UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the May/June 2012 question paper

for the guidance of teachers

9084 LAW

9084/11 Paper 1, maximum raw mark 75

This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began, which would have considered the acceptability of alternative answers.

Mark schemes must be read in conjunction with the question papers and the report on the examination.

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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows.

Indicative content for each of the questions follows.

Band 1:

The answer contains no relevant material.

Band 2:

The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
OR
The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Band 3:

The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.
OR
The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules.
OR
The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4:

Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.
OR
The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

Band 5:

The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

Maximum Mark Allocations:

Question	1	2	3	4	5	6
Band 1	0	0	0	0	0	0
Band 2	6	6	6	6	6	6
Band 3	12	12	12	12	12	12
Band 4	19	19	19	19	19	19
Band 5	25	25	25	25	25	25

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1 The answer should include some preliminary discussion of the position concerning human rights in the UK prior to the creation of HRA 1998. From that should develop a discussion of the principal rights which might include privacy, the right to a fair trial, to freedom of speech or of religious practice including some detail on how these rights are protected in the domestic courts. Any detailed discussion of a range of rights should be supported by relevant case law. Better answers might make the point that the enforcement of the right to privacy may be dependent on social and financial position.

The answer should conclude with a critical assessment of the impact of HRA.

A bare list of Articles and rights with no supporting case law or commentary is unlikely to gain more than 13 marks. Answers which fail to include any critical assessment will be unlikely to achieve more than 18 marks.

2 Statistics reveal this to be a real growth area. Candidates should explain what mediation is; when it is appropriate; the differing types and uses of mediation; and what a mediator does, before going on to assess ADR generally as an alternative to the use of the courts. Mediation may not be appropriate in all situations and explanation should be given as to why. There needs to be some explanation of its success and also of the non-legal aspect of its decisions. Avoidance of adversarial conflict and of the costs of court cases requires mention. At worst, mediation may narrow the issues for any subsequent litigation. Candidates may draw examples from other areas of ADR, but should not lose focus on mediation as the main issue for discussion. Candidates who ignore mediation and elect to discuss instead other forms of ADR will not achieve more than 13 marks. Candidates who discuss only mediation cannot achieve more than 18 marks.

3 Candidates are being asked to consider the shortcomings of the jury system and why it has been deemed necessary for certain cases to dispense with the jury's services. There needs to be some discussion of the selection, composition and function of the jury and the reasons for its efficacy having been called into question. Issues such as "jury nobbling"/interference should be looked at; the possibilities of jury vetting; the experiment with the Diplock courts in Northern Ireland; and the inability of some jurors to grasp complex issues. The safety and integrity of jury members should also be examined. Although the quotation concerns criminal cases, credit should be given for candidates who consider the problems and issues surrounding the use of a jury in the civil courts. Candidates who present either a wholly factual or wholly analytical account will be unlikely to achieve the highest band of marks.

4 The question requires an explanation of the hierarchical operation of precedent in the courts, with a range of appropriate case citation. Students should discuss the rigidity of the House of Lords (now the Supreme Court) prior to 1966, and the effect of the Practice Statement; the conflict between the Court of Appeal and the House of Lords (SC); the principle elaborated in R v Gould; and the reluctance, even after 1966, to disturb the certainties of the law. Relevant cases need to be cited and a conclusion reached. Candidates should also consider the other avoidance mechanisms of overruling, reversing and distinguishing. Candidates who fail to address the critical component of the question will not reach the top band of marks.

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5 The focus of this question is the reasons for the growth of equity and its impact on fairness in the legal system. There needs to be some historical discussion of the shortcomings of the common law system which preceded equity, in particular the contribution of equity to conscience and fairness. Clearly, candidates must discuss the remedies which came about in an effort to promote justice from case to case. No answer will be complete without consideration of the equitable maxims, whose moral basis is clear. Relevant cases should be considered and students may wish to consider equitable concepts such as estoppel, trust and the mortgage which also reflect ideas of fairness. Very general answers, or answers which fail to both use and explain relevant citation will not reach the higher mark bands.

6 Candidates should briefly explain the qualifications required for the Magistracy and the appointment process before going on to discuss their function and jurisdiction. Candidates are asked to consider both the civil and criminal sides of their work. However, those who consider either the civil or criminal jurisdiction exclusively will not achieve marks in the top band. They should also look at the issues of how well the Magistrates' court carries out these functions, including criticism where appropriate. The answer should ideally balance amateurism against the volume of work usefully and cheaply undertaken, as well as the inbuilt checks of the services of a Legal Advisor and of a system of appeals. Candidates should consider whether the system could manage without lay magistrates. Candidates who fail to consider the analytical component of the question will not be able to achieve the top band of marks.

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