

**A LEVEL 9084**

# **LAW**

## **LAW OF CONTRACT**

### **TOPICAL PAPER 3**

**WITH MARK SCHEME & EXAMINER REPORT**

**June 2011 – June 2025**

**FOR CAMBRIDGE 2026 and onwards EXAMS**

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## Question Paper

### 9084/31/June/2011 Law of Contract

**LAW**  
**Paper 3 Law of Contract**  
**TIME**

**9084/31**  
**May/June 2011**  
**1 hour 30 minutes**

#### Question 6 SECTION B

Jorge, aged 16, sees the following on his college's notice board.

**PHOTOGRAPHIC MODELS  
 REQUIRED  
 to model clothing for  
 new fashion house.  
 Models must be at least  
 18 years of age.  
 £250 per photo shoot. Contact  
 Laura Craft via the Students'  
 Union Office.**

Jorge contacts Laura and she agrees to use him as a model. A written contract is signed by both of them, the terms of which state that payment will be made within 8 weeks of the end of any photo shoot for which Jorge is called. Jorge also signs to say that he is at least 18 years of age. Discuss the legal liability of the respective parties and any defences that might be raised if: (a) Laura calls Jorge for a photo shoot, but Jorge is nervous and fails to turn up as agreed; (b) Laura persuades him to turn up on a second photo shoot but has failed to pay him by 12 weeks after the event. [25]

#### Mark Scheme

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. Jorge, 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). The contract referred to in the question is arguably a contract of employment. Is it and if so is Jorge 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 in the light of the two separate incidents identified and the likely effect of either party's failure to adhere to the contract as agreed. Would Jorge's fraud as regards his age have any impact at all? General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. Any advice given to the parties should be clear, concise and conclusive.

#### Examiner's Report

This question produced responses of the most variable quality of any on this question paper. There were quite a good number of superb responses, which were again examples of what well prepared candidates can achieve. Material was carefully selected, presented within a compelling and logical structure which applied the law to the scenario throughout, and clear, compelling conclusions were presented. These

candidates thus demonstrated a first-rate understanding of the law and its likely application. It is essential that candidates read the scenarios and questions very carefully. A surprising number of candidates missed capacity of contracting parties in this instance, although the age of one of the parties in the scenario was clearly indicated. In these instances only limited credit could be gained for these answers

**Question Paper**

**9084/33/June/2011 Law of Contract**

<b>LAW</b>	<b>9084/33</b>
<b>Paper 3 Law of Contract</b>	<b>May/June 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 1 SECTION A**

English law strikes a delicate balance between rules based on freedom of contract and doctrines designed to protect those people in society unable to protect themselves. Consider the current rules relating to capacity of minors to make contracts and, using examples, discuss the extent to which such a balance has been achieved. [25]

**Mark Scheme**

At Common Law 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). Does this actually strike the right balance, as even those under 18 years of age do find themselves in positions where they need to be free to make binding contracts? 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 as far as their responsibility to pay a reasonable price for such goods purchased and if the contract of service is on the whole beneficial. 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. Again, the appropriateness and fairness of the rules needs to be discussed and an assessment made of the impact (in terms of remedies) on innocent third parties with whom such contracts are made. Candidates should consider the availability of specific restitution or specific performance in such cases. Descriptive responses should be limited to maximum marks in band 3. An assessment of the impact of rules, and meaningful conclusion with regard to the extent to which the right balance is struck, is necessary for marks in band 4 and beyond.

**Examiner’s Report**

This was a very popular question. Most candidates provided a good recitation of the rules and exceptions regarding enforcement of contracts by minors and the best candidates produced some exceptional comment regarding the balance required between the rights of minors to be free to make contracts and the interests of those who contract with them. Some candidates appeared to have misunderstood the question and discussed whether the doctrine and statutory instruments were fair to the contracting adult, rather than discussing the balance between protection of minors and freedom of contract.

**Question Paper**

STUDENT RESOURCE

## 1 Question Paper

### 9084/31/June/2011 Law of Contract

<b>LAW</b>	<b>9084/31</b>
<b>Paper 3 Law of Contract</b>	<b>May/June 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Q1.** The decision in *Williams v Roffey Bros* resulted in a more realistic approach to the enforcement of contracts. Section A

Analyse how the development of the doctrine of consideration has been impacted by that decision. [25]

#### Mark Scheme

Candidates are expected to set the question in context by defining consideration and by explaining its significance as a doctrine of English Law. The case of *Williams v Roffey Bros* should be outlined and a summary of the findings given. Candidates should show awareness that, as it is still a relatively recent case, its boundaries are still to be established. The requirement that consideration be real, in the sense of having recognisable value, must be discussed in the light of case law such as *Stilk v Myrick* and *Hartley v Ponsonby* and the implications of *Williams v Roffey Bros* clarified to the extent that it seems to redefine consideration as a much wider concept and to reduce barriers to making modifications to commercial contracts binding. It would also seem to allow courts more discretion than do previous, tighter definitions as practical benefits may well be found in situations where traditional consideration would not have been found. Candidates are also expected to consider the potential impact of the decision in *Williams v Roffey Bros* on the rules of waiver and promissory estoppel. Comparison with *High Trees* would also be beneficial. Descriptive responses should be limited to maximum marks in band 3. An analysis of developments and their impact is necessary for marks in band 4 and beyond.

#### Examiner's Report

Responses from the better-prepared candidates briefly contextualised the answer with a few sentences about consideration and its rules. They then went on to discuss the very pertinent issue of the sufficiency of consideration and, in particular, whether or not the performance of an existing duty already owed under a contract between two parties can possibly act as valuable consideration to support a promise made by one of the parties to do something which they are not bound to do under the terms of their original contract (e.g. make additional payments). The majority of candidates wrote all-embracing answers, covering virtually all they knew about the topic, and performed very little or no relevant analysis

## Question Paper

### 9084/31/November/2011 Law of Contract

<b>LAW</b>	<b>9084/31</b>
<b>Paper 3 Law of Contract</b>	<b>October/November 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

#### Question 2 SECTION B (PROMISSORY ESTOPPEL)

The doctrine of equitable or promissory estoppel enables the enforcement of rights under a contract. Discuss the circumstances which gave rise to the introduction of the doctrine and analyse the extent to which you would agree with this proposition. [25]

**Mark Scheme**

Candidates are expected to set the question in context by saying that this is an equitable doctrine introduced by the High Trees Case as a means of mitigating undue hardship (at least temporarily) that would result from the strict application of the rules of consideration in the law of contract. Responses should be further contextualised by reference to the harshness of the rigid application of the common law rule in Pinnel’s case – examples ought to be given. The rule itself should be stated and explained and candidates should then, using relevant case law, go through situations in which the doctrine will not apply, i.e. where there is no pre-existing contract, where a promise has been made place no reliance on the promise to forego strict rights, where it would be inequitable to allow the doctrine to apply etc.

