

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the November 2004 question paper

LAW

9084/03

Paper 3, maximum mark 75

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which Examiners were initially instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began. Any substantial changes to the mark scheme that arose from these discussions will be recorded in the published *Report on the Examination*.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the *Report on the Examination*.

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

CIE is publishing the mark schemes for the November 2004 question papers for most IGCSE and GCE Advanced Level syllabuses.



Grade thresholds taken for Syllabus 9084 (Law) in the November 2004 examination.

	maximum mark available	minimum mark required for grade:		
		A	B	E
Component 3	75	43	36	20

The thresholds (minimum marks) for Grades C and D are normally set by dividing the mark range between the B and the E thresholds into three. For example, if the difference between the B and the E threshold is 24 marks, the C threshold is set 8 marks below the B threshold and the D threshold is set another 8 marks down. If dividing the interval by three results in a fraction of a mark, then the threshold is normally rounded down.



November 2004

GCE ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/03

LAW



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

Question 1

In *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha (1962)* it was established that it was no longer appropriate to categorise terms of contract as being merely conditions or warranties. It was said that the correct approach is to look at what had happened as a result of the breach and then decide if the claimant(s) had been deprived of substantially the whole intended benefit of the contract.

Critically analyse and evaluate the decision of the Court of Appeal in the above case and its subsequent effect on remedies for breaches of contractual terms.

It is imperative that candidates at least outline the situation prior to the Hong Kong Fir Shipping case: that the contents or terms of a contract could vary in importance, but would nevertheless fall into one of two categories (conditions or warranties) depending on the perceived importance of the term at the time that the contract was made. Breaches of vital terms (conditions) allowed repudiation of the contract plus an action for damages, whereas breaches of subsidiary terms (warranties) simply permitted actions for damages.

It was in this court case that the terminology of “innominate” or “intermediate” term was first used. These terms could be broken with either serious, thus allowing repudiation and an action for damages, or minor consequences, allowing an action for damages, depending on the nature of the breach.

Candidates should be credited for outlining the facts of the Hong Kong Fir Shipping case and for briefly explaining the outcome.

The effect of the CofA decision should be analysed in the light of later cases such as *Schuler AG v Wickman Machine Tool Sales Ltd (1973)*, *Reardon Smith Line v Hansen Tangen (1976)* or *The Hansa Nord (1975)* and a conclusion drawn regarding the effect that it has had on remedies for breaches of contractual term.

Question 2

In the view of the American academic, Professor Williston, the contractual requirement that there should be an intention to create legal relations is superfluous because English Law has the test of consideration to determine the boundaries of contract.

Discuss this view.

Candidates should explain the terminology contained in the question; both the intention to create legal relations and consideration should be defined.

It is indeed true that in general, agreements are not legally binding as contracts if promises contained therein are neither put into the form of a formal deed nor supported by valuable consideration given in return. Courts seem only to consider intent to create legal relations if offer, acceptance and consideration are established, so is there truth in Prof Williston’s assertion?

Suitable case law such as *Balfour v Balfour*, *Simpkins v Pays* and *Rose and Frank Co v J R Crompton Bros* should be considered and discussed in the light of the assertion.

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Question 3

‘Contracts are frequently induced by misrepresentation’.

Critically assess the remedies available to a person who has entered into a contract on the basis of a misrepresentation.

Candidates should explain that when statements are made in order to persuade the other party to enter into a contract, those statements are called representations, but if they turn out to be untrue they are known as misrepresentations. Given the maxim, caveat emptor or let the buyer beware, the onus is on buyers to make sure, as far as they possibly can, that they are very careful when entering contracts. However, active misrepresentations of fact are recognised as vitiating factors undermining the consensus ad idem required and thus render a contract voidable at the innocent party’s option. Key points to be emphasised: statement should be of fact; made before the contract was made and did not become a term of the contract; one of the causes to induce the contract.

Candidates must then focus on the remedies available as a consequence of the differing categories of misrepresentation: innocent, negligent and fraudulent. The common law view of caveat emptor and the approach of equity making contracts voidable should be critically analysed. Exploration of provisions of Misrepresentation Act 1967 (negligent misrepresentation) and tort of deceit (fraudulent misrepresentation) and the resulting additional remedy of damages is expected. The role of fraud in both should be discussed.

Section B

Question 4

Sufficiency of consideration

Candidates should open discussion of this case with a definition of consideration and a brief explanation of its role in the formation of valid contracts.

The rule that consideration must be real or sufficient but need not be adequate should be identified and explained and the consequences of the Rule in Pinnel’s Case analysed.

Promissory estoppel should be identified as an exception to the general rule that performance of an existing contractual obligation does not amount to sufficient or real consideration. The decisions in High Trees case, in D&C Builders v Rees and in Williams v Roffey Bros should be discussed and the facts of the present case reviewed in the light of them.

Candidate responses should focus on the carpentry firm’s claim for the full amount due to them and discuss to what extent a counter-claim for defects in performance might be lodged by the customers. A clear, compelling conclusion must be drawn.

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Question 5

Mistakenly signed documents

Mistakes do not generally affect the validity of contracts. As a general rule, a person who signs a document is bound by its contents, regardless of whether the document was read or understood (*L'Estrange v Graucob*).

Candidates are expected to explore the one key defence to liability: the plea of non est factum (not his deed), a defence reliant on proof that at the time of signing the document, there existed a belief that the document was of a fundamentally different nature to what it actually was. A successful plea will generally render the contract void. The effect of Mr Maxwell acting in a professional capacity and the bearing that this might have should also be considered.

Candidates must focus discussion on the mistake as to the nature of the document (*Saunders v Anglia Building Society*) and the presence or not of fraud to induce the signature.

The issue of rectification as a possible remedy might also be addressed briefly.

A clear, compelling conclusion must be drawn.

Question 6

Incorporation of terms

Candidates should contextualise the problem by saying that terms do not bind contracting parties unless incorporated into the contract. The ways in which incorporation might take place (by signature, by reasonable notice or by a course of dealing) should then be identified and explained. The problem essentially hinges on whether reasonable notice was given to incorporate the exemption clause into the contract. In general, notice of the existence of such terms must be given either before or at the time that the contract is made and if notice is contained in a document like a ticket, then the document must be one in which a person might expect to find terms of contract mentioned.

Cases such as *Olley v Marlborough Court Hotel*, *Thornton v Shoe Lane Parking* and *Chapelton v Barry UDC* should be explored, the decisions applied to the problem and clear, compelling conclusions drawn.

The better candidate should also be rewarded for assessing the validity of such a clause in the light of Unfair Contract Terms Act 1977.