the contract for late delivery? Whilst it is not uncommon for such terms to be included in contracts, they are not always enforceable as agreed. Before Levi can successfully make a counterclaim against Better Boats, the court would have to be satisfied that the £2000 per day compensation which was agreed amounted to a genuine attempt to estimate the loss likely to be suffered as a consequence of the boat not being ready on time (i.e. liquidated damages). If that can be proven, then the court would permit a counterclaim for the £20 000 apparently payable. If, on the other hand, the courts think that the amount of compensation agreed is simply there as a threat in order to compel performance (i.e. a penalty clause), the agreement would be held invalid (*Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Company Ltd*). That is not to say that a court would not award damages for any actual loss caused by the delay in delivery of the boat; it simply means that the previously agreed amount would not necessarily be awarded.

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

© Cambridge International Examinations 2015