CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the October/November 2013 series

9084 LAW

9084/32 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 October/November 2013 series for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level components and some Ordinary Level components.

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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.

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

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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 Injustice is caused by the rules relating to the capacity of minors to contract with adults.

Critically assess the extent to which the remedies that adults can obtain against minors mitigate this. [25]

Candidates should **briefly** outline the legal protection afforded to minors with regard to contracts. Only executed contracts for necessary goods and services can be enforced against minors at common law and even then only actions for a reasonable price can be entertained (Sale of Goods Act 1979); all other contracts are voidable at the minor's option, leaving the adult, being unaware that the other party to a contract is a minor with little or no comeback. Is this potentially unjust and do the remedies afforded against minors mitigate this injustice in any way?

The equitable remedy of restitution should be defined and explored as one such remedy. If a minor fraudulently obtains goods and then keeps them in his/her possession, an order of restitution can be made to compel the minor to return them to the claimant.

Candidates should go on to explore the claimant's rights as a consequence of S3 of the Minors' Contracts Act 1987 which do not rely upon the minor's fraudulence although it still needs to be a just and equitable course of action for the court to order the return of property acquired by the minor. If the goods have been sold or exchanged the minor may have to pay for them or give up to the claimant property received in exchange. However if the goods have been sold and the proceeds of sale spent, the minor cannot be made to pay anything as this would effectively enforce what was an unenforceable contract.

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

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2 A claim for damages can be based on expectation loss or reliance loss principles.

Discuss the concepts of expectation loss and reliance loss and critically analyse limitations imposed by the speculative damages and bad bargain rules. [25]

Candidates must introduce their response with an explanation that loss of expectation and reliance loss are the two main ways in which losses arising from breach of contract are calculated by the courts.

The loss of expectation approach aims to put claimants in the position they would have been in had the contract been performed, so if the parties would have suspected a certain result from the contract being performed (e.g. a profit), the damages would compensate for the loss of that expectation (as long as not deemed too remote).

The reliance loss approach seeks to put the claimant in the position he was in before the contract was made, thus compensating for wasted expenditure and any other loss incurred because a contract has been breached.

The choice of approach rests with the claimant, but he is unable to claim for both expectation and reliance losses (*Anglia Television v Reed*) and there are restrictions on that choice: the bad bargain rule and the speculative damages rule.

The bad bargain rule dictates that if a claimant would have made a loss from the contract, he will be entitled to nominal damages only and will not be entitled to claim expenses on the basis of reliance loss as this would effectively put him in a better position as a result of the breach than if the contract had been performed (*C and P Haulage v Middleton*).

The speculative damages rule limits the use of the reliance loss approach to situations where it is virtually impossible to calculate what profit would have been made by the claimant had the contract been performed. In practice, the courts seem reluctant to conclude that damages are too speculative and do base awards on a certain amount of guesswork (*Sapwell v Bass; McRae v Commonwealth Disposals Commission*).

Candidates are expected to assess whether the rules really do limit choice to reach band 4.

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3 ***Caveat vendor. Caveat emptor.***

Critically analyse the extent to which mistakes made by the parties when forming a contract might invalidate any resulting contract. [25]

Candidates should contextualise responses by reference to the need for true consensus ad idem at the time that contracts are formed. Mistake should then be identified as one of the factors sometimes recognised as sufficient to vitiate or undermine that consent so as to invalidate the contract in some way.

The general common law view is that parties to a contract should not be able to escape liability by reason of mistake, but in particular and special circumstances. These might be explained. Those circumstances of common mistake and cross-purposes (or mutual) mistake should be identified and briefly described. In addition, the more general rules applicable to both should be explained and illustrated: mistake to precede contract, to induce the contract and to be of fact.

The view that common mistakes render contracts void should be questioned as case law points very largely to circumstances involving res extincta and res sua, both of which lead many to believe that the contract is not void because mistake induced the contract, but that there was no subject matter on which to base the contract in the first place, so no contract was ever formed. The issue of qualitative mistakes (cf mistakes regarding identity), *The Great Peace* case and the previous approach of equity in granting relief where common law principles would not should also be addressed.

The question of mistaken identity of the other contracting party and the intention to deal with someone else should give candidates the opportunity to assess whether, again, mistakes alone negative consent or whether something more, such as fraudulent intent, is also required.

Coverage of mistakenly signed documents and the effect of a plea of non est factum will also be given appropriate credit.

General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.

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Section B

4 Advise Petra as to her potential legal liability to Helen and Dan in <u>each</u> of the following independent situations.

(a) Helen and Dan ask for a payment of £500 for the use of the garden. Petra agrees to pay, but fails to do so.

(b) Nothing is initially agreed about payment, but Petra is so pleased with what Helen and Dan do for her that, once the party is over, she promises to give them £500, but never does. [25]

Oral agreements will only be legally binding as contracts if an element of exchange is present. This element of exchange is evidenced by valuable consideration. Candidates should define consideration (*Currie v Misa*) and explain why it is a requirement of English Law.

Candidates may then briefly outline the rules of consideration, but the focus of attention for part **(b)** must be on the rule relating to past consideration (*re McArdle*) and sufficiency of consideration (*Pinnel's Case).*

(a) Candidates should consider this a simple case of oral contract of an executory nature – a promise for a promise. Even if they are friends, it would appear that any presumption of no intention to be legally bound would be rebutted as in *Simpkins v Pays*.

(b) With regard to the promise from Petra, the issue is whether or not candidates consider that Helen and Dan doing the work to their garden for the wedding party was in the past relative to her promise to give them money towards the work and therefore unenforceable. However, candidates really must explore exceptions to the past consideration rule as evidenced by *Lampleigh v Braithwaite* and *Re Casey's Patents.*

Both issues must be fully discussed and clear compelling conclusions drawn. General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.

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5 Discuss the legality of the exclusion notice used at the riders' entrance and on the back of spectators' tickets and advise Eidur of his potential rights to recover compensation for the loss that he sustained. [25]

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. Candidates may raise the issue of vicarious liability, but no special credit should be given but for a brief acknowledgement in this case.

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 Eidur 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, then 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 speedway riders must have trained at the arena. Discussion and conclusions are required.

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 arena 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 Crystal Dome would appear to be liable but to what extent?

Candidates should then explore whether a claim for £25 000 would be likely to succeed. The issues of potential mitigation and remoteness should be discussed and clear, compelling conclusions drawn.

General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.

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6 With reference to relevant case law, discuss Lesley's potential contractual liability towards Patrick and the possible remedies that he might pursue against her. [25]

An **outline** of the essentials of a valid contract; emphasis expected on offers, invitations to treat, counter offers and acceptance. Credit for possible reference to consideration, but nothing for other essentials.

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 Lesley or was his letter an invitation to treat? If it was an offer, does Patrick 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 equipment to Lesley's ex-colleague is tantamount to a breach of that contract. Acceptance and posting rules must also be considered.

General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.

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