

**MARK SCHEME for the October/November 2006 question paper**

**9084 LAW**

**9084/03**

Paper 3 (Law of Contract), maximum raw 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 instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began.

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.

The grade thresholds for various grades are published in the report on the examination for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses.

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

CIE is publishing the mark schemes for the October/November 2006 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	<b>Paper 3</b>	Paper 4	Advanced Level
Knowledge/Understanding	50	50	<b>50</b>	50	50
Analysis/Evaluation/Application	40	40	<b>40</b>	40	40
Communication/Presentation	10	10	<b>10</b>	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:**

<b>Question</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
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 Explain when the doctrine of promissory (or equitable) estoppel might be applicable and discuss the limitations on its application.**

The doctrine of equitable or promissory estoppel must be set in the context of consideration and the Rule in Pinnel's case that the payment of a lesser sum than that due does not provide valuable consideration for either express or implied promises to forego the remainder due. This equitable doctrine provides one way of making such a promise binding in situations when it is considered the only just outcome.

Candidates should explain its alleged origins (Hughes v Metropolitan Railway Co) and outline the case in which the doctrine was first enunciated in detail: Central London Property Trust Ltd v High Trees House Ltd.

Conditions on its application to be discussed are:

Need for a pre-existing contract

A clear and unambiguous promise not to enforce full contractual or legal rights

The promisee must have acted in reliance on the promise in the sense that it influenced conduct (Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd)

It must be deemed inequitable for the promisor to enforce his strict rights (D&C Builders v Rees)

Usually prevents rights from being exercised for a period of time & does not destroy them entirely (Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd)

Cannot be used to create new rights or extend scope of existing rights already held (Combe v Combe).

### **2 Critically evaluate the remedies available to a party who discovers that a contract has been founded on a misrepresentation.**

Misrepresentation should be defined and candidates should explain that, as a recognised vitiating factor that undermines the true consent given to an agreement, it renders a contract voidable at the option of the party who has been misled.

Marginal credit will be granted to candidates who identify the different types of misrepresentation (i.e. fraudulent, negligent and innocent), but that is all, as the focus of this question is on remedies granted in equity and by statute.

Candidates should note that common law never recognised misrepresentation as a basis for invalidating a contract at all, the only remedy of damages being available for a deliberate act (tort) of deceit (fraudulent misrepresentation). Candidates should also note that Equity would provide some relief by granting rescission of the contract in suitable situations. Detailed explanation of the limitations on rescission as a remedy is not required, but its effect should be outlined: restoring parties to pre-contractual positions.

Remedies under Misrepresentation Act 1967 should be detailed and the effects of S2(1) & S2(2) discussed and distinctions drawn between damages available for negligent and innocent misrepresentations.

The question requires candidates to be critical, so a mere listing of remedies will not attract marks beyond band 3, however detailed. Cases such as Leaf v International Galleries, South Australia Asset Management Corp v York Montague Ltd and Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd should be compared and contrasted and relative fairness of outcome assessed.

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**3 'Most businesses wish to limit or exclude liability for the consequences of the breach of contracts that they make.'**  
**Outline the statutory controls that exist over the use of exclusion clauses and assess their impact on the ordinary consumer of goods and services in England & Wales.**

Freedom of contract dictates that the use of exclusion clauses is valid, provided that both parties are aware that they form part of a contract. This is fine in principle, as long as all parties to the contract are in a realistic position to negotiate the terms of a contract. This is commonplace in the majority of business-to-business transactions, but not so when one party is an ordinary consumer of the subject matter of the contract. Businesses tend to take advantage of the weak or non-existent bargaining power of the ordinary consumer by presenting terms of contract with a take it or leave it attitude. Hence, the need for statutory intervention in the form of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations (1999).

UCTA's main provisions under Ss 1, 2(1), 2(2), 3, 6 & 7 should be outlined and impact on the ordinary consumer assessed and evaluated. Do these provisions go far enough to protect the core interests of the ordinary person in the street?

The 1999 Regulations should also be examined and distinguished from UCTA (what do they add?). Regulations 5(1), 5(3) and 6(2) are of particular significance but are they still too vague and woolly?

Candidates must evaluate the success or otherwise of the legislation and draw clear conclusions supported by example wherever possible.

