CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the May/June 2014 series

9084 LAW

9084/23 Paper 2, maximum raw mark 50

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Mark Scheme

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) Angus is stopped by the police because he was seen driving erratically down a main road. He refuses to take a roadside breath test to assess whether he is fit to drive. He is arrested and taken to the police station, where he again refuses to provide a specimen of his breath until his solicitor arrives.

Consider whether Angus can be charged with failure to provide a specimen.

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 a defendant is under a duty to comply with the police if he/she is suspected of drink driving:… **and/or**
- Reference to s.7(6) RTA 1988 and/or s.58 PACE with little or no development. [1–5]

Band 4: Some development of s.7(6) RTA 1988 and s.58 PACE. Discussion of whether this is similar to DPP v Billington. [6–7]

Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion that Angus can be charged under s.7 RTA and is unlikely to be able to defend the charge by arguing that he has the right to delay the provision of a specimen. [8–10]

(b) What difference would it make if his solicitor was already at the police station, advising another client, when Angus is brought in? [10]

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 Angus may have the right to legal advice and recognition of the failure of Angus to take the breath test. :…**and/or**
- Reference to s.58(1) PACE and/or DPP v Billington and/or s.7(6) RTA 1988 with little or no development [1–5]

Band 4: Some development of DPP v Billington with some application to the facts. Reference to s.7(6) can be credited but is not required. [6–7]

Band 5: Candidate must refer to and provide full development of DPP v Billington and at least one other of s.7(6) RTA 1988 and s.58(1) PACE 1984 and DPP v Billington. Clear conclusion that as Angus may have been able to speak to a solicitor quickly because he was already at the police station and so available almost immediately, the slight delay in taking the breath test may be acceptable but does not prevent him being guilty under s.7(6) RTA 1988 if he does not provide a specimen at all. [8–10]

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(c) Bruce is driving home from work when he is involved in a road traffic accident. He is arrested on suspicion of dangerous driving. At the police station a police officer tells him that if he admits to careless driving he will advise the custody sergeant not to pursue charges of the more serious offence of dangerous driving. Bruce is very tired and wants to go home and, although he has no solicitor present, he admits to the charge of careless driving. Bruce is nevertheless later charged with dangerous driving. He says that he is not guilty of either careless or dangerous driving.

Consider whether Bruce can challenge the admissibility of his confession to the police officer.

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 a defendant is protected by the law when questioned by the police at the police station:… **and/or**
- Reference to protection given to a defendant under s.76 and s.78 PACE … with little or no development [1–5]

Band 4: Some development of s.76 PACE. Credit reference to s.78 PACE but this is not essential. Discussion of whether B can successfully challenge the admissibility of his admission at the police station. [6–7]

Band 5: Candidate must refer to and provide full development of all subsections of s.76 and s.78 PACE. s58,76,78. Clear conclusion that B has a very strong case for arguing that the admission should not be admitted in court linked to s.76(2)(b) PACE [8–10]

(d) Critically compare trial at the Magistrates' Court with trial at the Crown Court

Band 1: Irrelevant answer [0]

Band 2: Discusses either trial at the magistrates court in very simplistic terms or trial at the Crown Court. [1–6]

Band 3: Good discussion of one type of trial **or** limited discussion of both types of trial. Typical content may include role of laymen in both trials and the fact that magistrates undergo some training. However there is a better chance of acquittal at the Crown Court although the defendant may be subject to perverse decisions by the jury whilst magistrates may be case hardened and less likely to acquit. [7–13]

Band 4/5: Very good discussion of both methods of trial and good analysis of the merits of each type of trial. A good conclusion on both type of trial. [14–20]

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2 (a) Consider whether Mr McFly can argue that he took no part in the decision making and is therefore not liable for any loss in value of the assets. [10]

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 McFly cannot leave decisions to his co-trustee but he is entitled to argue that Harry should know better being a solicitor:… **and/or**
- Reference to Bishopsgate case with little or no development and reference to s.1 Trustee Act [1–5]

Band 4: Some development and discussion of the correct section s.1 Trustee Act and Bishopsgate case. [6–7]

Band 5: Candidate must refer to and provide full development of correct subsection s.1(1)(b). Clear conclusion that McFly will likely be held be liable for breach of trust and the losses to the trust. [8–10]

(b) Explain whether the trustees should have taken advice on investment decisions and, if so, who would have been qualified to give that advice. [10]

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 need for trustees to take advice on investment decisions:…**and/or**
- Reference to s.5 Trustee Act 2000 with little or no development [1–5]

Band 4: Some development of subsections s.5(1)(2)(3)(4) Trustee Act 2000. Not all subsections are required to reach the top of the band. Some discussion of whether the trustees took proper advice. [6–7]

Band 5: Candidate must refer to and provide full development of the correct subsection. Clear conclusion that no proper advice was taken by the trustees. Flora was clearly not qualified to give advice that led to the buying of the shares under s.5(4). Harry should have taken advice under s.5(2) before selling the shares and reinvesting them. Candidates can reach maximum marks with a detailed consideration of Flora or Harry. [8–10]

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(c) Consider whether trustees can take a moral view when making investment decisions. [10]

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 the trustees have a duty to invest and maximise the fund:… **and/or**
- Reference to Cowan v Scargill with little or no development [1–5]

Band 4: Some development of the correct case and discussion of the principle [6–7]

Band 5: Candidate must refer to and provide full development of Cowan v Scargill. Clear conclusion that the trustees were in breach of trust in making the investment in Vegebics. [8–10]

(d) Assess the contribution of Equity to the development of law, with particular reference to the creation of the trust and the role it plays today. [20]

Band 1: Irrelevant answer [0]

Band 2: Discusses development of equity in very general terms [1–6]

Band 3: Good discussion of either historical development of equity or modern use of equity **or** limited discussion of both [7–13]

Band 4/5: Very good discussion of development of equity and discussion of the way the trust developed as well as other rights such as the mortgage and also the development of remedies. Modern use of the trust such as married women's equity. Some discussion of the discretion available in applying equity in particular remedies. Some analysis of the way that equity has developed as a separate system of law. [14–20]

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