**Examiner’s Report**

Better-prepared candidates set the question in the context of consideration and the lack of fairness in the common law approach in Pinnel and Hughes, and were able to provide a succinctly presented account of appropriate case law and the conditions of its application. It was pleasing to see a good number of candidates demonstrating a very clear understanding of the extent to which the doctrine may or may not enable contractual rights to be enforced. Less well-prepared candidates were still fairly secure in their knowledge of the doctrine and its limitations, although explanations were sometimes superficial or lacked succinctness. To gain further credit, these candidates then needed to analyse why the doctrine arose and whether or not it should facilitate enforcement of rights.

**Question Paper**

**9084/32/November/2011 Law of Contract**

<b>LAW</b>	<b>9084/32</b>
<b>Paper 3 Law of Contract</b>	<b>October/November 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 1 SECTION A (PROMISSORY ESTOPPEL)**

The doctrine of promissory (or equitable) estoppel tried to mitigate the unfair effect of the common law rule in Pinnel’s case. (a) Analyse why the doctrine was thought to be necessary. (b) Outline the limitations to the doctrine’s application. (c) Discuss the extent to which the doctrine meets the aims stated above. [25]

**Mark Scheme**

The doctrine of equitable or promissory estoppel must be set in the context of consideration and the rule in Pinnel’s case (should be explained), that the payment of a lesser sum than that due does not provide valuable consideration for either express or implied promises to forego the remainder due. This equitable doctrine provides one way of making such a promise binding in situations when it is considered the only just outcome. Candidates should explain its alleged origins (Hughes v Metropolitan Railway Co) and outline the case in which the doctrine was first enunciated in detail: Central London Property Trust Ltd v High Trees House Ltd. Conditions on its application to be discussed are:

- need for a pre-existing contract
- a clear and unambiguous promise not to enforce full contractual or legal rights
- the promisee must have acted in reliance on the promise in the sense that it influenced conduct (Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd)
- it must be deemed inequitable for the promisor to enforce his strict rights (D&C Builders v Rees)
- usually prevents rights from being exercised for a period of time and does not destroy them entirely (Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd)
- cannot be used to create new rights or extend scope of existing rights already held (Combe v Combe).

STUDENTS RESOURCE

Candidates must reach clear and concise conclusions to reach band 4.

**Examiner’s Report**

This question was found to be the most accessible on the paper, as the required amount of analysis was minimal. Better-prepared candidates set the question in the context of consideration and the lack of fairness in the common law approach in Pinnel and Hughes, and were able to provide a succinct account of appropriate case law and the conditions of its application. It was pleasing to see a good number of candidates demonstrating a very clear understanding of the extent to which the doctrine may or may not meet its aims. Less well-prepared candidates were still fairly secure in their knowledge of the doctrine and its limitations, though explanations were sometimes superficial or lacking.

**Question Paper**

**9084/32/November/2011 Law of Contract**

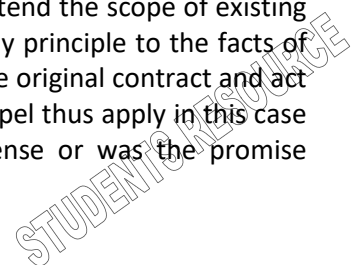
<b>LAW</b>	<b>9084/32</b>
<b>Paper 3 Law of Contract</b>	<b>October/November 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 6 SECTION B**

UpinaFlash agree to build a conservatory for Morris. Measurements incorrectly taken by UpinaFlash, poor quality parts and factory delays cause the contract’s completion to overrun by six weeks. Consequently, when the work is completed, Morris decides to withhold payment. UpinaFlash argue that his complaints are unjustified and threaten legal action unless he pays as agreed. However, when Morris offers to pay 80% of the agreed contract price, UpinaFlash accept the amount offered and sign a receipt stating that this is in full and final settlement. UpinaFlash have now changed their mind and wish to recover the discount allowed. Consider Morris’ potential contractual liability towards UpinaFlash. [25]

**Mark Scheme**

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 who deal with exceptions to the rule should be awarded appropriate credit. 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. 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, i.e. 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). Candidates must apply principle to the facts of the case in question. Could the signing of the receipt indicate a discharge of the original contract and act as consideration for the agreed payment? Do the principles of equitable estoppel thus apply in this case at all? And, if they do, did UpinaFlash freely forego rights in the strict sense or was the promise



## Question Paper

### 9084/31/June/2023 Law of Contract

**LAW**  
**Paper 3 Law of Contract**  
**TIME**

**9084/31**  
**May/June 2023**  
**1 hour 30 minutes**

#### Question 4 SECTION B

For a contract to be discharged, the general rule is that performance must entirely and exactly match what the party agreed to do. Discuss to what extent the potential for hardship caused by the entire or strict performance rule has been mitigated by the courts. [25]

#### **MARK SCHEME**

Responses may include:

AO1 Knowledge and understanding

1. Explain the 'entire' or 'strict performance rule' (Cutter v Powell).
2. Describe what is meant by substantial performance (Hoenig v Isaacs) and voluntary acceptance of part performance (Sumpter v Hedges).
3. Describe what is meant by a divisible (or severable) contract (Ritchie v Atkinson) and prevention of performance (Planche v Colburn).
4. Describe what is meant by tender of performance (Startup v Macdonald), time of performance (Charles Rickards v Oppenheimer) and vicarious performance (Stewart v Reavell's Garage).

Accept any other relevant case cited for AO1.

