

## **MARK SCHEME for the May/June 2008 question paper**

<b>9084/03</b>	<b>9084 LAW</b> Paper 3, maximum raw mark 75
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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.

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 discussions or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the May/June 2008 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 Candidates should contextualize their response by stating the general rule that a contract cannot come into existence until there has been an offer and corresponding acceptance and by briefly discussing the need to distinguish between offers and invitations to treat as only the former can be accepted to form a valid, binding contract. Candidates should offer definitions of the terms offer and invitations to treat.

Candidates should go on to explain that confusion can arise, however, because an advertisement would appear to amount to an offer but is held by the law to be merely an invitation to treat.

Unilateral contracts result from advertisements which call for action only of those reading them, such as that in the case of *Carlill v Carbolic Smoke Ball Company* or those offering rewards in return for information or for returning a lost item, are usually considered to be firm offers capable of acceptance without the need for further negotiation and ones which the advertiser intends to be bound by.

By comparison, advertisements that intimate action or further negotiation between advertiser and customer before a bilateral contract results are generally seen as invitations to treat or something that invites the viewer to make a consequential offer to the advertiser. Shop window displays and classified advertising are classic examples as exemplified by cases such as *Partridge v Crittenden*, *Fisher v Bell* and *Pharmaceutical Society of GB v Boots Cash Chemists (Southern) Ltd*. In these instances, it is considered that potential buyers may still wish to negotiate price and that sellers might wish to refuse to sell their goods or services to certain buyers in some circumstances.

- 2 Candidates should **briefly** outline the legal protection afforded to minors with regard to contracts. Only executed contracts for necessary goods and services can be enforced against minors at common law and even then only actions for a reasonable price can be entertained; all other contracts are voidable at the minor's option, leaving the adult, being unaware that the other party to a contract is a minor with little or no comeback. Is this potentially unjust and do the remedies afforded against minors mitigate this injustice in any way?

The equitable remedy of restitution should be defined and explored as one such remedy. If a minor fraudulently obtains goods and then keeps them in his/her possession, an order of restitution can be made to compel the minor to return them to the claimant.

Candidates should go on to explore the claimant's rights as a consequence of S3 of the Minors' Contracts Act 1987 which do not rely upon the minor's fraudulence although it still needs to be a just and equitable course of action for the court to order the return of property acquired by the minor. If the goods have been sold or exchanged by the minor he may have to pay for them or give up to the claimant property received in exchange. However if the goods have been sold and the proceeds of sale spent, the minor cannot be made to pay anything as this would effectively enforce what was an unenforceable contract.

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

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- 3 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 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 signature (*L'Estrange v Graucob*, *Curtis v Chemical Cleaning & Dyeing Co* ), by reasonable notice (*Parker v SE Railway*, *Ollie v Marlborough Court Hotel*, *Thornton v Shoe Lane Parking*, *Chapelton v Barry UDC*) and by a course of dealing (*Spurling v Bradshaw*, *Hollier v Rambler Motors*).

This should be followed by an examination of the rules of interpretation. Candidates should identify and explain the application of the *contra preferentem* rule (*Houghton v Trafalgar Insurance*) to limit the impact of exemption clauses. Some candidates might consider the effect on fundamental breach as in *Suisse Atlantique* and *Photo Productions* cases.

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

## Section B

- 4 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*) and sufficiency of consideration (*Pinnel's Case*).

With regard to the promise from Rose, the issue is whether or not candidates consider that Nuala and Steve doing the work to accommodate Richard was in the past relative to her promise to give them money towards the work and therefore unenforceable.

As far as Patrick agreeing to forego money lent to them, the issue of whether the doctrine of promissory estoppel might be applicable here (*High Trees Case*) and thus make Patrick's promise enforceable.

Both issues must be fully discussed and clear compelling conclusions drawn.

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- 5 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 Winston 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.

An alternative approach might be for the candidate to consider the issue purely and simply from the perspective of a contract induced by fraudulent representation in which case appropriate credit should be given.

A clear, compelling conclusion must be drawn.

- 6 Candidates should recognise the terms of the contract as the issue here and whether there has been breach of those terms and what the effects are thereof.

It would appear that Ahmed is in breach of some of the terms of the written contract entered into with Mahmoud. Rights and liabilities in any contract are determined by the nature of the terms that are alleged to have been broken. Terms vary in importance from contract to contract with apparently the same term in essence being of great significance in one contract but of minor significance in another. Consequently, the law seeks to classify terms according to their importance, with the implications varying according to the type of term breached.

Candidates should recognise that for these purposes there are three types of term: conditions, warranties and innominate terms. Each type should be defined and explained with reference to case law (e.g. *Schuler AG v Wickman Machine Tool Sales Ltd*, *The Mihalis Angelos*, *Hong Kong Fir Shipping Co Ltd v Kawasaki Ltd*) and the implications of breach explored.

When applied to the case in hand, Ahmed's liabilities and Mahmoud's rights must be explored in respect of each of the terms that were agreed when the contract was made. The correct model and engine size was supplied, but in the wrong colour and without the extras ordered. What was the significance of these terms in this contract? On the basis of conclusions, effects and remedies should be explored.

Whatever lines of argument candidates take, clear, compelling conclusions must be drawn.