

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the June 2005 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 June 2005 question papers for most IGCSE and GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



Grade thresholds for Syllabus 9084 (Law) in the June 2005 examination.

	maximum mark available	minimum mark required for grade:		
		A	B	E
Component 3	75	43	37	24

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.



June 2005

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

- 1** In Common Law, the statement is true as 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).

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. 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. Candidates are expected to assess the impact on innocent third parties with whom such contracts are made and make a critical assessment in the light of remedies available to the parties concerned.

Candidates should consider the availability of specific restitution or specific performance in such cases.

Should these rules protecting minors still exist? Candidates might express a supported view. **[25]**

- 2** The question 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.

When a contract is declared void, 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).

In the case of voidable contracts, the situation is muddled 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 avoids 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* could be used to support this view. **[25]**

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- 3** Specific performance (SP) is one of a range of equitable remedies that can be awarded when a court considers that compensation of the claimant in the form of damages would not be adequate. It is a remedy that can be awarded to compel performance of a contract, but is seldom used today for this purpose.

Damages must be inadequate on their own. SP is not granted, therefore, if the contract was one for goods or services that are easily replaced. Hence, today, the decree is reserved almost exclusively to contracts for the sale of land and other goods of a similarly unique nature.

The remedy should not cause greater hardship to the defendant. Equitable remedies are based on the notion of fairness.

The claimant must have acted equitably himself. If the contract was obtained by unfair means, the remedy is defeated.

The contract must be suitable for SP. SP is never awarded in the case of contracts for personal services, of contracts resulting in an infringement of personal freedom, or of contracts involving continuous duties. In these instances, too much policing by the court would be necessary to ensure compliance with the order.

Mutuality of remedy is required. It is also a condition that such a remedy could be granted against either party. Hence never granted if one party is a minor. **[25]**

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Section B

- 4 An outline of the essentials of a valid contract; emphasis expected on offers, invitations to treat, counter offers and acceptance. Credit for possible reference to consideration, but nothing for other essentials.

Binding contract requires definite offer and corresponding, unconditional acceptance. Counter offer operates as a rejection and terminates offer (*Hyde v Wrench*). Was there an offer made by Michael or was his letter an invitation to treat? If it was an offer, does Laurel make a counter offer when she asks about payment by instalments? Probably not as a mere enquiry for information (*Stevenson v McLean*). If there has been an offer and corresponding unconditional acceptance, a contract has been made; sale of the equipment to Michael's partner is tantamount to a breach of that contract. Acceptance and posting rules must also be considered.

General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. **[25]**

- 5 This is a clear case of misrepresentation. During the lead-up to the formation of a contract, statements have been made and responses given which are false and known to be false. A contract has then been made.

Having purchased the business and its premises and discovered that Gulzar has misled him, Nazir may choose to try and avoid the contract on the grounds that there has been an actionable misrepresentation.

Actionable misrepresentations occur when there has been an untrue statement of fact, made with the intention of inducing the representee into a contract, which is then relied upon by that representee when the contract is made. Candidates must discuss whether this has happened in this instance.

Thereafter discussion is required as to the nature of the misrepresentation as it is that which will determine remedies. Is this a case of fraudulent (i.e. deliberate), negligent or innocent misrepresentation? Candidates should explain all three types and conclude.

Seems that there was a deliberate attempt to mislead, so it would be a fraudulent misrepresentation. The effect of all types of misrepresentation is to render the contract voidable at the innocent party's option, so Nazir may wish to avoid the contract with Gulzar. If Gulzar fails to cooperate, Nazir would be able to take him to court, where he would ask for the equitable remedy of rescission. As the misrepresentation appears to be fraudulent, damages would also be available.

Candidates should debate this issue and draw a clear, compelling and fully reasoned conclusion supported by case law references – failure to do so will impact severely on marks awarded. **[25]**

Page 4	Mark Scheme	Syllabus	Paper
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- 6** The principal focus anticipated is that of the communication and validity of contract terms.

Terms only bind parties if they have been made aware of their existence either before or at the time that the contract is made. Terms should be either actually communicated or constructively communicated by this time.

Was the ticket a sufficient means to communicate the existence of terms (*Thomson v LMS Rlwy*; *Chapelton v Barry UDC*)? Was the ticket a contractual 'note' or a mere receipt for payment? Even if adequately communicated, was the term excluding all liability valid, given Unfair Contract Terms Act 1977, S1?

Assuming negligence is proven, however, even if the exemption was deemed to have been properly and adequately communicated, the attempt to exclude liability for negligence resulting in personal injury would be absolutely void by virtue of S2 UCTA 1977. Any measure of damages thus becomes of no consequence.

General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. **[25]**