



Cambridge International AS & A Level

LAW

9084/03

Paper 3 Law of Contract

For examination from 2023

MARK SCHEME

Maximum Mark: 75

Specimen

This document has **10** pages.

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.

Guidance on using levels-based mark schemes

Marking of work should be positive, rewarding achievement where possible, but clearly differentiating across the whole range of marks, where appropriate.

The marker should look at the work and then make a judgement about which level statement is the best fit. In practice, work does not always match one level statement precisely so a judgement may need to be made between two or more level statements.

Once a best-fit level statement has been identified, use the following guidance to decide on a specific mark:

- If the candidate's work **convincingly** meets the level statement, award the highest mark.
- If the candidate's work **adequately** meets the level statement, award the most appropriate mark in the middle of the range (where middle marks are available).
- If the candidate's work **just** meets the level statement, award the lowest mark.

Assessment objectives**AO1 Knowledge and understanding**

- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

AO2 Analysis and application

- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

AO3 Evaluation

- Evaluate legal concepts, principles and rules.
- Communicate legal argument coherently on the basis of evidence.

Section A**Table A**

Use this table to give marks for each candidate response for **Questions 1** and **2**.

Level	AO1 Knowledge and understanding 12 marks	AO2 Analysis and application 5 marks	AO3 Evaluation 8 marks
	Description	Description	Description
4	10–12 marks <ul style="list-style-type: none"> Accurate and detailed in most relevant areas. Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology. 		
3	7–9 marks <ul style="list-style-type: none"> Mostly accurate but may not be detailed in some relevant areas. Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology. 	4–5 marks <ul style="list-style-type: none"> Mostly focused and reasoned application throughout. The application is supported by effective and well developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority. 	6–8 marks <ul style="list-style-type: none"> Mostly focused and reasoned evaluation of all the relevant issues. Effectively supported by relevant material. Coherent argument.
2	4–6 marks <ul style="list-style-type: none"> Some accuracy but lacks detail in relevant areas. Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology. 	2–3 marks <ul style="list-style-type: none"> Some reasoned application. The application is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority. 	3–5 marks <ul style="list-style-type: none"> Some evaluation, reasoned at times, of some of the relevant issues. Supported by some relevant material. Some coherent argument.
1	1–3 marks <ul style="list-style-type: none"> Limited accuracy. Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology. 	1 mark <ul style="list-style-type: none"> Limited application. The application is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority. 	1–2 marks <ul style="list-style-type: none"> Limited evaluation of a relevant issue. Limited or no use of relevant material. Limited or no argument.
0	0 marks <ul style="list-style-type: none"> No creditable content. 	0 marks <ul style="list-style-type: none"> No creditable content. 	0 marks <ul style="list-style-type: none"> No creditable content.

Question	Answer	Marks
1	<p>Assess Benji’s potential contractual liability to Clarice and to the car dealer.</p> <p>Use Table A to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • Identify the issues of offer, invitation to treat, revocation and acceptance. • Show an understanding of the postal rule (<i>Adams v Lindsell</i>) and the conditions of its use (<i>Holwell Securities v Hughes</i>). • Demonstrate knowledge of revocation of an offer (<i>Byrne v Van Tienhoven</i>) including by a reliable third party (<i>Dickinson v Dodds</i>). <p>Credit any other relevant case cited for AO1.</p> <p>AO2 Analysis and application and AO3 Evaluation</p> <ul style="list-style-type: none"> • Show whether there was a firm offer by Benji to sell the car and comment on any significance of Clarice’s reply being received prior to the 30 May. • Consider the significance of Clarice’s awareness that the offer had been withdrawn. • Be given credit for any possible suggestion of remedies available to Clarice or the car dealer depending on line of reasoning. <p>Accept all valid responses.</p>	25
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
2	<p>Advise SF and Tara of their respective contractual rights and obligations throughout the course of these events.</p> <p>Use Table A to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • Identify the issues of anticipatory breach and frustration of contract. • Explain the difference between anticipatory breach and actual breach (<i>Hochster v De la Tour</i>) and outline the choices available to the innocent party (<i>Avery v Bowden</i>). • Define the doctrine of frustration, explain how it may occur (<i>Taylor v Caldwell</i>) and outline the effects of it with reference to the Law Reform (Frustrated Contracts) Act 1943. <p>Credit any other relevant case cited for AO1.</p> <p>AO2 Analysis and application and AO3 Evaluation</p> <ul style="list-style-type: none"> • Recognise Tara's breach as anticipatory giving SF the right to sue immediately or wait until 1 August. • Recognise SF's decision to affirm the contract because the dress can be completed without Tara's co-operation and consider whether SF has a genuine interest in doing this by evaluating if Lord Reid's restrictions stated in <i>White and Carter (Councils) Ltd</i> would apply. • Demonstrate how the gas explosion frustrates the contract, and show how the LR(FC)A 1943 would likely apportion loss. <p>Accept all valid responses.</p>	25
	AO1	12
	AO2	5
	AO3	8

Section B**Table B**

Use this table to give marks for each candidate response for **Questions 3, 4 and 5**.

