

MARK SCHEME for the May/June 2006 question paper

9084 LAW

9084/03

Paper 3

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 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.

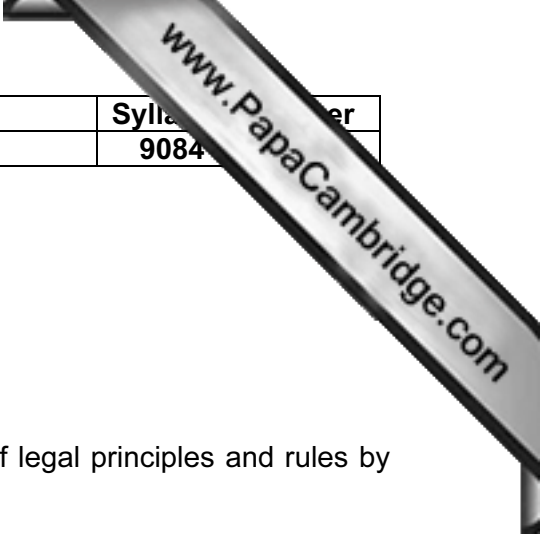
Mark schemes must be read in conjunction with the question papers and the *Report on the Examination*.

The minimum marks in these components needed for various grades were previously published with these mark schemes, but are now instead included in the Report on the Examination for this session.

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

CIE is publishing the mark schemes for the May/June 2006 question papers for most IGCSE and 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

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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.

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 the light of modern technology, critically assess the significance today of the postal rule of acceptance to the formation of valid contracts.**

Candidates should set the question in the context of the general rule of offer and acceptance, i.e. that a contract is formed once a firm offer has been communicated by offeror to offeree and that an unconditional acceptance has been communicated by offeree to offeror, and explain that the posting rule has arisen as an exception to the general rule.

Postal acceptances take effect from posting rather than communication, due to the inevitable delay between posting and receipt (*Adams v Lindsell*). Candidates may outline the circumstances under which the rule applies (specified or reasonable means of acceptance (*Henthorn v Fraser*), posting in proper manner (*Re London & Northern Bank*), and properly addressed and stamped (*Holwell Securities v Hughes*) and briefly explain the effects of letters of acceptance that never arrive (*Household Fire Insurance v Grant*) or cross with letters of revocation (*Byrne v Van Tienhoven*).

The present day significance of the rule must be assessed even if Band 3 marks are to be achieved. Does the rule still have any real significance in today's world of instantaneous, electronic communications?

The rule was extended to cover acceptance by telegram, now telemessages (*Cowan v O'Connor*), but what about fax, email or mobile phone messaging?

It would appear, however, that where acceptances are made by an instant mode of communication, the posting rule is inapplicable, as the acceptor will know at once that they have not managed to communicate with the offeror and will need to try again (*Brinkibon v Stahag Stahl GmbH*).

So does the rule have any real significance today? Even in today's society, many offerors will still want written, signed evidence that an offer has been accepted and may make it a specific requirement of the offer itself, in which case the rule clearly applies even today.

- 2 'The performance of an existing duty is not in itself sufficient consideration to legally enforce a promise.' With reference to case law, evaluate the apparent truth of this statement.**

Candidates should set the question in the context of valuable consideration as an element essential to the formation of a valid contract.

Consideration should be defined (e.g. price of a promise) and explained briefly.

In the light of consideration being something beneficial to the promissory or of detriment to the promisee, can the performance of existing duties amount to anything of real value?

Existing duties fall into various categories. Legal/moral duties owed by promisee to promisor, contractual duties owed by promisee to promisor, or contractual duties owed by the promisee to third parties.

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In the former two cases, it is generally accepted that the performance of existing legal duties do not amount to anything of real value and therefore would not amount to valuable consideration to support a promise made by the person to whom the duty is owed (*Collins v Godefroy*). However, an action beyond the call of duty would amount to valuable consideration (*Glasbrook Bros v Glamorgan CC*).

The performance of existing contractual duties was viewed in a similar light (*Stilk v Myrick*; *Hartley v Ponsonby*) until the case of *Williams v Roffey* in 1990. It would appear today that if the performance of an existing contractual duty confers an additional practical benefit, then the performance of that duty will act as consideration, provided that there has been no duress involved.

The performance of contractual duties owed to third parties have always amounted to consideration for promises between promisor and promisee (*The Eurymedon*; *Pao On v Lau Yiu Long*).

3 Analyse the circumstances under which common mistake invalidates contracts and critically assess whether English Law deals adequately with problems of mistake when contracts are made.

Candidate responses should be set in the general context of mistake as a factor that can invalidate a contract, but thereafter must be confined to COMMON mistake as referenced by the question.

Common mistake should be defined: the same mistake made by both parties. Candidates should then clarify the three generally recognised classes of common mistake, i.e. as to the existence of the subject matter, as to the ownership of the subject matter and mistakes as to the quality of the subject matter of the contract.

