CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the May/June 2013 series

9084 LAW

9084/23 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 should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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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.

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 – reference to the fact that every person shall be qualified to sit as a juror unless he/she is disqualified under the Act.
  and/or
- Reference to s.1(1)(a)(b) and/or s.20(5) Juries Act 1974 with little or no development. **[1–5]**

Band 4: Some development of the correct sections s.1(1); s.20 Juries Act understanding that in this case the juror would have been excused if he had not been resident in the UK for the required length of time but as he has lied here he has committed an offence and is liable to a penalty. **[6–7]**

Band 5: Candidate must refer to and provide full development of the subsection s.1(1), s.20 Juries Act 1974. Clear conclusion that an offence of making false representations for the purpose of evading jury service has been committed here. Any student who suggests for this offence should be credited generously, e.g. expectation that everyone will serve on a jury unless disqualified without exception. May also mention s.18(1) and the effect on the verdict of a disqualified person sitting on the jury but can reach full marks without mentioning s.18. **[8–10]**

MAX 5: where only one issue discussed.

(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 both jurors should have disclosed the facts and so an offence has been committed here.
  and/or
- Reference to s.1 (1)(a) Juries Act 1974; s.18 Juries Act with little or no development. **[1–5]**

Band 4: Some development of s.1(1) Juries Act 1974 and s.6(e) Juries Act. Some understanding that it refers to particular groups of people who may affect the decision of the jury if allowed to sit, e.g. some understanding shown that the juror was disqualified because he had served a five-year prison sentence. **[6–7]**

Band 5: Candidate must refer to and provide full development of the relevant subsection. Clear conclusion that Ben should not have been allowed to sit and an offence has been committed here. Some discussion of s.18(1)(b) reversal of judgments and conclusion that although Ben should not have been sitting on the jury an appeal by Frank's lawyers will not be successful. **[8–10]**

MAX 5 where wrong conclusion drawn.

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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 a person who is deaf may still be allowed to sit on a jury
  and/or
- Reference to s.1 Juries Act presumption that everyone is qualified to sit on a jury, s.9(B)(1) and (2) Juries Act 1974/s.18(1) with little or no development. **[1–5]**

Band 4: Some development of the correct sections and understanding that it is the judge who can decide the issue so Deena may have been able to sit although a good candidate will note that Deena is profoundly deaf rather than simply deaf. **[6–7]**

Band 5: Candidate must refer to and provide full development of both subsections. Clear conclusion that the fact that Deena was on the jury will not affect the decision and no appeal can be made under s.18(1). **[8–10]**
MAX 5 where wrong conclusion drawn.

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

Band 2: Discusses the involvement of members of the public on the jury in very general terms only. **[1–6]**

Band 3: Good discussion of the role of the jury. Candidates need to discuss the selection of juries; their role in criminal proceedings; but answers should concentrate on the advantages and disadvantages of the use of the jury. **[7–13]**

Band 4/5: Very good discussion of all aspects of the use of juries. Whether they are up to that task intellectually; cases where the jury has been shown to be manifestly perverse or unreliable; and the effect of all this on the defendant. Good comparison of the advantages and also the disadvantages. **[14–20]**
MAX 15 for a very good wide ranging answer where no case law is cited.
Points for discussion may include a range of the following points:
Advantages: random selection; fairness; public confidence in the system; secrecy; lack of precedent; tried by one's peers; not case hardened.
Disadvantages: perverse decisions; prone to jury nobbling; laymen unable to follow complex cases and decisions; no training; influenced by the media and barristers; not everyone registered on the electoral role so not truly representative.

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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 – understanding that this concerns the holding of an identity parade:
  and/or
- Reference to Code D with little or no development of 3.12. **[1–5]**

Band 4: Some development of the circumstances when an identity parade will be held and some basic link with the question. **[6–7]**

Band 5: Full development of Code D and a proper link with the facts of the question. Candidate must refer to and provide full development of all subsections of the Code. Discussion of whether it was practicable to hold the identity parade for Rahul. Clear conclusion that in this case it was practicable and it would serve a useful purpose. The shopkeeper expressed an ability to identify the suspect and the witness was available. **[8–10]**
MAX 5 If code not fully cited and explained.

(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 Code D 3.12 and the admissibility of the evidence of the shopkeeper with little or no development.

Band 4: Some development of the correct sections Code D 3.12 and discussion of whether the evidence of the shopkeeper would be admissible under s.78 PACE. Some application of s.78 e.g. fairness of the proceedings if evidence is admitted. Some application of the wider human rights issues. **[6–7]**

Band 5: Candidate must refer to and provide full development of the subsection and refer to the Code and link it to the facts of the problem. Clear conclusion that if there had been a breach of Code D the evidence would be admissible. Must refer to the human rights issues. NB Where a candidate draws conclusion that the evidence would not be admissible credit can be given if the conclusion is linked to the question of fairness under s.78 and this has been fully discussed. **[8–10]**
MAX 5 if discussion not linked to the failure to hold an identity parade.

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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 concerning the admissibility of the evidence obtained.
  and/or
- Reference to s.78(1) PACE either ECHR Art 8 or Art 6 and/or Campbell and the general effect on admissibility with little or no development. **[1–5]**

Band 4: Some development of all the correct section s.78(1) and also articles 6 and 8 and good link with the facts. Understanding of the content of the articles and link with the facts. **[6–7]**

Band 5: Candidate must refer to and provide full development of s.78(1) all the articles, very clear link to the facts of the case i.e. discussion of the bugging device. Clear conclusion that the confession is not admissible. **[8–10]**
MAX 5 if reach the wrong conclusion.

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

Band 2: Discusses the contribution of the ECHR in very general terms, e.g. some reference to one or two articles in the ECHR. **[1–6]**

Band 3: Good discussion of the development of ECHR and reference to a number of articles e.g right to life under Art 2, right to private life under art 8, freedom of thought, conscience and religion, Art 9 right to marry Art 12. It is anticipated that these will be dealt with fairly briefly.
Other details may include fact that the state can interfere with all but a very few of the rights detracts from their impact and good detail on several cases, e.g. See R v Secretary of State for Home Department ex p Brind (1991) Brown v A-G for Scotland e.g. Douglas v Hello; **or** limited discussion of a range of cases on Human Rights. **[7–13]**

Band 4/5: Very good discussion of contribution of human rights to the development of law and very good explanation of various articles in the ECHR. Perhaps explanation that main impact has been the right to rely on the convention in UK courts rather than to pursue an action through the European court of Human Rights. Comment on fact that legislation must include a statement of compatibility. The Act also requires courts to take into account any previous decision of the ECHR. The courts can only act against a public authority.
The judiciary cannot simply declare a piece of legislation to be unenforceable but simply state that it is incompatible. There is fast track procedure which would allow any necessary changes to bring legislation into line. Perhaps reference to the restrictions on the HRA in particular the convention has a limited impact as many of the articles are out of date. We have no Human Rights Commission and so its impact is rather piecemeal. Overall good use of case law throughout to illustrate the answer. Emphasis on critical analysis. **[14–20]**

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