Cambridge International AS & A Level

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LAW **9084/32**

Paper 3 **May/June 2016**

MARK SCHEME

Maximum Mark: 75

Published

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Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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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

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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

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Section A

1 A 'battle of the forms' often takes place when commercial contracts are made. Evaluate the rules that determine when and on what terms commercial contracts come into existence.

Responses should be contextualised: this statement addresses the issue of the formation of a contract. Candidates are expected to explain the conditions of offer and acceptance on which a binding contract is formed, but this should not form the main focus of the response. General commentary on formation issues is not expected but may be granted some credit.

The expression 'battle of the forms' must be explained in relation to negotiating contract terms and reliance on standard written terms to save time and money and the fact that standard terms commonly conflict. The general rule of 'last shot wins' should be explored in terms of offer and counter offer with delivery of goods or performance of service equating to acceptance of the offer represented by the last form.

Case law such as *British Road Services v Crutchley, Butler Machine Tool Ltd v Ex-Cell-O Corp* and others must be examined in detail and candidates should identify rules and approaches which have developed to help determine if and when contracts come into existence when standard terms and determine their effectiveness.

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

2 Mistake is generally better than misrepresentation as a basis for an action in contract. Critically analyse this view.

Candidates are expected to contextualise the question by explaining that mistake and misrepresentation are vitiating factors which undermine the true consent given to an agreement and if established, affect a contract's validity.

The two factors should be defined and candidates should identify that, as a general rule, misrepresentation has the effect of rendering a contract voidable whereas an operative mistake would render a contract void. This distinction should be highlighted as being central to the question posed.

Misrepresentation results in contracts which, according to equitable principle, must be avoided promptly and if third party rights accrue by virtue of the Nemo Dat Rule, any right to rescind are lost. Hence, if in such circumstances, operative mistake can be established instead, ownership rights would not be deemed to have transferred. Any such analysis is likely to centre on contracts induced by fraudulent misrepresentation of a person's identity (*Lewis v Avery*).

Candidates must adopt a critical approach so must comment critically on circumstances where mistake is likely to be the preferred basis of claim in order to reach band 4.

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3 Critically assess the fairness of the rules of causation and remoteness that are applied by the courts to restrict liability for breach of contract.

Candidates might introduce their responses by stating that damages were the only remedy available at common law but that such entitlement would simply be to put a party in the position that would have been held had the contract been performed.

Today there are three significant limitations on awards of damages: causation, remoteness and mitigation. Candidates are expected to analyse the first two of these.

The first limitation is that a defendant will only be liable to pay damages to another if the breach of contract was an effective cause of a complainant's loss. A chain of causation between breach and loss should exist and the question always arises whether or not intervening acts break the chain and candidates need to discuss this issue (*County Ltd v Girozentrale Securities, Quinn v Burch Bros (Builders) Ltd*).

The second limitation is remoteness of damage. Candidates must discuss case law such as *Hadley v Baxendale, Victoria Laundries v Neman Industries, The Heron II and Balfour Beattie Construction (Scotland) v Scottish Power plc* and draw conclusions that losses are recoverable if they would arise from the breach naturally according to the usual course of things and if the loss was within the reasonable contemplation of the parties when the contract was made. The concepts must be be explored and conclusions explained.

Responses based purely on factual recall without the necessary critical assessment of fairness will be limited to maximum marks within band 3.

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Section B

4 Consider Euan's potential contractual liability towards Faith and the remedies that she might pursue against him.

An outline of the essentials of a valid contract; emphasis expected on offers, invitations to treat, counter offers and acceptance. Credit is to be given for possible reference to intention to create legal relations, but nothing for other essentials.

Domestic agreements are generally considered to have not been intended to be legally binding, but the assumption may be rebutted (*Simpkins v Pays*). Is there sufficient evidence of intention here?

Binding contract requires definite offer and corresponding, unconditional acceptance. Counter offer operates as a rejection and terminates offer (*Hyde v Wrench*).

Was there an offer made by Euan or was his letter an invitation to treat? If it was an offer, does Faith make a counter offer when she asks about payment by instalments? Probably not, as a mere enquiry for information (*Stevenson v McLean*). If there has been an offer and corresponding unconditional acceptance, a contract has been made; sale of the television to Tim's neighbour is tantamount to a breach of that contract.

Acceptance and posting rules (*Henthorn v Fraser, Fire and Household Insurance v Grant*) must also be considered.

The potential for remedies of damages, rescission and specific performance should be discussed as appropriate.

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

5 Discuss Ashraf's potential liability towards Bashir for the £5000 that he still owes, whether or not he paints Bashir's boat. Use case law to support your views.

Part payment of a debt does not discharge the debt, even if the creditor agrees to forego the outstanding amount because no consideration is given for the promise to forego payment. However, there are exceptions to this somewhat harsh common law rule: in Pinnel's Case, it was recognised that payment of a lesser sum could discharge a larger debt if the mode of payment is changed (as the original contract would then be discharged by accord and satisfaction).

Candidates need to consider whether the circumstances of this case would allow the courts to discharge Ashraf from his contractual liability. Asraf contracted to pay £50 000 by ten equal instalments and he has defaulted on the last one. Clearly, unless the doctrine of equitable or promissory estoppel is invoked, Ashraf would be liable for the £5000 unpaid. However, Bashir has promised to forego the £5000 due if Ashraf cleans and paints his boat. Whether or not Ashraf completes cleaning and painting, would the court consider the promise to perform that act sufficient fresh consideration in return for the promise to forego the £5000?

Candidates may also consider the position should the doctrine of equitable or promissory estoppel be invoked. Are all the conditions present for the doctrine to be deemed applicable (*Pinnel's case* and *High Trees case*)?

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Candidates are expected to debate the issues and draw clear, compelling conclusions, fully supported by case law references. Generalised responses, lacking focus on the question or responses limited to factual recall are to be awarded a maximum mark within mark band 3.

6 Advise Carly and Dexter's garage of their respective rights and liabilities as a consequence of these events. Use case law to support your views.

Candidates should recognise the terms of the contract as the issue here and whether there has been a breach of those terms and what the effects are thereof.

It would appear that Dexter is in breach of some of the terms of the written contract entered into with Carly. Rights and liabilities in any contract are determined by the nature of the terms that are alleged to have been broken. Terms vary in importance from contract to contract with apparently the same term in essence being of great significance in one contract but of minor significance in another. Consequently, the law seeks to classify terms according to their importance, with the implications varying according to the type of term breached.

Candidates should recognise that for these purposes there are three types of term: conditions, warranties and innominate terms. Each type should be defined and explained with reference to case law (e.g. *Schuler AG v Wickman Machine Tool Sales Ltd, The Mihalis Angelos, Hong Kong Fir Shipping Co Ltd v Kawasaki Ltd)* and the implications of breach explored.

When applied to the case in hand, Dexter's liabilities and Carly's rights must be explored in respect of each of the terms that were agreed when the contract was made. The correct model and engine size was supplied, but in the wrong colour and without one of the accessories ordered. What was the significance of these terms in this contract? On the basis of conclusions, effects and remedies should be explored.

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

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