AO2 Analysis and application and AO3 Evaluation

1. Discuss that the 'strict performance rule' provides for certainty and encourages performance but has the clear potential for injustice if a party has to perform the contract in its entirety (Cutter v Powell) or exactly (Arcos v Ronaasen).
2. Discuss the fairness of substantial performance. For example, it would be unjust to refuse payment for minor infringements of a contract or conversely, to allow a party to substantially benefit from a contract yet escape liability for payment because of a minor defect.
3. Discuss that voluntary acceptance of part performance depends on the party making the promise having a 'genuine choice' – so it is not universally applicable.
4. Discuss that a divisible contract is a common sense approach to allow a contract to exist yet, in the absence of express provisions, will usually require construction by the court to allow it to survive.
5. Discuss that vicarious performance gives businesses flexibility but is not available for every contract. For example, one relying on a person's skill.

## Question Paper

### 9084/32/June/2023 Law of Contract

**LAW**  
**Paper 3 Law of Contract**  
**TIME**

**9084/32**  
**May/June 2023**  
**1 hour 30 minutes**

**Question 1 SECTION A**

Asif buys an office building and he enters into the following contracts. He contracts with Bilal to supply and install new windows. Bilal buys all the windows needed and stores them at the back of the building. Bilal completes installation of a third of the windows when he tells Asif that he is in financial difficulties and abandons the work. Asif is forced to employ another contractor to complete the work and uses the windows Bilal has left behind. Bilal claims payment for the work he has completed and for the cost of all the windows supplied but Asif refuses to pay anything. Asif contracts with Carl to install 20 washbasins in the building. When the work is completed Asif notices that one washbasin is cracked and so refuses to pay Carl. Asif contracts with Dora to plant trees around the building. She completes planting at the front of the building and agrees with Asif to finish planting at the back when the windows stored there are removed. However, when that time arrives Asif informs Dora that he has decided to provide car parking at the back of the building and no longer wants trees there. He pays her for the work completed at the front. Dora tells Asif she has spent time planning and researching suitable trees for the back of the building and demands payment for this work. Asif refuses.

Advise Asif of any liability he may have towards Bilal, Carl and Dora, in relation to discharge of contract by performance. [25]

**MARK SCHEME**

AO1 Knowledge and understanding

1. Identify the issue of discharge of contract by performance.
2. Explain the 'strict performance rule' (Cutter v Powell).
3. Describe the exception of substantial performance (Hoenig v Isaacs) and voluntary acceptance of part performance (Sumpter v Hedges).
4. Describe the exceptions of divisible (or severable) contracts (Ritchie v Atkinson) and prevention of performance (Planche v Colburn).
5. Credit discussion of any other exceptions; tender of performance (Startup v Macdonald), time of performance (Charles Rickards v Oppenheimer) and vicarious performance (Stewart v Reavell's Garage).

Accept any other relevant case cited for AO1.

AO2 Analysis and application and AO3 Evaluation.

1. Analyse whether the contracts fall to be considered under the strict performance rule or are capable of being seen as exceptions, providing some relief to Bilal, Carl and Dora.
2. Advise Asif whether he is obliged to pay Bilal on the basis of part performance. Did Asif have a 'genuine choice' whether or not to complete installation of the windows (probably no) but he had a choice whether or not to use the window frames left by Bilal.
3. Moreover, although there is no express provision for it in the contract, could the contract be construed as being divisible?

4. Advise Asif whether he should pay Carl on the basis of substantial performance. The sum agreed minus cost of replacing the one defective wash basin.
5. Advise Asif whether his sudden decision to turn the area at the rear of the building into a car park amounts to prevention of performance. Consider whether Dora can claim on a quantum meruit basis for any time spent designing the layout at the rear of the building and for researching the types of trees to be planted there.

## Question Paper

### 9084/33/June/2023 Law of Contract

**LAW**  
**Paper 3 Law of Contract**  
**TIME**

**9084/33**  
**May/June 2023**  
**1 hour 30 minutes**

**Question 4 SECTION B**

In developing the doctrine of frustration, there has been reluctance to allow it to be used for the purpose of escaping a bad bargain. Assess to what extent this statement is true. [25]

**MARK SCHEME**

Responses may include:

AO1 Knowledge and understanding

1. Define frustration.
2. Explain how it may occur. For example, impossibility of performance (Taylor v Caldwell).
3. Explain limits to its operation. For example, inconvenience or additional expense (Tsakiroglou and Co Ltd v Noblee and Thorl GmbH).
4. Explain the legal consequences of it by reference to the Law Reform (Frustrated Contracts) Act 1943.

Accept any other relevant case cited for AO1.

AO2 Analysis and application and AO3 Evaluation

1. Assess the view that the doctrine of frustration operates within very narrow limits which invariably restrict a party's ability to invoke it.
2. Assess the view that frustration should not replace the need of the parties making an effective contract at the outset, protecting them from unforeseen events. For example, the inclusion of a force majeure clause.
3. Assess whether it is reasonable to allow a party to use frustration to escape an unwanted contract. For example, because it undermines freedom of contract and the importance of binding contracts.
4. Assess the importance of achieving justice for both parties. Consider that the doctrine was developed to mitigate injustice. The consequences of frustration are drastic, bringing the contract

## Question Paper

### 9084/32/June/2011 Law of Contract

**LAW****Paper 3 Law of Contract****TIME****9084/32****May/June 2011****1 hour 30 minutes****Question 3**

The intention to create legal relations is the least important of the elements of valid contracts. Critically assess this statement, using decided case law to support your conclusions. [25]

**Mark Scheme**

It is indeed rare for cases to be brought in contract which involve problems with the requirement of intention to create legal relations. The reason, simply put, is that most of the relatively trivial agreements, which would otherwise be excluded by this requirement, are already excluded by the need for consideration. The requirement of intention to create legal relations is only questioned when valuable consideration is present but, nevertheless, someone may wish to argue that the agreement is not a contract. Candidates must cite cases and explain their outcomes. Typical examples that could be cited and discussed are: *Carlill v Carbolic Smoke Ball Co* (merely a 'puff'); *Eso Petroleum v Customs and Excise* (trivial – no contractual right); *Rose and Frank v Crompton Bros* (negative intention expressly stated); *Balfour v Balfour* (domestic agreements). Responses based purely on factual recall will be limited to maximum marks within band 3.

