
LAW

9084/31

Paper 3

May/June 2017

MARK SCHEME

Maximum Mark: 75

Published

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, which would have considered the acceptability of alternative answers.

Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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This document consists of **10** printed pages.

Cambridge International Examinations – Generic Marking Principles

These general marking principles must be applied by all examiners when marking candidate answers. They should be applied alongside the specific content of the mark scheme or generic level descriptors for a question. Each question paper and mark scheme will also comply with these marking principles.

GENERIC MARKING PRINCIPLE 1:

Marks must be awarded in line with:

- the specific content of the mark scheme or the generic level descriptors for the question
- the specific skills defined in the mark scheme or in the generic level descriptors for the question
- the standard of response required by a candidate as exemplified by the standardisation scripts.

GENERIC MARKING PRINCIPLE 2:

Marks awarded are always **whole marks** (not half marks, or other fractions).

GENERIC MARKING PRINCIPLE 3:

Marks must be awarded **positively**:

- marks are awarded for correct/valid answers, as defined in the mark scheme. However, credit is given for valid answers which go beyond the scope of the syllabus and mark scheme, referring to your Team Leader as appropriate
- marks are awarded when candidates clearly demonstrate what they know and can do
- marks are not deducted for errors
- marks are not deducted for omissions
- answers should only be judged on the quality of spelling, punctuation and grammar when these features are specifically assessed by the question as indicated by the mark scheme. The meaning, however, should be unambiguous.

GENERIC MARKING PRINCIPLE 4:

Rules must be applied consistently e.g. in situations where candidates have not followed instructions or in the application of generic level descriptors.

GENERIC MARKING PRINCIPLE 5:

Marks should be awarded using the full range of marks defined in the mark scheme for the question (however; the use of the full mark range may be limited according to the quality of the candidate responses seen).

GENERIC MARKING PRINCIPLE 6:

Marks awarded are based solely on the requirements as defined in the mark scheme. Marks should not be awarded with grade thresholds or grade descriptors in mind.

Paper 31: Law of Contract**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, but indicative marks per question attempted on Paper 3 are shown in brackets.

Assessment Objective	Paper 1	Paper 2	Paper 3	Paper 4	Advanced Level
Knowledge/ Understanding	50	50	50 (13)	50	50
Analysis/ Evaluation/ Application	40	40	40 (10)	40	40
Communication/ Presentation	10	10	10 (2)	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.

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

Question	Answer	Marks
1	<p>It can be unjust when the courts limit the liability of those who commit breaches of contract.</p> <p>Examine the rules of causation and remoteness applied by the courts and critically assess the extent to which you agree with the statement above.</p> <p>Candidates might introduce their responses by stating that damages were the only remedy available at common law but that such entitlement would simply be to put a party in the position that would have been held had the contract been performed.</p> <p>Today there are three significant limitations on awards of damages: causation, remoteness and mitigation. Candidates are expected to analyse all three.</p> <p>The first limitation is that a defendant will only be liable to pay damages to another if the breach of contract was an effective cause of a complainant's loss. A chain of causation between breach and loss should exist and the question always arises whether or not intervening acts break the chain and candidates need to discuss this issue (<i>County Ltd v Girozentrale Securities</i>, <i>Quinn v Burch Bros (Builders) Ltd</i>).</p> <p>The second limitation is remoteness of damage. Candidates must discuss case law such as <i>Hadley v Baxendale</i>, <i>Victoria Laundries v Neman Industries</i>, <i>The Heron II</i> and <i>Balfour Beattie Construction (Scotland) v Scottish Power plc</i>. and draw conclusions that losses are recoverable if they would arise from the breach naturally according to the usual course of things and if the loss was within the reasonable contemplation of the parties when the contract was made. The concepts must be explored and conclusions explained.</p> <p>Mitigation is the third limitation: claimants are expected to take reasonable steps to minimise the impact of a breach of contract. Losses sustained due to a failure to take such steps will not be recoverable (<i>Pilkington v Wood</i>, <i>Brace v Calder</i>, <i>British Westinghouse Electric Co Ltd v Underground Electric Railway Co of London Ltd</i>)</p> <p>Responses based purely on factual recall without the necessary critical assessment of fairness will be limited to maximum marks within band 3.</p>	25

Question	Answer	Marks
2	<p>The doctrine of promissory estoppel has resolved the hardship frequently experienced as a result of applying the Common Law rules of consideration.</p> <p>Discuss the circumstances under which this doctrine is applied and critically analyse its effectiveness in mitigating the potential harshness of the Common Law.</p> <p><i>Candidates should contextualise 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 recognise 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.</i></p> <p>Candidates should recognise 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.</p> <p>The doctrine as expounded by Lord Denning in <i>Central London Property Trust Ltd v High Trees House Ltd</i> must then be addressed and the conditions on which its application rests explored, viz pre-existing contractual relationship, a promise to forego strict rights (<i>China Pacific SA v Food Corp of India</i>), reliance on the promise (<i>Hughes v Tool Metal Manufacturing</i>) and inequitable to enforce strict legal rights (<i>D& C Builders v Rees; re Selectmove</i>).</p> <p>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’ (<i>Combe v Combe</i>).</p> <p>Candidates are expected to critically analyse the limitations to the application of PE to reach band 4.</p>	25

