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

9084/22 Paper 2, maximum raw mark 50

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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This mark scheme includes a summary of appropriate content for answering each question. It should be emphasised, however, that this material is for illustrative purposes and is not intended to provide a definitive guide to acceptable answers. It is quite possible that among the scripts there will be some candidate answers that are not covered directly by the content of this mark scheme. In such cases, professional judgement should be exercised in assessing the merits of the answer and the senior examiners should be consulted if further guidance is required.

Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the mark scheme for each question or question part.

Indicative content for each of the questions follows overleaf.

Band 1:

The answer contains no relevant material.

Band 2:

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

Band 3:

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

Band 4:

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

Band 5:

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

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1 (a) Band 1: Irrelevant answer. [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section; [1–5]

and/or

- Reference to either or both s.78 PACE Article 8 with little or no development MAX 5 both sources must be discussed. [1–5]

Band 4: Some development and application of all the correct sources. s.78 PACE and Article 8. Can refer to a single source and still reach Band 4 but must be applied convincingly. [6–7]

Band 5: Candidate must refer to and provide full development of the correct source material. Clear conclusion. Note that the evidence of the video camera may not be admitted in evidence by the court if it believes that it would be prejudicial and would affect the fairness of the trial; the video camera violates Article 8 the right to family life and privacy. [8–10]

(b) Band 1: Irrelevant answer. [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section; [1–5]

and/or

- Reference to s.78 and Article 8 or article 6 R v Grant with little or no development. [1–5]

Band 4: Some development of the correct section and R v Grant and application of the source material to the facts of the case. [6–7]

Band 5: Candidate must refer to and provide full development of all subsections. Note that the police use of the listening device would constitute violation of s.78 PACE 1984 and any evidence obtained may not be admitted R v Grant. Candidates should consider whether the case comes within the exception to s.78. Clear conclusion. [8–10]

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(c) Band 1: Irrelevant answer. [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section – that a confession may not be admitted where it is unfair to admit it; [1–5]

and/or

- Reference to s.78(1) PACE/ Article 6 and R v Mason with little or no development. [1–5]

Band 4: Some development of all the correct source material and application to the facts i.e. some consideration of the facts. [6–7]

Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion. Note that in R v Mason a conviction was quashed when the police had falsely told a defendant and his solicitor that evidence of fingerprints on a bottle had been found; The defendant then confessed to the offence. Good application of R v Mason. In this case Fagin's confession may not be admitted. [8–10]

(d) Band 1: Irrelevant answer. [0]

Band 2: Discussion of the Human Rights Act in very general terms. [1–6]
MAX 6 for answer that only includes Article 6 or Article 8 and no other reference to articles of the ECHR.

Band 3: Good discussion of the Human Rights Act with some citation and mention of individual articles. [7–13]

Band 4/5: Very good discussion of the Human Rights Act, its impact and good use of illustrative examples. Credit for any discussion of human rights effect on the issues of the problem. Where articles are cited credit for any attempt to analyse the effect on UK law. This part of the question expects a wide ranging answer of the effect of the HRA 12 years after it became law. Case law will probably include the cases cited as well as the well known Douglas v Hello but particular credit should be given for attempts to look at more recent cases. Credit should be given for answers which try to be critical in their analysis perhaps taking in any less welcome aspects of the HRA. [14–20]

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2 (a) Band 1: Irrelevant answer. [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section – reference to the fact that making a will may require formalities; [1-5]

and/or

- Reference to s.9 Wills Act with little or no development. [1–5]

Band 4: Some development of all the correct sections. Good application noting that in this case the will has not been witnessed in accordance with the Act. [6–7]

Band 5: Candidate must refer to and provide full development of the section. Candidates are expected to apply section 9 of the Wills Act. There is no mention of any witnesses. Clear conclusion. This will is invalid under s.9 Wills Act 1837 and will not be enforceable. [8–10]

(b) Band 1: Irrelevant answer. [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section – reference to the fact that making a will may require certain formalities and some general comments about the fact that the spouse has witnessed the will; [1–5]

and/or

- Reference to s.15 Wills Act with little or no development. [1–5]

Band 4: Some development of all the correct sections and good application noting that Freda is married to Dan and therefore she cannot inherit under the will because she is married to Dan who witnessed the will. Good application of s.15 but no reference to gift to Freda may still allow a Band 4 mark. [6–7]

Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion. The will is valid as it satisfies s.9 but the gift to the wife of the witness will not be upheld as it violates s.15 Wills Act 1837. [8–10]

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(c) Band 1: Irrelevant answer. [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section – reference to fact that the law may intervene where a testator/testatrix disinherits his/her family; [1–5]

and/or

- Reference to the Inheritance provision for Family and dependants act 1975 with little or no development. [1–5]

Band 4: Some development of the provisions of the Inheritance. (Provision for Family and Dependants Act.) [6–7]

Band 5: Candidate must refer to and provide full development of provisions of the 1975 Act. Candidates should see that the son can make an application under the Inheritance Family Provision Act 1975 which may be successful as the son is being maintained by the father; Clear conclusion. [8–10]

(d) Band 1: Irrelevant answer. [0]

Band 2: Discusses the contribution of equity in very general terms perhaps concentrating solely on the historical background to equity. [1–6]

Band 3: Good discussion of the contribution of equity and some examples from case law. Minimum of at least one case to reach this band. Either reasonable discussion of remedies or reasonable discussion of maxims or general discussion of all. A purely historical account will gain credit but MAX [10]. [7–13]

Band 4/5: Very good discussion of contribution of equity with good range of examples from case law. A full discussion of equity is expected and this will necessarily include the background to equity and the contribution it has made. The more modern effects will include the constructive trust, the Anton Pillar order and the Mareva injunction. Should include some discussion to the maxims of equity. [14–20]

[14–16] Some remedies with some explanation and/or cases. Some maxims and/or cases and some reference to context.

[17–20] Full range of remedies (including AP/Mareva injunction) maxims and rights in context e.g. need for fairness.

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