**Examiner's Report**

This question required candidates to look at the intention to create legal relations from a different angle from previous questions on the topic. Many candidates found this question challenging. The better-prepared candidates briefly discussed the key essentials of the formation of a contract (e.g. agreement and consideration) and then went on to compare these with intention, referring to relevant cases on the way. Weaker candidate responses tended to be descriptive only. To gain further credit, candidates needed to analyse the cases, rather than simply discussing intention cases with no other context.

## Question Paper

### 9084/32/November/2011 Law of Contract

**LAW****Paper 3 Law of Contract****TIME****9084/32****October/November 2011****1 hour 30 minutes****Question 3 SECTION A**

The requirement of intention to create legal relations seldom gives rise to problems in contract cases. Explain why the requirement exists and assess the extent to which the above statement is true. [25]

**Mark Scheme**

The question requires candidates to consider the importance of the intention to create legal relations in modern contract law. The crux of the matter is that the law seeks to distinguish between mere agreements, which are not intended to be legally binding, and contracts, which are. In this context, consideration is seen as the sign and seal of a legally-enforceable bargain, so is it relevant that the intention needs to be established too? Candidates should explain the rebuttable presumptions as regards social and domestic agreements (*Balfour v Balfour*, *Merritt v Merritt*, *Jones v Padavatton*, *Simpkins v Pays*) and commercial agreements (*Eso Petroleum v Commissioners of Customs and Excise*, *J Evans & Son (Portsmouth) Ltd v Andrea Merzario Ltd*, *Rose and Frank v Crompton Bros*, *Jones v Vernons Pools*) and then go on to discuss the matter in relation to the linked presence of offer and acceptance

and consideration. Candidates are expected to discuss the issue and draw firm conclusions if they are to reach band 4.

**Examiner’s Report**

Candidates are encouraged to prepare themselves for all potential questions on a topic and not simply to practise for the recurrent standard question. Many candidates demonstrated preparation for potential questions about the contents of a contract. A number produced excellent responses focused on the crux of the question: whether the existence or non-existence of consideration removes the need to consider the intention to be legally bound. Better-prepared candidates recognised the link between consideration and intention and produced very informed and thoughtful assessments. Most candidates knew the rebuttable presumptions and had case law to support them. The less well-prepared candidates often knew the rebuttable presumptions associated with social/domestic and commercial agreements (although not always both) but the response lacked the assessment required by the question.

**Question Paper**

**9084/31/33/November/2012 Law of Contract**

<b>LAW</b>	<b>9084/31/33</b>
<b>Paper 3 Law of Contract</b>	<b>October/November 2012</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 1 SECTION A**

**Intention to create legal relations is the most recently developed and the least important of the three basic requirements for a binding contract (agreement, consideration and intention). Critically assess the truth of this view. [25]**

**Mark Scheme**

It is indeed rare for cases to be brought in contract which involve problems with the requirement of intention to create legal relations. The reason, simply put, is that most of the relatively trivial agreements, which would otherwise be excluded by this requirement, are already excluded by the need for consideration. The requirement of intention to create legal relations is only questioned when valuable consideration is present, but nevertheless, someone wishes to argue that the agreement is not a contract. Candidates ought to cite cases and explain their outcomes. Typical examples that should be cited and discussed are: Carlill v Carbolic Smoke Ball Co (merely a ‘puff’); Esso Petroleum v Customs and Excise (trivial – no contractual right); Rose and Frank v Crompton Bros (negative intention expressly stated); Balfour v Balfour (domestic agreements).

**Examiner’s Report**

This was a popular question that attracted responses of very variable quality. Unfortunately, there were significant weaknesses in many responses. It would appear that weaker candidates either misread or simply misunderstood the requirements of the question. The result was allembicing factual responses about agreement, intention and consideration for which few marks could be awarded. Better prepared candidates, however, briefly discussed the elements of agreement and consideration and then focused exclusively on looking at the approach of the courts to intention. The best responses involved specific examples of commercial contracts in which intention was denied and of domestic agreements in which intention was found, followed by the requisite criticism of the legal rules.

**Question Paper**

**9084/31/June/2014 Law of Contract**

STUDENTS RESOURCE

**- Question Paper**

**9084/31/June/2011 Law of Contract**

**LAW**  
**Paper 3 Law of Contract**  
**TIME**

**9084/31**  
**May/June 2011**  
**1 hour 30 minutes**

**Question 4 SECTION B**

The following advertisement appears in the Bradford Bugle newspaper:

**FOR SALE**  
**Apple iPod Player**  
**Brand new and unused; still in original box. Don't**  
**delay!**  
**Sensible offers in the region of £100. Telephone**  
**Skinner on 0777 77777**

Madge sees the advertisement, telephones Skinner, and arranges to see the iPod at 18:00h. Skinner receives a second telephone call from Bart and arranges for him to see the iPod at 19:00h. Madge inspects the iPod and says that she will give Skinner £100 for it. Skinner says that he now wants £120 for it. Madge agrees to pay the £120, but only if Skinner agrees to wait for payment until the end of the week when Madge gets paid. Skinner agrees to the arrangement. At 19:00h, Bart arrives and offers to pay £125 in cash. Skinner takes his money and Bart takes the iPod home. When Madge returns with the money at the end of the week, Skinner informs her that she is too late and that the iPod has gone. Consider Skinner's potential contractual liability towards Madge and the possible remedies that she might be entitled to pursue. [25]

**Mark Scheme**

An outline of the essentials of a valid contract; emphasis expected on offers, invitations to treat, counter offers and acceptance. Credit will be given 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? Advertisement is an invitation to treat, not a firm offer to sell (*Partridge v Crittenden*). Does Skinner offer to sell for £100? Does Madge make a counter offer when she asks about payment later in the week? Probably not, as this appears to have been a mere enquiry for information (*Stevenson v McLean*). Candidates should also consider whether a contract actually resulted nonetheless from Skinner's interchange with Madge: if there has been an offer and corresponding unconditional acceptance, a contract has been made; the promise to pay later in the week acts as supporting executory consideration and the sale to Bart amounts to a breach of that contract. Either specific performance or rescission could be sought, but neither is likely to be granted as the IPOD is hardly unique and third party rights have accrued; damages are the only likely remedy available. General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. Any advice given to the parties should be clear, concise and conclusive.

