

**MARK SCHEME for the May/June 2009 question paper
for the guidance of teachers**

9084 LAW

9084/03

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 must be read in conjunction with the question papers and the report on the examination.

- CIE will not enter into discussions or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the May/June 2009 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



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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 'Offers last forever unless expressly revoked'.
Critically evaluate this statement as it relates 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. Candidates should then identify and explain the rule that if an offer is withdrawn or revoked prior to acceptance then no contract can result. Discussion should then take place as to whether or not offers have a definitive life once communicated to the intended offeree(s). Candidates are expected to consider lapse of specified time, lapse of reasonable time [*Ramsgate Victoria Hotel v Montefiore*], failure of preconditions [*Financings Ltd v Stimpson*, *Total Gas Marketing Ltd v Arco British Ltd*], rejection, counter offer [*Hyde v Wrench*], death of offeror/offeree [*Bradbury v Morgan*], and revocation as means of bringing offers to an end.

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

- 2 Analyse critically the factors taken into account by the courts when making an award of damages where the terms of the contract have made no provision for this.**

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 of 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*] 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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- 3 In the Great Peace Shipping case (2002), the Court of Appeal suggested that Parliament should legislate “to give greater flexibility to our law of mistake than the common law allows”. Critically assess the significance of any consequent change in the law as a result of this case and explain why legislation was thought necessary.**

Candidates should set the question in context by identifying the effects of mistake at common law in the broadest of terms only and then focus on the issue addressed by the question: the issue of common mistake as to the quality of the bargain struck by the contracting parties. Generally, where the mistake shared by both parties is that the subject matter is of a quality different to that anticipated, the mistake has three consequences: the mistake will not be operative, it will have no effect in common law and both parties are still bound by the contract [*Bell v Lever Bros*]. However, in the case of *Solle v Butcher*, the Court of Appeal decided that a mistake as to the quality of the subject matter did not prevent the court from setting aside the agreement in equity in the interests of fairness.

In *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd*, the Court of Appeal had to review the relationship between the two former cases. The CofA suggested that it is possible that a common mistake is such that the contract is neither operative, meaning that it cannot be declared void, nor, because the mistake has no effect in common law, can it then be set aside in equity.

Candidates should assess the extent to which the decision in the Great Peace leaves certainty in the law or whether in fact, legislation is now necessary. Candidates must adopt a critical approach to achieve marks in band 4.

Section B

- 4 Using case law to support your views, consider Nila’s legal position if Hamid fails to honour the two promises made.**

Some candidates will recognize the intended issue as being whether valuable consideration was given in return for promises made. The use of the word friend in the question, however, may lead candidates to respond on the basis of intention to create legal relations. Better candidates are expected to address both.

Candidates should recognize that social and domestic agreements are not intended to be legally binding (e.g. *Balfour v Balfour*); however, it is a rebuttable presumption (e.g. *Simpkins v Pays*). If the presumption stands there is nothing further to debate, but candidates must consider the alternative view that there was an intention to be legally bound in this instance and then move on to address consideration.

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 must be on the rule relating to past consideration (*re. McArdle*) exceptions to the rule [particularly *Lampleigh v Braithwaite*]. The promise to reimburse and the promise of something special were both made after lifts to and from the airport had been given. 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?

Issues must be fully discussed and clear compelling conclusions drawn.

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5 Assess Chan's legal liability should he breach any of these contracts and discuss any remedies that might be available against him in each case.

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 necessities – *Nash v Inman*, and beneficial employment contracts – *Doyle v White City Stadium*), voidable contracts (e.g. contracts of a continuing nature such as 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. Winston – if car is deemed necessary, Winston placed in same position of the seller of the car had Chan not paid him, so would be entitled to recover from Chan the actual amount spent on the car.

Re. the College – fees recoverable as contract entered for benefit of Chan and hence necessities.

Re. lease – takes Chan past 18th birthday, so voidable at his option.

Clear, compelling conclusions must be drawn.

6 Discuss the contractual liability that the owners of the car-park would have towards Sandeep if he was to return to his car to find that it had been deliberately damaged by a gang of youths and on exiting the car park, a faulty barrier at the exit falls and damages the roof of his car.

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 (*Parker v SE Railway*, *Ollie 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 Unfair Contract Terms Act 1977 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.

Responses limited to factual recall of principle will be restricted to marks below band 4.