### **Section B**

**4 Discuss Ralf and Michael's respective legal entitlement to the reward advertised by Jenson.**

This scenario requires candidates to focus on the formation of contract and in particular of the rules relating to offers. The advertisement in question appears to amount to a unilateral offer rather than an invitation to treat. Candidates should define and distinguish between these two terms and illustrate the legal principles (e.g. Partridge v Crittenden, Carlill v Carbolic Smoke Ball Company). Contracts are only valid and enforceable if there has been a firm offer that has been unconditionally accepted. Candidates need to discuss and conclude whether in fact the ad for the reward does amount to a firm offer.

Furthermore, it is fair to say that offers must have been communicated to an offeree before (s)he is then able to accept the offer. Candidates need to debate, therefore, when acceptance would take place in this case and to decide whether either of the potential offerees were aware that the offer had been made to them.

Candidates are told that at the time that Ralf and Michael find the car, only Ralf knows that a reward has been offered; Michael finds out later. The key issue to be debated, therefore, is when acceptance takes place, because as long as an offeree is aware that an offer has been made at that time, acceptance brings about a binding contract (Fitch v Snedaker). If acceptance is represented by the finding of the vehicle, then only Ralf would be entitled to accept. If acceptance is represented by communicating information to the offeree, then would both be in a position to accept? Michael had not seen the advertisement himself, so would a court recognise communication through a reliable third party? It would appear so (Gibbons v Proctor), Michael would also be in a position to accept.

The offer intimates that acceptance should be by post. Ralf posts his letter before Michael, so provided that the letter has been properly stamped and addressed, posted in the proper manner and proof of posting exists, the posting rule would dictate that Ralf's acceptance took place before Michael's even if both letters arrived at the same time (Henthorn v Frazer, Household Fire Insurance v Grant).

Candidates must produce a clear, compelling conclusion.

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**5 Discuss any entitlement that Phones-4-All Ltd may have to the return of the consignment of mobile phones now in the possession of The Phone Connection.**

The question asks for a focus on any remedy that Phones-4-All might have, given the scam pulled by Wang-Li.

If we presume that The Phone Connection were bona fide purchasers in good faith, Phones-4-All would have to establish a better title to the consignment of phones than that acquired by The Phone Connection.

There are two real possibilities that candidates should focus on and lengthy regurgitation of principles relating to misrepresentation and mistake are not required:

It would appear that the initial contract between Phones-4-All and Wang-Li (posing as Coldcall) had been induced by a fraudulent misrepresentation (only a very brief explanation is required). However, this would have only rendered the contract voidable at Phones-4-All's option. In this case the option to avoid the contract would appear to have been lost since the fraud has not been discovered until after innocent third party rights have accrued (sale under a voidable title exception to nemo dat rule, Sale of Goods Act). On that basis, The Phone Connection would be entitled to keep the phones.

The second approach would be to establish that the initial contract was void for operative mistake. Under void contracts, no ownership rights pass, so Phones-4-All might obtain an order of specific restitution to get the phones back. However, the mistake was a unilateral one of identity. Candidates need to consider the decisions in the cases of Cundy v Lindsay and Kings Norton Metal Company v Edridge Merrett and draw analogies. As the name of Coldcall Ltd was a total fiction, it would seem likely that any action for the return of the phones would fail.

A detailed discussion is expected, followed by clear, concise and compelling conclusions.

**6 Discuss Kingston's legal liability to take late delivery of and pay for a jeep of the wrong colour and his rights if, having taken delivery and paid for it, it immediately ceases to work properly.**

This question requires the issue of terms of contract to be addressed.

Candidates should explain that terms are the contents of the contract itself. Terms generally identify the responsibilities and rights agreed by the parties when the contract is made. Candidates should distinguish briefly between conditions, warranties and innominate terms and explain that the classification into which a term falls will determine remedies should the term be broken (Poussard v Spiers, Hong Kong Fir Shipping Co Ltd v Kawasaki Ltd).

Candidates should assess whether the date for delivery and the colour of the jeep would be considered to be conditions, warranties or innominate terms as only the breach of conditions, or possibly innominate terms, would give rise to the right to repudiate the contract (The Mihalis Angelos). Discussion and conclusion are required re scenario, but if considered warranties, the contract cannot be repudiated and only a claim for damages can be made in respect of the breach of a subsidiary term.

With reference to the eventuality that delivery is taken of the jeep which does not go, candidates are expected to discuss the issue of fundamental breach and draw appropriate conclusions (Photo Production Ltd v Securior Transport Ltd). Is there any breach more fundamental than a breach of condition?

A detailed discussion is expected, followed by clear, concise and compelling conclusions.