**Examiner's Report**

This was a popular question which was well answered by those who focused their knowledge on the question actually posed. A number of candidates simply wrote all they knew about the formation and

essentials of a valid contract. The Examiner will always look for a brief introduction to contextualise the response, but candidates must realise that focus is the key to success. The concepts of unilateral and bilateral contracts were generally well known. The ability clearly and succinctly to state, explain and illustrate with case law examples the basic rules relating to offers, invitations to treat and acceptance of offers was very variable. The best responses to this question were excellent examples of what well prepared candidates can achieve. Material was carefully selected and presented within a compelling and logical structure which applied the law to the scenario throughout. Clear, compelling conclusions were then presented. Weaker answers tended to be long and unstructured. To gain higher marks, greater application to the scenario and clear conclusions were required.

**Question Paper**

**9084/32/June/2011 Law of Contract**

<b>LAW</b>	<b>9084/32</b>
<b>Paper 3 Law of Contract</b>	<b>May/June 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 4**

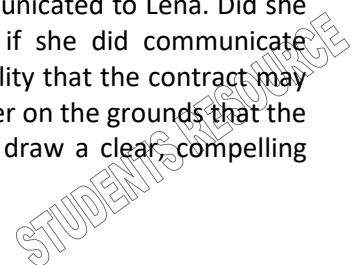
The following appears on the notice-board of the Kingfisher table tennis club:

**LOST AT THE CLUB on Monday 20 May**  
**Gentleman’s Watch**  
**Gold in colour with metal bracelet. Reward of £50 offered**  
**for its safe return or for information leading to its return.**  
**Please contact Jay Brown on 07777 7777.**

The watch is found by a passer-by, Kevin, in the club car-park and he hands it in to the police, explaining where and when it was found. Lena is a member of the Kingfisher table tennis club and sees the reward notice concerning the lost watch when she plays a match at the club. Kevin and Lena are friends and when Kevin tells her some months later that he has found a gold watch near the club, she says nothing about the reward. The following morning she contacts Jay Brown and tells him to go to the police station, as she believes that the missing watch has been handed in, and asks for the £50 reward. When Jay goes to the police station and asks whether anyone has handed in his watch, he finds that it has been sold by auction and the money given to charity because so much time has passed without the watch being collected by the owner. Discuss Lena’s legal rights to the reward if Jay refuses to give it to her. [25]

**Mark Scheme**

An outline of the essentials of a valid contract; emphasis expected on offers and invitations to treat and acceptance in relation to unilateral contracts. Credit for possible reference to consideration, but nothing for other essentials. Binding contract requires definite offer and corresponding, unconditional acceptance. Was there an offer made? Advertisement is an invitation to treat, not a firm offer to sell (Partridge v Crittenden). Does the advertisement of a reward amount to a firm offer? Even if it does, candidates should also consider whether the offer had been effectively communicated to Lena. Did she communicate acceptance to Jay? (Carlill v Carbolic Smoke Ball Co.) Even if she did communicate acceptance and a contract was formed, candidates might consider the possibility that the contract may be rendered void for operative mistake as to the existence of the subject matter on the grounds that the parties had contracted for res extincta. Candidates must discuss the issues, draw a clear, compelling conclusion and advice given should be clear, concise and conclusive.



**Examiner’s Report**

The concepts of unilateral and bilateral contracts were generally well known. The ability clearly and succinctly to state, explain and illustrate with case law examples the basic rules relating to offers, invitations to treat and acceptance of offers was variable. This was a popular question, which was well answered by those who focused their responses on the question posed. These candidates correctly and succinctly identified and applied the decisions in Carlill and Clarke and examined correctly the terms of the contract – finding the watch or info leading to it being found – and pointed out that this was also the consideration. The best responses to this question were excellent examples of what well prepared candidates can achieve: material was carefully selected, presented within a compelling and logical structure which applied the law to the scenario throughout, and clear, compelling conclusions were presented. Weaker responses tended to be long and unstructured and were mainly descriptive, containing all the candidates knew about the formation and essentials of a valid contract. The Examiner will always look for a brief introduction to contextualise the response, but candidates must apply their knowledge to the scenario and then draw firm conclusions in order to gain higher marks.

**Question Paper**

**9084/33/June/2011 Law of Contract**

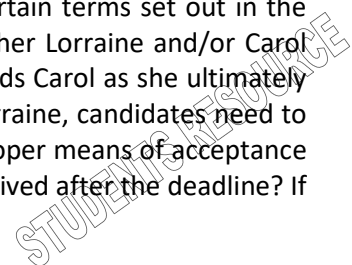
<b>LAW</b>	<b>9084/33</b>
<b>Paper 3 Law of Contract</b>	<b>May/June 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 5 SECTION B**

**Club Mencer post letters to their credit card account-holders inviting them to join a new wine club. The letter says that members of the club will benefit from special price wine delivered to their homes at regular intervals, that membership lasts for one year and that members must order at least 12 bottles of wine every 3 months. The letter also says that new members are entitled to an introductory bonus of 12 bottles at half the normal price. In smaller print, however, it says that to qualify for the introductory bonus, stocks of which are limited, new members must have placed their order by 1 April. Lorraine receives a copy of the letter, applies for membership and places an order for the introductory bonus. Her application is posted on 24 March but it fails to arrive until 3 April, by which time the stock of introductory bonus wine has all been sold. Carol also receives the letter from Club Mencer. She applies for the introductory bonus wine and it is delivered to her. She then orders no further wine during her year’s membership because she claims that she didn’t know she had to. Taking into account the rules on formation of contract, consider whether Lorraine and Carol are each bound by a contract of membership to the wine club and analyse their respective rights and liabilities in the light of the above circumstances. [25]**

