

MARK SCHEME for the October/November 2008 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 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 October/November 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	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

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.

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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 creating innominate terms, the Hong Kong Fir decision approaches the effect of breach from the opposite direction to that traditionally adopted by the courts.' (Contract Law: Catherine Elliott and Frances Quinn). Critically assess this view.**

Responses should be contextualised: this statement addresses the issue of the relative importance of the terms of a contract. Traditionally, the law has sought to classify terms according to their importance and the effects of breach have varied accordingly. Our courts have classified terms according to the intentions of the parties to the contract at the time that the contract was made, as in different situations the same term can have very different significance. The traditional view has been to classify terms as conditions (very important terms) and warranties (collateral to the main purpose of the contract: S.61 SOGA 1979). Breaches of condition have been traditionally perceived as so significant as to enable the innocent party to repudiate the contract and claim damages; breaches of warranty give rise to actions in damages only.

It was in the *Hong Kong Fir case* (a brief outline should be credited) in 1962 that the expression 'intermediate' or 'innominate' term was used for the first time, thus challenging the traditional approach to the terms of a contract. The Court of Appeal suggested that all terms do not lend themselves to the traditional form of legal analysis in that they could not be clearly defined as either conditions or warranties at the time of contract formation: the effect of the breach should depend on the importance of the breach. In *Schuler AG v Wickman Machine Tool Sales Ltd* the House of Lords held that the use of the word 'condition' was only an indication of intention and that it was important to look at the contract as a whole and whether a strict interpretation of the meaning of the term would create a very unreasonable result.

One problem with innominate terms has been the potential for uncertainty and in *The Mihalis Angelos* and other subsequent cases, the courts have decided to limit the doctrine's scope.

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

- 2 The general rule is that innocent parties are entitled to such damages as will put them in the position they would have been in if the contract had been performed. Using case law to support your views, analyse any limitations that exist to this rule.**

This is a general question on the limitations on the recovery of damages and thus that is where the focus should lie, even if some limited credit is given for an explanation of what damages are and what their purpose is.

It is anticipated that the principal limitations that should be addressed are: causation, remoteness and mitigation.

A defendant will only be held liable for losses actually caused by their breach; a break in the chain of causation and no liability exists (*County Ltd v Girozentrale Securities*).

Fairness also dictates that a defendant should not be expected to accept liability for losses deemed too remote from the breach. The rules set down in *Hadley v Baxendale* need to be outlined and discussed. The development of these rules should then be traced through cases such as *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd*, *The Heron II* and *Wroth v Taylor*. The net result is that losses that arise from special circumstances are not recoverable unless the defendant knew of such circumstances and that defendants can be held liable for losses far greater than might have been expected as long as they are of a type that could have been reasonably contemplated.

Claimants have a duty to limit the losses that they suffer and will not be able to recover the full extent of a loss suffered if the court feels that reasonable steps could have been taken to reduce that loss (*Pilkington v Wood*; *Brace v Calder*).

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- 3 The rigid application of the Rule in Pinnel's Case has frequently caused hardship. Explain the rule and evaluate the extent to which its application has been mitigated by the development of the doctrine of promissory estoppel.**

Candidates should contextualize their response by explaining that special rules apply to contractual duties regarding debts. If money is owed and the debtor is unable to pay in full, that debtor will sometimes offer to pay a smaller sum on the condition that the entire debt is discharged. Even if the creditor agrees to this arrangement, it is only binding if the debtor provides consideration by adding some extra 'horse, hawk or robe', i.e. some extra element. The facts of *Pinnel's Case* may be outlined. Candidates should recognize that this approach has been confirmed in much more recent case law too (*Re Selectmove Ltd; Williams v Roffey*). Candidates are not expected to deal with exceptions to the rule but some credit may be granted.

Candidates should recognize that the rigid application of this common law principle can prove rather harsh in certain circumstances and that in such circumstances equitable doctrines have been developed in mitigation. One such doctrine is promissory estoppel.

The doctrine as expounded by Lord Denning in *Central London Property Trust Ltd v High Trees House Ltd* must then be addressed and the conditions on which its application rests explored, viz pre-existing contractual relationship, a promise to forego strict rights (*China Pacific SA v Food Corp of India*), reliance on the promise (*Hughes v Tool Metal Manufacturing*) and inequitable to enforce strict legal rights (*D& C Builders v Rees; re Selectmove*).

Candidates are also expected to evaluate the limits on the doctrine's scope. Promissory estoppel cannot be used to create entirely new rights or extend the scope of existing ones; it is a 'shield and not a sword' (*Combe v Combe*)

Section B

- 4 Using case law, advise the parties concerned whether a valid contract was formed and whether Louis is liable to pay the three girls.**

Candidates might be expected to introduce the requirements of a valid simple contract.

The importance of legal intent should be stressed to distinguish between various agreements, some of which are legally binding and others which are not.

There are two possibilities here – that the agreement made to play at the wedding is taken as a commercial agreement or that it is considered to be merely a social arrangement. Candidates should emphasise the need to distinguish because of presumptions regarding intent.

The presumptions in both contexts should be explained and explored in the context of previous case decisions (*Carlill; Merritt, Jones v Padavatton; Buckpitt v Oates etc*) and candidates must consider the possibility that the presumption might be rebutted in the light of the circumstances of this case.

To succeed, the girls will probably need to prove a commercial agreement; but would the presumption of intent be rebutted?

Informed debate followed by clear, compelling conclusions is expected.

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5 Assuming that Dunny Builders do complete the building project by 30 April 2008, consider the extent of London Arenas's liability to pay them.

In this case, Dunny Builders will want to establish that the promise to pay extra that was made by London Arenas is binding.

Candidates need to emphasise the need for genuine agreement to pay the extra and valuable consideration in return. However, Dunny Builders have not given consideration in the traditional sense, as they have not done anything over and above what the original contract required them to do, so how can London Arenas be legally bound to pay?

Candidates should recognise the implications of the outcome in *Williams v Roffey* for this case. In *W v R* it was held that there will be consideration if the promise to pay extra created a practical benefit for the promisor or else prevented a disbenefit and was not secured by duress.

Candidates should discuss whether, on balance, the findings in *W v R* would apply in this case and whether London Arenas are likely to have to pay the extra amount promised.

Informed debate followed by clear, compelling conclusions is expected.

6 Using decided case law, discuss whether or not Didier has any contractual claim on the reward advertised by Ibrahima.

Candidates should recognise that this scenario concerns the issue of offer, acceptance and consideration in unilateral contracts.

The first issue to be debated is whether the reward notice in the newspaper amounts to an offer or an invitation to treat. Offers and invitations to treat should be defined and explained. Case law supports the view that this would most likely be deemed an offer.

The issue then arises as to whether acceptance can take place of an offer of which the offeree is unaware. Case law here is inconclusive, so assumptions need to be made in order to progress the debate.

Is the reward sought in time? Issue of acceptance by post and posting rule should be explained and debated.

The final issue is one of consideration. Has the policeman done anything more than his legal duty? If not, no consideration. (*Glasbrook Bros v Glamorgan CC*).

Informed debate followed by clear, compelling conclusions is expected.