Level	AO1 Knowledge and understanding 12 marks	AO2 Analysis and application 5 marks	AO3 Evaluation 8 marks
	Description	Description	Description
4	10–12 marks <ul style="list-style-type: none"> Accurate and detailed in most relevant areas. Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology. 		
3	7–9 marks <ul style="list-style-type: none"> Mostly accurate but may not be detailed in some relevant areas. Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology. 	4–5 marks <ul style="list-style-type: none"> Mostly focused and reasoned analysis throughout. The analysis is supported by effective and well developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority. 	6–8 marks <ul style="list-style-type: none"> Mostly focused and reasoned evaluation of all the relevant issues. Effectively supported by relevant material. Coherent argument.
2	4–6 marks <ul style="list-style-type: none"> Some accuracy but lacks detail in relevant areas. Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology. 	2–3 marks <ul style="list-style-type: none"> Some reasoned analysis. The analysis is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority. 	3–5 marks <ul style="list-style-type: none"> Some evaluation, reasoned at times, of some of the relevant issues. Supported by some relevant material. Some coherent argument.
1	1–3 marks <ul style="list-style-type: none"> Limited accuracy. Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology. 	1 mark <ul style="list-style-type: none"> Limited analysis. The analysis is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority. 	1–2 marks <ul style="list-style-type: none"> Limited evaluation of a relevant issue. Limited or no use of relevant material. Limited or no argument.
0	0 marks <ul style="list-style-type: none"> No creditable content. 	0 marks <ul style="list-style-type: none"> No creditable content. 	0 marks <ul style="list-style-type: none"> No creditable content.

Question	Answer	Marks
3	<p>Assess the extent to which the use of innominate terms has resulted in a significant level of uncertainty in contract law.</p> <p>Use Table B to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> Show understanding of the difference between a condition and warranty (<i>Poussard v Spiers and Pond, Bettini v Gye</i>). Explain how this traditional approach was challenged by the creation of the innominate term (<i>The Hong Kong Fir Case</i>). <p>AO2 Analysis and application and AO3 Evaluation</p> <p>Responses should acknowledge the law's dislike of uncertainty and select arguments to show how this flaw may manifest itself with the use of the innominate term. These may include:</p> <ul style="list-style-type: none"> The innocent party's difficulty in knowing how to react until the effects of the breach have played out. The danger of pursuing expensive and ultimately futile litigation (<i>The Chikuma</i>). By disturbing established commercial assumptions. For example in shipping contracts 'readiness to load' clauses are always treated by the courts to be conditions (<i>The Mihalis Angelos</i>). <p>Responses should argue that there are in fact benefits to its use which outweigh the potential for uncertainty. These may include:</p> <ul style="list-style-type: none"> Creating flexibility in the law by giving the court a wider view of the contract with the chance to create the right decision (<i>Hong Kong Fir</i>). Preventing breach for a trivial reason (<i>The Hansa Nord</i>) or to escape unwanted contracts (<i>Reardon Smith Line v Hansen-Tangen</i>). Disputing whether it is any less certain than the traditional approach (<i>Schuler AG v Wickman Machine Tools Sales Ltd</i>). <p>Accept all valid responses.</p>	25
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
4	<p>English law aims to strike a balance between the freedom to contract and the need to protect people who are unable to protect themselves.</p> <p>Assess the extent to which minors are protected when entering into contracts.</p> <p>Use Table B to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding Responses should show knowledge and understanding of the types of contract that may bind minors by:</p> <ul style="list-style-type: none"> • Outlining contracts for necessities (<i>Nash v Inman</i>) and beneficial contracts (<i>De Francesco v Barnum</i>). • Describing the nature of voidable contracts (<i>Corpe v Overton</i>). • Referring to key sections of the Minors' Contract Act 1987. <p>AO2 Analysis and application and AO3 Evaluation Responses may offer the following arguments to support the premise that the law gives minors the freedom to make contracts:</p> <ul style="list-style-type: none"> • Necessary contracts mean minors are not disadvantaged and can acquire basic requirements of life. • Beneficial contracts allow minors the chance to make their way in life by receiving an education, training or employment. • Voidable contracts provide a workable arrangement between minors and adults dealing fairly with them. <p>These arguments should be balanced by an appreciation of the law's paternalistic approach towards minors' contracts. For example:</p> <ul style="list-style-type: none"> • Minors are only bound to pay for necessary goods and services and even then only at a reasonable price. • Minors can escape contracts of employment if terms are on the whole onerous or can be released from voidable contracts in certain circumstances. • The limited remedies given to an adult in comparison. <p>Accept all valid responses.</p>	25
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
5	<p>An award of damages may be limited by causation, remoteness and mitigation.</p> <p>Justify the view that these limitations are based on a desire to be fair to both parties.</p> <p>Use Table B to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding Responses should:</p> <ul style="list-style-type: none"> • Outline the issues of causation (<i>Quinn v Burch Brothers (Builders) Ltd</i>). • Outline the issue of remoteness of damage (<i>Hadley v Baxendale</i>). • Outline the duty to mitigate loss (<i>Brace v Calder</i>). <p>Responses can be given credit for any brief outline of the aims of damages as a remedy but no credit should be given to responses which discuss measures of quantifying or calculating loss.</p> <p>AO2 Analysis and application and AO3 Evaluation Responses should address the assertion in the question and may discuss the following:</p> <ul style="list-style-type: none"> • Fairness dictates that there should be some link between the breach of contract and any consequential loss. • Given the compensatory aim of damages it is only fair that an innocent party should not benefit from any breach. • It is not just or even practical to make the defendant liable for every consequential loss which arises from the breach. • Whether mitigation reduces the scope of the protection given to the innocent party. <p>Accept all valid responses.</p>	25
	AO1	12
	AO2	5
	AO3	8