**Mark Scheme**

The question addresses the rules relating to the formation of the contract, and in particular, offer and acceptance, so these do need to be discussed in some detail in relation to the three parties concerned. In the cases of Lorraine and Carol, discussion should centre on whether the letters sent out by Club Mencer amounted to offers or invitations to treat, both of which should be defined, explained, illustrated by case law (e.g. Carlill v Carbolic Smoke Ball Co etc) and conclusions drawn. The better view would seem to be that the letters amounted to firm offers to contract on certain terms set out in the letter and consequently candidates ought then to discuss whether or not either Lorraine and/or Carol went on to accept the offer unconditionally. There seems little doubt as regards Carol as she ultimately received the introductory offer wine promised by Club Mencer. As regards Lorraine, candidates need to discuss and apply the posting rule as it relates to acceptance. Was post the proper means of acceptance (e.g. Henthorn v Fraser)? If so, was the letter posted in time, even though it arrived after the deadline? If



**Question Paper**

**9084/33/June/2011 Law of Contract**

<b>LAW</b>	<b>9084/33</b>
<b>Paper 3 Law of Contract</b>	<b>May/June 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 3 SECTION A**

**Specific Performance is a discretionary remedy in civil law. Explain why discretionary remedies exist and examine whether the limited conditions under which specific performance is granted for breach of contract are justifiable and fair. [25]**

**Mark Scheme**

Specific performance 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, where personal freedom may be infringed, or one involving continuous duties, as that would be too much for the court to police. Mutuality of remedy is required. It is also a condition that such a remedy could be granted against either party. Hence it is never granted if one party is a minor. Responses which focus primarily on basic descriptions of the remedy of specific performance and the conditions will be limited to maximum marks in band 3. Assessment of the remedies and their fairness in reality rather than theory is required for band 4 and above.

**Examiner’s Report**

This was a straightforward question, but it still expected candidates to make an assessment of rules. It is pleasing that the majority of candidates at least attempted a rudimentary assessment and a few then went on to consider fairness to both parties involved. The best responses explained in some detail how equitable remedies are based on the notion of fairness and mutuality and how, consequently, such an award should not cause greater hardship to one party rather than the other. Candidates also used case law to illustrate the situations in which specific performance had or had not been granted by the courts and were able to explain the reasons for the decisions in each instance.

**Question Paper**

**9084/33/June/2011 Law of Contract**

<b>LAW</b>	<b>9084/33</b>
<b>Paper 3 Law of Contract</b>	<b>May/June 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 6 SECTION B**

**Samira is a well-known writer. She is planning a party on 20 April in order to launch her new book and a number of well-known writers are going to attend. Javed, a carpenter, agrees to build and fit two bookcases, each for a separate price, to replace an interior door and handle for £100 and to supply and fit three kitchen cupboards for £1000. All of the work is to be completed in time for the party. Javed manages to build and fit one bookcase in time, to replace the interior door (but not to fit its**

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handle), but when he arrives at Samira's house to fit the kitchen cupboards, she turns him away because she is busy in the kitchen preparing food for the following day's celebration. Advise Javed as to his contractual entitlement to payment for the work he has done for Samira and the remedies that he might be granted should he need to sue her. [25]

### Mark Scheme

Candidates should recognise the focus of this question as concerning remedies for breach of contract. A brief introductory paragraph re whether a contract was formed in the first place can be entertained but only limited credit will be given. Candidates should recognise that there are probably three contracts in evidence – one to supply and fit the kitchen cupboards, one to supply and fit a door with its furniture and one to supply two bookcases – and that the one for the bookcases is probably divisible as separate prices were agreed for each. On the face of it, all three contracts would appear to have been partially performed when the date for completion passes, so the focus of candidate responses should be on the entitlement to payment, if any, that Javed would have if Samira fails to pay him. The bookcase issue would appear to be straightforward. As this appears to be a divisible contract, Javed would seem to be entitled to payment of the price agreed for the one that he was able to supply in time. As regards the second one, his entitlement to payment for any work completed and his liability for failure to meet the agreed delivery date really depends on whether the delivery date for the bookcase was actually a condition of the contract, the breach of which entitles contract repudiation by Samira plus a claim for damages. The contract for the door would probably be treated in accordance with the de minimis rule, on the grounds that the contract had been substantially performed thus entitling Javed to some payment, even if not in full (e.g. *Sumpter v Hedges*). The performance of the contract regarding the kitchen cupboards would appear to have been prevented by Samira. Could Javed thus be held liable for his failure to complete the kitchen on time, even though time was clearly of the essence in this case? Would a quantum meruit claim be feasible here (e.g. *Planche v Colburn*)? Clear, compelling conclusions must be drawn. Responses limited to factual recall of principle will be restricted to marks below band 4.

### Examiner's Report

This question was the least popular in section B. A few candidates recognized that there were three contracts which needed to be examined separately and that de minimis and quantum meruit principles might be applicable to whether there was a breach of contract in each case and whether or not a remedy might be available. Those candidates who treated this as a past consideration problem could not gain credit for their answers.

## Question Paper

### 9084/31/November/2011 Law of Contract

**LAW**

**Paper 3 Law of Contract**

**TIME**

**9084/31**

**October/November 2011**

**1 hour 30 minutes**

### Question 1 SECTION A

A solution is available for every breach of contract. Analyse the range of common law and equitable remedies available for actions based in contract law and, using suitable examples, critically assess the truth of the above statement. [25]

### Mark Scheme

Cursory examination of the remedies available for breach of contract might indeed suggest that there is a solution for every sort of breach. However, closer examination discloses two main gaps in provision: in relation to interests protected and to practicalities. The law focuses mainly on one type of loss: financial loss to the innocent party to the breach. In general, the law ignores mental distress, anxiety and

## Question Paper

### 9084/31/June/2011 Law of Contract

**LAW****Paper 3 Law of Contract****TIME****9084/31****May/June 2011****1 hour 30 minutes****Question 3 SECTION A**

Using appropriate case law examples, critically examine the contrasting effects of breaches of warranties, conditions and innominate terms of contract. [25]

**Mark Scheme**

Responses should be contextualised: this question 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 (e.g. Bunge Corporation v Tradax Export SA); breaches of warranty give rise to actions in damages only (e.g. Reardon Smith Line v Hansen Tangen). In the Hong Kong Fir case (a brief outline should be credited) in 1962, 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. Responses which focus primarily on a description of the three types of term without significant reference to case law should be limited to maximum marks in band 3. A critical examination of contrasting effects of breaches of the different terms is necessary for marks in band 4 and beyond.