Question	Answer	Marks
3	<p>Explain and critically evaluate the rules for the incorporation of exemption clauses into a contract.</p> <p>Candidate should explain that an exemption clause is simply a term of a contract by which a party might attempt to limit or exclude liability for certain eventualities and that as such will be treated in the same way as any other term of contract when it comes to deciding whether or not it has been suitably incorporated. If it does become incorporated into the contract, other common law and statutory rules will determine its effect in fact (e.g. <i>contra proferentem</i> (<i>Houghton v Trafalgar Insurance</i>), fundamental breach (<i>Suisse Atlantique</i> and <i>Photo Productions</i> cases) and UCTA 1977)</p> <p>Candidates are expected to consider the rules of incorporation by signature (<i>L'Estrange v Graucob</i>, <i>Curtis v Chemical Cleaning & Dyeing Co</i>), by reasonable notice (<i>Parker v SE Railway</i>, <i>Ollie v Marlborough Court Hotel</i>, <i>Thornton v Shoe Lane Parking</i>, <i>Chapelton v Barry UDC</i>) and by a course of dealing (<i>Spurling v Bradshaw</i>, <i>Hollier v Rambler Motors</i>).</p> <p>Candidates are expected to critically evaluate the way in which the law deals with these situations to reach band 4.</p>	25

Question	Answer	Marks
4	<p>Discuss whether or not Pablo is bound by his contract of employment with Q Racing and consider the likelihood of award of any of the range of remedies that might be sought.</p> <p>Candidates are not required to know anything about contracts in restraint of trade.</p> <p>There are two issues that require attention in this question. The first is whether Pablo might be able to wriggle out of the contract on the grounds of a mistakenly signed contract and the second addresses the possible equitable remedies that Q Racing could seek against her if the contract is valid.</p> <p>Candidates should address these issues in turn.</p> <p>With regard to the potential issue of mistake, candidates should identify that Pablo would need to successfully raise a plea of <u>non est factum</u> (must be defined). This plea is unlikely to succeed on two counts; firstly, he signed a contract of employment, which is precisely what he thought he was signing, and, secondly, there appears to have been no fraud present (<i>Foster v McKinnon</i>, <i>Saunders v Anglia Building Society</i>). Candidates should conclude that the contract was, therefore, binding on Q Racing; he had simply been careless.</p> <p>Q Racing could seek compensation as of right or he might seek an equitable remedy instead. Candidates should emphasise that, unlike damages, these are only awarded at the courts' discretion. Discussion of equitable principles is not required here. Specific performance is one conceivable remedy, but would not be granted for a contract of personal services such as this one. That leaves an injunction. This is one of those borderline cases where, if awarded, an injunction can be used to bring about the same effect. This is exemplified in the case of <i>Warner Bros v Nelson</i>. However, more recent cases, such as <i>Page One Records v Britton</i> and <i>Warren v Mendy</i>, suggest that the courts are watching out for the use of injunctions as a way of achieving specific performance by the back door and the general view is that Q Racing is unlikely to obtain an injunction to stop Pablo working for T Sport unless it would leave her with some other reasonable means of making a living.</p> <p>Candidates must discuss the issues, draw a clear, compelling conclusion and advice given should be clear, concise and conclusive.</p>	25

Question	Answer	Marks
5	<p>Advise Sukhi and Tatiana as to their contractual rights and obligations in this situation.</p> <p>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. <i>Partridge v Crittenden</i>, <i>Carlill v Carbolic Smoke Ball Company</i>). 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 advertisement for the reward does amount to a firm offer.</p> <p>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 Tatiana was aware that the offer had been made to her at the time of her purported acceptance.</p> <p>Candidates are told that at the time that Tatiana finds the dog, she is unaware that the reward has been offered.</p> <p>The main issue here, however is that she was never aware of the offer and thus would probably not be entitled to the reward if Stephanie decided not to give it to her.</p> <p>Candidates must discuss the issues, draw a clear, compelling conclusion and advice given should be clear, concise and conclusive.</p>	25

Question	Answer	Marks
6	<p>Advise Wanda as to her legal entitlement to keep all of the winnings in this situation and explore any remedies that Ursula and Veena might pursue against her.</p> <p>Candidates must consider whether or not a binding contract was made between Ursula, Veena and Wanda or whether it was simply an agreement between friends not intended to lead to legal consequences. Candidates should explain why legal intention is critical to the formation of a binding contract.</p> <p>There was an apparent agreement between workmates and friends, but was the alleged agreement any more than a social or domestic arrangement? Candidates should examine the different presumptions made by the courts are faced with issues arising out of commercial agreement and out of domestic agreement.</p> <p>As the agreement was between friends and not essentially commercially based, it would seem likely that the courts would presume that the parties had no intention to create a legally binding contract (<i>Merritt v Merrit, Balfour v Balfour</i>). If Ursula and Veena are to find Wanda liable for failing to share the winnings, they would thus need to rebut the presumption (<i>Simpkins v Pays</i>). Candidates must reach a reasoned conclusion.</p> <p>Should the court consider that a binding contract existed? The issue of possible remedies must be discussed. Would damages be deemed appropriate in this case? Might a court award specific performance instead?</p> <p>Informed debate followed by clear, compelling conclusions is expected. General, all-embracing and ill-focused responses or ones limited to factual recall are to be awarded a maximum mark within mark band 3.</p>	25