Cambridge International AS & A Level

Cambridge International Examinations
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/33**

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 Distinctions are frequently drawn between advertisements for unilateral and bilateral contracts. Critically analyse this statement with reference to the formation of contracts.

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 and by briefly discussing the need to distinguish between offers and invitations to treat as only the former can be accepted to form a valid, binding contract. Candidates should offer definitions of the terms 'offer' and 'invitation to treat'.

Candidates should go on to explain that confusion can arise, however, because some advertisements would appear to amount to an offer but are held by the law to be merely an invitation to treat.

Unilateral contracts result from advertisements which call for action only of those reading them, such as that in the case of *Carlill v Carbolic Smoke Ball Company* or those offering rewards in return for information or for returning a lost item are usually considered to be firm offers capable of acceptance without the need for further negotiation and ones which the advertiser intends to be bound by.

By comparison, advertisements that intimate action or further negotiation between advertiser and customer before a bilateral contract results are generally seen as invitations to treat or something that invites the viewer to make a consequential offer to the advertiser. Shop window displays and classified advertising are classic examples as exemplified by cases such as *Partridge v Crittenden, Fisher v Bell and Pharmaceutical Society of GB v Boots Cash Chemists (Southern) Ltd*. In these instances, it is considered that potential buyers may still wish to negotiate price and that sellers might wish to refuse to sell their goods or services to certain buyers in some circumstances.

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 analysis is required for marks to be awarded within bands 4 and 5.

2 The law relating to unfair terms in contracts is confusing and thus inaccessible to consumers who require protection. Discuss whether the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 effectively regulate the use of terms in contracts.

This legislation as now been superceded by the Consumer Rights Act 2015, but given its relatively recent enactment candidates cannot be expected to exhibit knowledge of it. Nevertheless, due credit will be awarded where such knowledge and understanding of impact is demonstrated.

Candidates should introduce their response by explaining why the two pieces of legislation exist: to control the use of clauses limiting or excluding liability for breach of contract (UCTA) and to give effect to the EU Directive on Unfair Terms in Consumer Contracts (1993) and thus provide consumer protection (UTCCR).

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	UCTA	UTCCR
Parties protected	consumer contracts and business contracts if on written standard terms	consumer contracts only
Definition of consumer	companies can be 'consumers' as well as human beings	only human beings
Types of term covered	exemption clauses and those allowing business to change substance of own performance	most terms except 'core' terms and any individually negotiated
Test applied	unreasonableness; some terms automatically ineffective	unfairness
Burden of proof	party claiming validity has to show satisfies reasonableness test	consumer to prove terms unfair
Enforcement	contracting parties	contracting parties or by OFT

Candidates should explore areas of overlap and conclude whether both statutes are truly necessary and, even if they are, whether or not the law is confused rather than clarified by them.

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

3 Common law damages are available as of right if a contract is breached and will compensate fully for losses suffered. Critically assess the accuracy of this statement.

Candidates should introduce their responses by clarifying that an award of damages is the usual remedy for breach of contract and highlight that it aims to compensate for pecuniary losses suffered as a result. The crux of candidate responses must then focus on an assessment of the extent to which the aim is achieved because of limitations imposed on such awards.

Candidates should discuss in some detail the limitations of causation, remoteness (e.g. *Hadley v Baxendale, Victoria Laundries v Newman Industries, The Heron II*) and mitigation (e.g. *Brace v Calder*).

No credit can be given for discussing measures of quantifying or calculating loss.

Candidates must make the assessment and draw conclusions as required by the question to achieve marks in band 4 and beyond.

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Section B

4 Consider whether Ahmed would be liable if Balquees decides to buy the shop and suffers a loss after the first year of trading. Discuss any remedies that she might have against him.

Candidates should identify the crux of the issue as potential misrepresentation. Misrepresentation should be identified as a vitiating factor, which if deemed actionable, has the effect of rendering the subsequent contract voidable at the misrepresentee's option.

The main issue to be discussed is what amounts to an actionable misrepresentation and whether Balquees would have any grounds for avoiding any contract to purchase the business.

Principle areas for debate are whether or not silence can amount to misrepresentation and, if so, in what circumstances and what its effects are, and what effect a deliberate attempt to mislead would have. Would the maxim of caveat emptor apply here?

Potential remedies would be dependent on the class of misrepresentation committed and the full range ought to be addressed as there are suggestions in the facts that any of the three types may have been committed.

Whatever 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.

5 Discuss Floella's rights and liabilities with regard to both the employment contract and rental agreement she has made with Enrique.

Contracts are only binding on the parties concerned if valid contracts have been made. Candidates should identify capacity as one of the factors that can result in a valid contract not having been formed.

Floella, at the age of 17, is classed as a minor in law. Candidates should identify that there are only two types of contract that will bind minors: executed contracts for necessaries and beneficial contracts of service (employment).

One of the contracts referred to in the question is a contract of employment, so is Floella bound by its terms? Case law (*De Francesco v Barnum, Doyle v White City Stadium etc.*) suggests that minors will be bound by the terms of employment contracts if the contract is on the whole beneficial to the minor in that it makes provision for training in the minor's chosen career. Discussion should take place and conclusions must be drawn.

The other contract, the rental of the room, is of a continuing nature which, with a duration of three years, will take her past her 18th birthday. The common law renders such a contract voidable at the option of the minor, but binds the other party. Thus, in Floella's case, the common law allows her to terminate the agreement at any time before and within a reasonable time after her 18th birthday. If at the time of termination she seeks the return of rent or deposits paid, for instance, she is likely to fail unless she has received nothing from Enrique in return.

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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6 Critically analyse Carlos' legal liability to pay Domingo the money promised for all his work.

Candidate responses should be focused on principles associated with the formation of a contract in general and the doctrine of consideration in particular.

Credit will also be given for discussion of the requirement that parties intend promises to have legal consequences. In social agreements there is a rebuttable presumption that no such intention exists. Whatever immediate conclusion is drawn in this regard, candidates are still expected to consider the eventuality that a court would find the necessary intention in these circumstances.

Consideration must be defined (*Currie v Misa* or suitable paraphrase) and explained in order to set the response in context. Candidates are expected to outline the rules of consideration, but should then focus on the rule which says that consideration must not been in the past relative to the promise which it is to support. If Carlos fails to pay Domingo the money promised, Domingo will have to prove that he gave him valuable consideration for the promise to pay him. The consideration that he gave was the services performed for Carlos while he was away on business, but these were clearly done in the past relative to the promise to pay him. On that basis, any claim would fail (*Re McArdle*).

However, there are exceptions to this rule of consideration. One such exception, exemplified by the cases of *Lampleigh v Braithwaite* and *Re Casey's Patents* suggests that if services are rendered in circumstances that would give rise to the belief that they will be paid for, a later promise to pay merely fixes the amount and there is no need for further consideration to make that later promise binding.

Candidates should debate this issue and draw a clear, compelling and fully reasoned conclusion supported by case law references – failure to do so will impact severely on marks awarded which will be restricted to marks below band 4.

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