**Examiner's Report**

This was a straightforward question calling for skills of critical examination. It was popular and it is pleasing to report that it produced some stronger responses than the other Section A questions in terms of knowledge focus, even if sometimes candidates did not provide sufficient criticism. The better responses generally contextualised the question, pointing up the fact that, traditionally, contractual terms are classified when the contract is made, based on their relative significance within a contract, and that this frequently causes issues with the remedies available on breach. Conditions, warranties and innominate terms should be defined and respective remedies for breach identified and application explored through appropriate case law decisions. The candidate should then critically determine the extent to which the introduction of innominate terms, which can vary in significance depending on situation and effect of breach, has improved the law. Weaker responses tended to be descriptive only.

**Question 5 SECTION B**

Laurent buys a ticket to travel on the Condor Airlines flight from London to Kuala Lumpur. He downloads his ticket from the Internet and, without reading the terms and conditions, he files it safely until he is due to travel. Laurent still hasn't read the terms by the time he attempts to board the

aircraft in London. As he climbs the steps onto the aircraft he slips, falls down backwards and severely injures his neck and spine. When Laurent applies to Condor Airlines for compensation for his injury, the company seeks to rely on a term which excludes its liability for breach of the contract of carriage made with its passengers. Advise Condor Airlines of their contractual liability for Laurent’s injuries.

[25]

**Mark Scheme**

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? If negligence occurred and the exemption was considered to have been properly and adequately communicated then liability depends on whether considered reasonable for exclusion to be permitted. If not, then damages; measure to be discussed. General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. Any advice given to the parties should be clear, concise and conclusive.

**Examiner’s Report**

It is pleasing to report that this question produced some strong responses. The rules of incorporation and related case law were generally well known and answers were illustrated with case law, with the majority able to make reference to UCTA. The mark scheme did not allow discussions of liability in the tort of negligence to gain any credit.



**Question Paper**

**9084/32/June/2011 Law of Contract**

<b>LAW</b>	<b>9084/32</b>
<b>Paper 3 Law of Contract</b>	<b>May/June 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 2 SECTION A (EXEMPTION CLAUSE)**

The contra proferentem rule no longer serves as a useful tool for the interpretation of exemption clauses in contracts. Discuss. [25]

**Mark Scheme**

Once it has been established that an exemption clause has been incorporated into a contract, the scope of the clause needs to be established. Does it cover the sort of and extent of the breach that has occurred? Candidates should recognise that whilst the interpretation and validity of exclusion clauses is now largely controlled by statute (UCTA & UCTRR), there still remain many types of contract to which they do not apply. The courts use the contra proferentem rule when trying to reach such decisions. Candidates are expected to provide a rudimentary explanation of the Latin phrase to the effect that if the wording of an exemption clause is in any way ambiguous, it will be interpreted in the least profitable way for the party seeking to rely upon it to limit or exclude liability. The extent to which this interpretation tool is “useful” must be debated. Given that exemption clauses are commonly constructed in vague and unclear language so as to conceal their true purpose, the probable conclusion that needs be drawn is that it is a very useful tool indeed. Candidates might give example cases such as Houghton v Trafalgar Insurance Co (1954) or Middleton v Wiggins (1995) to support this view. Better

STUDENTS RESOURCE

candidates will also point out that whilst applicable to all types of exemption clause, rigorous application is commonly reserved for attempts to exclude rather than just limit liability.

**Examiner’s Report**

Generally candidates found this question challenging and many focused on the incorporation of contract terms rather than concentrating on contra proferentem rule and the interpretation of contract terms, which was required in order to access the higher mark bands.

**Question Paper**

**9084/31/November/2011 Law of Contract**

<b>LAW</b>	<b>9084/31</b>
<b>Paper 3 Law of Contract</b>	<b>October/November 2011</b>
<b>TIME</b>	<b>1 hour 30 minutes</b>

**Question 5 SECTION B**

Mercedes breeds pedigree dogs. She has a contract with K9 Petfoods for the supply of food for her dogs and she normally buys enough for a month. The contract states that Mercedes must inform the supplier of any problems with either the quantity or quality of dog food supplied within 10 working days of delivery and that the supplier’s liability is limited to the contract price paid for the relevant delivery of supplies. Mercedes has recently taken delivery of supplies for two months, costing £1000. Three weeks later, she finds that at least some of the last delivery of dog food is contaminated and three of her dogs, each worth £500, have died having eaten it. Advise Mercedes as to her right to compensation under the terms of the contract made with K9 Petfoods. [25]

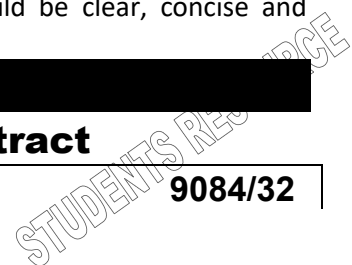
**Mark Scheme**

Candidates should recognise this question as concerning implied terms and the use of exclusion clauses in contracts of sale. Candidates must consider whether Mercedes would have a valid claim against K9 Petfoods either without or with the existence of the exclusion clause. Candidates should recognise that contracts may contain express or implied terms or both. Candidates might explain the various circumstances when terms might be implied but the scenario requires focus on those implied by statute and in particular by the Sale of Goods Act 1979. In this instance the question is whether the dog food could be considered either fit for purpose or of satisfactory quality – it would appear not. The question then arises as to whether either of the express terms can exclude or limit the supplier’s liability. It would seem to depend on whether Mercedes is a professional breeder or does it as a hobby, as according to S6 Unfair Contract Terms Act, such liability for the quality of goods supplied cannot be excluded when the buyer is a consumer; if she is in business, then such liability could be excluded if considered reasonable in the circumstances. The only issue that then remains is whether Mercedes would be too late to make a claim, given the term requiring notification within ten working days. Is this too onerous and against the spirit of SOGA and UCTA? General, all-embracing and ill-focused responses are to be awarded a maximum mark within mark band 3. The advice given to the parties should be clear, concise and conclusive.