Principles of law should be stated. In general, mistakes as to the existence of (*Couturier v Hastie*; *McRae v Commonwealth Disposals Commission*) and as to the ownership of (*Cooper v Phibbs*) the subject matter of the contract render the contract void. Some argue that no contract could even have come into existence if there was no subject matter in existence about which to contract! Qualitative mistakes have never had any effect at common law, but may render the contract voidable in Equity (*Bell v Lever Bros*; *Solle v Butcher*).

As the law is explained, problems ought to be highlighted. The strict rules regarding quality can prove unfair on those who end up with goods which they did not intend to buy and which they have no use for, for instance. What about inconsistencies between case decisions in mistake as to the subject matter? Equitable relief possibilities could then be explored.

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Section B

- 4 Discuss whether the exclusion clause contained in the notice actually formed part of the contract between the skaters and ice rink owners and, if so, whether the owners are liable in contract law for the skaters' lost income.**

The question posed requires candidates to address the issue of the incorporation of exclusion clauses in contracts through the use of notices and tickets and the extent to which liability can be excluded by businesses.

In order for the parties to any contract to be bound by particular requirements or limitations, these must become terms of the contract and the parties must be reasonably aware of them at the time that the contract is made. Candidates might briefly define terms, but no detail is required regarding the nature and importance of terms in this contract.

The first issue to be addressed is whether the exclusion clause did become incorporated to the contract made when the skaters entered the ice rink on this particular day. If the term was to be incorporated by notice then the notice must be prominently displayed so that the other party's attention is drawn to it at the time that the contract is made (*Olley v Marlborough Court Hotel*, *Thornton v Shoe Lane Parking*). Candidates need to discuss this issue and draw conclusions. If candidates conclude that insufficient notice was given by the sign by the ticket office, then incorporation by notice on an entrance ticket needs to be discussed (*Thompson v LMS Railway*, *Chapelton v Barry UDC*). Was the ticket in question a mere receipt or a contractual document? What is the effect of failing to read terms? Candidates might also consider whether this term might have been incorporated by a course of dealing, given the number of times that the skaters must have trained at the ice rink. Discussion and conclusions are required.

The second issue surrounds the validity of the term in question. Candidates should recognise the relevance of the Unfair Contract Terms Act 1977. It would appear that the cleaners employed at the ice rink had been negligent. S2(1) UCTA provides that clauses excluding or limiting liability for death or personal injury resulting from negligence are ineffective.

Hence, candidates should conclude that even if the term became incorporated, S2(1) UCTA would negate its effect. The owners of the ice rink would appear to be liable but to what extent?

Candidates should then explore whether a claim for £50,000 would be likely to succeed. The issues of potential mitigation and remoteness should be discussed and clear, compelling conclusions drawn.

- 5 Sofia would like your advice on whether she is bound to give the four weeks' notice to quit required by the terms of her employment contract and by the three year lease agreement that she has entered for her room.**

Contracts are only binding on the parties concerned if valid contracts have been made. Candidates should identify capacity as one of the factors that can result in a valid contract not having been formed.

Sofia, at the age of 16, is classed as a minor in law. Candidates should identify that there are only two types of contract that will bind minors: executed contracts for necessities and beneficial contracts of service (employment).

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One of the contracts referred to in the question is a contract of employment, so is Sofia bound by its terms? Case law (*De Francesco v Barnum*, *Doyle v White City Stadium* etc.) suggests that minors will be bound by the terms of employment contracts if the contract is on the whole beneficial to the minor in that it makes provision for training in the minor's chosen career. Discussion should take place and conclusions must be drawn.

The other contract, the lease of the room, is of a continuing nature which, with duration of three years, will take her past her 18th birthday. The common law renders such contract voidable at the option of the minor, but binds the other party. Thus, in Sofia's case, the common law allows her to terminate the lease at any time before and within a reasonable time after her 18th birthday. If at the time of termination she seeks the return of rent or deposits paid, for instance, she is likely to fail unless she has received nothing in return.

Advice given should be clear, concise and conclusive.

- 6 Advise (i) Jason whether he is bound by the contract and, (ii) Georgio of any remedies he may seek to enforce the contract and explain whether any of them are likely to be awarded.**

Candidates are not required to know anything about contracts in restraint of trade.

There are two issues that require attention in this question. The first is whether Jason 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 Georgio could seek against him if the contract is valid.

Candidates should address these issues in turn.

With regard to the potential issue of mistake, candidates should identify that Jason would need to successfully raise a plea of *non est factum* (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 (*Foster v McKinnon*, *Saunders v Anglia Building Society*). Candidates should conclude that the contract was, therefore, binding on Jason; he had simply been careless.

Georgio does not seek compensation, so he will need to 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 *Warner Bros v Nelson*. However, more recent cases, such as *Page One Records v Britton* and *Warren v Mendy*, 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 Georgio is unlikely to obtain an injunction to stop Jason working for his rivals unless it would leave Jason with some other reasonable means of making a living. Candidates must discuss and draw a clear, compelling conclusion.

Advice given should be clear, concise and conclusive.