CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the October/November 2013 series

9084 LAW

9084/33 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.

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 The Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 play substantially different roles in the control of clauses in contracts that attempt to limit or exclude liability.

Critically assess this view. [25]

Candidates are expected to draw comparisons, showing areas of overlap and similarity as well as highlighting significant differences in approach and effect. Some examples might include:

Unfair Terms in Consumer Contracts Regulations 1999	Unfair Contract Terms Act 1977
Restricted to contracts between 'consumers' and 'sellers or suppliers'. Consumer = human being only	Broader approach to cover anyone who 'deals as a consumer'. Consumer = humans and corporate bodies
Applicable to all manner or contract terms	Applicable simply to exclusion clauses
Applicable only to terms that have not been individually negotiated	Takes account of relative bargaining strengths, inducements accepted etc.
Terms do not need to be in writing	Terms expected to be in writing
Test of unfairness	Test of unreasonableness

Candidates who simply recount a list of facts relating to one piece of legislation followed by a similar list relating to the other will only warrant marks in band 3, however detailed, unless a clear attempt has been made to actually draw comparisons and make contrasts; this must not be left for the examiner to deduce or infer.

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2 Explain the rule in Pinnel's case and evaluate the extent to which its application has been mitigated by the development of the doctrine of promissory (or equitable) estoppel. [25]

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 (*Hughes v Tool Metal Manufacturing*) 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*).

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3 Critically examine the different factors taken into account by the courts when making awards of both liquidated and unliquidated damages. [25]

Candidates should contextualise their responses by stating that damages are the usual remedy for breach of contract and that, if the parties have not stated in the contract terms what the measure of damages will be in the event of breach (liquidated damages), the courts will make an award on unliquidated damages aimed at putting the parties in the position they would have been in if the contract had been performed.

Re liquidated damages, candidates should discuss what amounts to liquidated damages rather than penalties (both should be defined/explained and cases such as *Dunlop v Selfridge* discussed) and the approach adopted by the courts when deciding to award the predetermined amount or to make an unliquidated award.

Re awards of unliquidated damages, candidates should then examine and critically analyse the general limitations to loss recovery: causation, *[County Limited v Girozentrale Securities]*, remoteness *[Hadley v Baxendale, Victoria Laundry v Newman Industries, The Heron II]* and mitigation *[Pilkington v Wood, Brace v Calder].*

Candidates should also explore the calculation of actual value of loss and it is expected that candidates will analyse approaches to reliance loss and expectation loss, as well as punitive and non-punitive approaches.

Candidates must adopt a critical approach so must comment on how and whether a balance is achieved between adequate compensation and unfair burden and whether certain approaches are unduly harsh in order to reach band 4.

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Section B

4 Using case law to support your views, consider the effect of the circumstances set out above on the validity of the contract made for the football programmes and on the contract made for the football shirt. Advise Beth of the potential remedies available to her. [25]

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 Manchester United football programmes 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 Beth know that Alex owned a football programme collection already? Did both parties have reason to believe that Alex still owned and possessed a saleable programme collection when the sale was agreed? Did Alex by implication warrant the existence of the records (*McRae v Commonwealth Disposals Commission*)? If fundamental mistake is established, then the contract would be void, leaving Beth 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 signed Barcelona shirt, the issue would appear to be whether there was a mutual mistake as to the identity of the contract's subject matter; it does seem that Alex and Beth were talking at cross purposes and that the contract should be rendered void (*Raffles v Wichelhaus*). However, Alex might argue that it was only Beth who was mistaken (a unilateral mistake) and that she had made a qualitative mistake about the subject matter insufficient to render the contract void.

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.

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5 With reference to case law, discuss the potential contractual rights and liabilities of the respective parties that arise out of this scenario. [25]

An **outline** of the essentials of a valid contract may serve as an introduction; emphasis is expected on the formation of contract and the rules relating to the communication of firm offers, to what amounts to unconditional acceptance and to the communication of acceptance. Binding contracts require definite offer and corresponding, unconditional acceptance.

There was an apparent firm offer to sell made by Ollie to both Henry and Charlie.

Henry responded to the offer by seeking to extend the period during which he could accept the offer. It would appear that the proposal was accepted by Ollie in return for valuable consideration: the promise of a meal.

Charlie purported to accept by post. But was post the proper means of acceptance? If not – effective upon receipt. If yes, then the posting rule applies – properly stamped and addressed and posted in the proper manner: was it? Candidates to consider effect of compliance and non-compliance with the rule. Discussion should be case law referenced *(e.g. Henthorn v Fraser, Household Fire Insurance v Grant, Byrne v Van Tienhoven etc.)*

Ollie then chose to sell to Geoff instead of either of the previous offerees. In Henry's case, as Ollie does not appear to have expressly revoked the offer made to him, it would seem that Ollie may be in breach of the option purchased by Henry, but no more.

In Charlie and Geoff's case, however, it is less certain. If Charlie has satisfied the postal rule, there was a contract with Ollie from the moment his acceptance was posted. However, as no payment had been made, Ollie would still have been the owner, when he sold the hi-fi to the innocent third-party, Geoff. Thus it would appear that Geoff has become the legal owner and all that Charlie could do is to sue Ollie for breach of contract.

The issues must be discussed fully and clear, compelling conclusions must be drawn. Responses limited to factual recall of principle will be restricted to marks below band 4.

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6 Discuss:

(a) Yvette's liability towards Xavier in the event of her deciding to break the rental agreement within the two-year period;

(b) Yvette's liability towards Victor if she has insufficient funds at the bank to cover her cheque; and

(c) Yvette's rights to recover the £1750 from Ursula if her cheque is returned to Yvette unpaid by the bank. [25]

Candidates should **briefly** discuss contractual capacity as an essential of a valid simple contract. Particular attention to be paid to the capacity of minors (those under 18 years of age) to make valid simple contracts. Distinction to be drawn between valid contracts (executed contracts for necessaries – *Nash v Inman*, and beneficial employment contracts – *Doyle v White City Stadium*), voidable contracts (e.g. contracts of a continuing nature such as leases and partnerships – *Corpe v Overton)* which can be avoided before or within a reasonable time after the 18th birthday and those unenforceable (Minors' Contracts Act 1987), leaving the adult, being unaware that the other party to a contract is a minor, with little or no comeback.

Re rental of storeroom – two year contract takes Yvette past her 18th birthday, so is voidable at her option. Nothing would be recoverable from Xavier unless there has been a total failure of consideration provided in return for rental monies.

Re dishonoured cheque paid to Victor, the issue would appear to be whether or not the contract would be deemed beneficial to Yvette. In the light of the decision in *Cowern v Nield,* it would seem that minors will not be held liable on pure trading contracts, however they seem to be to the minor.

Re dishonoured cheque received from Ursula, the fact that Yvette is a minor would seem to be irrelevant and as long as the contract would have been a valid one if both parties had been over the age of majority, Yvette ought to be able to enforce it and seek compensation.

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.

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