**Question Paper**

**9084/32/November/2011 Law of Contract**

<b>LAW</b>	<b>9084/32</b>
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**Paper 3 Law of Contract  
TIME**

**October/November 2011  
1 hour 30 minutes**

**Question 5 SECTION B (EXEMPTION CLAUSES)**

Robertson, McAndrew and Peterhead plan to attend a celebration dinner and dance at a hotel. They buy tickets in advance of the event at a cost of £75 per person. The tickets refer to the terms of contract, details of which are available on request from the hotel's reception desk. The hotel's terms of booking state that all ticket prices are non-refundable and that the hotel cannot be held responsible for any loss sustained by guests whilst attending functions at the hotel. On the evening in question, Robertson is suffering from a heavy cold and so decides not to attend. McAndrew and Peterhead attend the function and each pays a cloakroom fee of £2 to have his belongings looked after for the evening. When they return to collect them, McAndrew's very valuable leather coat and Peterhead's umbrella are missing and cannot be found. Robertson has asked for a refund on his unused ticket. McAndrew and Peterhead seek compensation for their losses. Advise the hotel as to their legal liability in respect of these two claims. [25]

**Mark Scheme**

Candidates should contextualise the problem by saying that terms do not bind contracting parties unless incorporated into the contract. The ways in which incorporation might take place (by signature, by reasonable notice or by a course of dealing) should then be identified and explained. The problem hinges on whether reasonable notice was given to incorporate the exemption clause into the contract. In general, notice of the existence of such terms must be given either before or at the time that the contract is made and if notice is contained in a document like a ticket, then the document must be one in which a person might expect to find terms of contract mentioned. Was this the case with the respective parties? It would appear that two contracts were made: one to attend the dance and one to have belongings looked after. Did the different tickets have a contractual status, since they were of two types? The differences should be discussed. Whilst the ticket for the dance itself might be deemed to be of a contractual nature, would the cloakroom ticket? Were the terms relevant to both contracts suitably communicated? Cases such as *Olley v Marlborough Court Hotel*, *Thornton v Shoe Lane Parking* and *Chapelton v Barry UDC* should be explored, the decisions applied to the problem and clear, compelling conclusions drawn. Responses limited to factual recall of principle will be restricted to marks below band 4.

**Examiner's Report**

This scenario required candidates to identify that the primary issue affecting the rights and duties of the respective participants was the attempted incorporation of an exclusion clause into a contract. They then needed to analyse the extent to which one or both of the parties would be liable for the losses sustained, given the means by which incorporation was attempted and the limitations imposed by the Unfair Contract Terms Act. Better-prepared candidates demonstrated the required sophistication: a contract to attend the dance and a separate contract to have belongings looked after were identified, appropriate legal rules were carefully chosen and concisely presented, analysis was crisp and sharply focused and clear, concise conclusions were drawn. In other instances, responses were somewhat limited in focus and analysis, and any conclusions drawn would have benefited from being based more securely on what had been presented in the body of the response. Many of the less well-prepared candidates were unable to identify the potential for a secondary independent contract to look after belongings and many omitted to discuss UCTA in any context.

**Question Paper**

**9084/31/June/2012 Law of Contract**

**LAW**

**9084/31**

**Paper 3 Law of Contract  
TIME**

**May/June 2012  
1 hour 30 minutes**

**Question 1 SECTION A (EXCLUSION CLAUSES)**

Critically examine the common law controls implemented by the courts to regulate the use of exclusion clauses in contracts. [25]

**Mark Scheme**

Candidates should introduce their response with a brief explanation of what an exclusion clause is and why the use of such clauses needs to be controlled at all. Candidates might also explain that use is controlled by both common law and statutory means. Candidates should identify that there are two ways in which the courts have found to regulate exclusion clauses. Firstly, they may question whether a particular clause has actually been incorporated into the contract and secondly, whether the words used can be construed as covering the alleged breach of contract. These two controls need to be examined in some detail. Other common law limitations such as misrepresentation of a clause’s effect (e.g. Curtis v Chemical Cleaning & Dying Co) and inconsistent oral promises (e.g. Mendelssohn v Normand Ltd) might also be addressed. Incorporation by signature (e.g. L’Estrange v Gaucob), incorporation by reasonable notice (e.g. Parker v SE Railway, Thornton v Shoe Lane Parking, Capelton v Barry UDC, Interfoto Picture Library v Stiletto Visual Programmes Ltd) and incorporation by a previous course of dealing (e.g. Spurling v Bradshaw) should all be examined critically. Candidates should then address the issue of interpretation, the contra proferentem rule and its special application to negligence arising out of a contract. Descriptive responses should be limited to maximum marks in band 3. A critical examination of the common law controls and recognition that additional statutory controls have been required is necessary for marks in band 4 and beyond.

**Examiner’s Report**

It is pleasing to report that this question produced some strong responses and very few candidates who attempted it submitted very weak answers. Better prepared candidates were able to discuss the common law rules of incorporation and the contra proferentem rule and case law related thereto. Criticism of the rules as required by the question set was often tenuous except in the very best responses. Even at the better end of responses, candidates might have been more selective and chosen to omit reference to statutory controls too. Weaker answers were typically very descriptive, superficial and variable in accuracy.

**Question Paper**

**9084/32/June/2012 Law of Contract**

**LAW  
Paper 3 Law of Contract  
TIME**

**9084/32  
May/June 2012  
1 hour 30 minutes**

**Question 5 SECTION B**

Ronaldo goes on holiday and drives his car to the airport. He leaves the car keys at the car park reception desk and asks the staff to park it for him. He has paid the parking fee in advance using the online booking form and his credit card. He did not read the terms and conditions of using the car park when he made the booking but he still put a cross in a box to say that he had read and understood them. The terms and conditions state that cars are parked entirely at the risk of their owners. Discuss the contractual liability that the owners of the car park would have towards Ronaldo if he returns to his car some days later to find that (a) it has been damaged whilst being parked by a car park employee and (b) its soft-top roof has been cut open by a gang of youths who have entered the car park as trespassers. [25]

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