Cambridge International AS & A Level

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LAW **9084/33**

Paper 3 Law of Contract **October/November 2017**

MARK SCHEME

Maximum Mark: 75

Published

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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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The mark bands and descriptors applicable to all questions on the paper are as follows.

Band 1 [0 marks]
The answer contains no relevant material.

Band 2 [1–6 marks]
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 [7–12 marks]
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 [13–19 marks]

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 [20–25 marks]
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.

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Question	Answer	Marks
1	**In general, a buyer of goods becomes the owner once payment is made and possession of them is taken.** **Critically assess the extent to which ownership of goods is affected by misrepresentation and mistake in the formation of a contract.** The questions requires candidates to simply consider the passing of title to goods when the contract by which they are acquired is declared void or is rendered void as a consequence of the innocent party exercising his right to avoid the contract. The concept of an operative mistake should be explained. When a contract is declared void as in the case of an operative mistake, the effect is simple – it is as if the contract had never been entered into. No ownership (title) rights whatsoever pass between seller and buyer, so even if the buyer has sold the goods to an innocent third party, the seller is able to legally recover them from that third party (Nemo Dat rule – no-one can give that which they do not have). The concept of an actionable misrepresentation should be explained. In the case of voidable contracts, as induced by actionable misrepresentations, the situation is muddied by an exception to the Nemo Dat rule. Sale of Goods legislation provides that, if goods change hands between seller and buyer under a voidable contract and the buyer resells to an innocent third party before the original seller voids the contract he made with the buyer, that third party obtains a good title to the goods; the original seller has no legal right to recover the goods from the innocent third party who bought in good faith. Candidates who then explain that it is because of these differences that many cases have been brought in mistake rather than misrepresentation, should be given additional credit. Cases such as *Kings Norton Metal Co v Edridge Merrett and Co* could be used to support this view. Responses which focus primarily on a description of what amounts to actionable misrepresentation and operative mistake should be limited to maximum marks in band 3. An assessment of the rules, their impact and meaningful conclusion is necessary for marks in band 4 and beyond.	**25**

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Question	Answer	Marks
2	**English law balances the notion of freedom of contract with rules required to protect younger members of society.** **Critically analyse the capacity of minors to make contracts and assess whether the law has been successful in achieving the desired balance.** At Common Law the basic rule is that contracts do not bind minors. However, this rule has been modified over time such that, today, some types of contracts do bind minors and others can be rendered void at a minor's option (i.e. they are voidable). Does this actually strike the right balance as even those under 18 years of age do find themselves in positions where they need to be free to make binding contracts. Candidates are expected to define a minor (under age of 18) and to explore the types of contract that do bind and may bind minors. Contracts for necessary goods and services and beneficial contracts of service should be identified and detailed as contracts that unequivocally bind minors as far as their responsibility to pay a reasonable price for such goods purchased and if the contract of service is on the whole beneficial. Cases such as *Nash v Inman, Chapple v Cooper, Clements v London & N W Railway Co and Doyle v White City Stadium* must be used to illustrate and support. Candidates should identify the purpose of these principles and critically assess their fairness in the light of remedies available to the parties concerned. Other contracts should also be considered, such as those of a continuing nature which may have been made whilst a minor, but which continue after a person's eighteenth birthday. These are valid when made, but can be avoided at the minor's option before or within a reasonable time after their eighteenth birthday. Again, the appropriateness and fairness of the rules needs to be discussed and an assessment made of the impact (in terms of remedies) on innocent third parties with whom such contracts are made. Candidates may consider the availability of specific restitution or specific performance in such cases or comment on relevant sections of the *Minors Contract Act 1987*. Descriptive responses should be limited to maximum marks in band 3. An assessment of the impact of rules, and meaningful conclusion with regard to the extent to which the right balance is struck, is necessary for marks in band 4 and beyond.	**25**

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Question	Answer	Marks
3	**Explain and evaluate the factors taken into account by the courts when making awards of unliquidated damages.** 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, 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. Candidates should then go on to 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, The Achilleas*] 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.	**25**

Question	Answer	Marks
4	**Discuss the contractual liability that Barsetshire Council might have towards Ahmed.** In general, the courts have found two ways in which to regulate the use of exemption clauses; to question whether a clause was incorporated in such a contract and to question whether the words used can be taken to cover the alleged breach. Candidates are expected to consider the rules of incorporation by reasonable notice [P*arker v SE Railway, Olley v Marlborough Court Hotel, Thornton v Shoe Lane Parking, Chapelton v Barry UDC]* and the extent to which notices can limit or exclude liability for breach of contract. The provisions of the *Consumer Rights Act 2015* will need to be explored and applied with regard to negligence and other liability in this case and whatever lines of argument candidates take, clear, compelling conclusions must be drawn. General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. Any advice given to the parties should be clear, concise and conclusive.	**25**

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Question	Answer	Marks
5	**Consider Denzil's legal entitlement to payment for the tasks performed at Charlene's request.** Candidates should recognise the issues of the intention to create legal relations and valuable consideration and both should be addressed. Candidates should recognise that social and domestic agreements are not generally intended to be legally binding [e.g. *Balfour v Balfour, Buckpitt v Oates]*; however, it is a rebuttable presumption [e.g. *Simpkins v Pays]*. Were these gratuitous acts of friendship or were the actions taken in circumstances that would give rise to a belief that they would be paid for? Candidates must consider the alternative view that, regarding the drive to the airport, there was an intention to be legally bound in this instance because of the professional capacity in which Denzil was asked to act. Candidates should then move on to address consideration. Candidates may briefly define consideration and should emphasise that oral agreements will only be legally binding as contracts if an element of exchange is present. Candidates should then address the relevance of past consideration [*Roscorla v Thomas*] and its exceptions. Was there an implied promise made to pay for the service when it was requested by Charlene [*Lampleigh v Braithwaite*]? General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. Any advice given to the parties should be clear, concise and conclusive Issues must be fully discussed and clear compelling conclusions drawn.	**25**

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Question	Answer	Marks
6	**Consider whether binding contracts were formed between ABC Auctions and the three collectors and identify any remedies that might be available to them.** Candidates should introduce their response by explaining that contracts can only result from agreement represented by firm offer to contract on certain terms and a corresponding unconditional acceptance of such terms. Candidates are not expected to display precise knowledge of how rules of offer and acceptance relate directly to auction sales, but will be credited if knowledge is disclosed. The advertising of the intention to hold an auction of goods [as in the catalogue seen by Fabrice] is probably a mere invitation to treat and not a firm offer to sell anything [*Harris v Nickerson]* and thus no contract results until someone either offers to sell or offers to buy and there is a corresponding unconditional acceptance of the price stated. As the goods were apparently withdrawn from the potential sale, there was no offer made to sell so no contract could result. In Eric's case, candidates should debate whether or not he knew that the coin was for sale only on the condition that offerees were only willing to pay a minimum price [*Barry v Davies]*. Gilles appears to have offered (he bid) to buy the coin and the auctioneer seems to have accepted the offer made so there would appear to be a binding contract unless an effective revocation or withdrawal of offer was communicated prior to acceptance taking place [*Warlow v Harrison]*. Did the auctioneer hear or see Gilles' attempts to withdraw his offer to buy? General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. Any advice given to the parties should be clear, concise and conclusive Issues must be fully discussed and clear compelling conclusions drawn.	**25**

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