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Cambridge International Advanced Subsidiary and Advanced Level

MARK SCHEME for the May/June 2015 series

9084 LAW

9084/12 Paper 1 (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 should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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General Marking Guidance

- Marking should be positive: marks should not be subtracted for errors or inaccuracies.
- When examiners are in doubt regarding the application of the mark scheme to a candidate's response, a senior examiner must be consulted.
- Crossed out work should be marked UNLESS the candidate has replaced it with an alternative response.
- Poor spelling, handwriting or grammar should not be penalised as long as the answer makes sense.
- Scoris annotations must be used.
- A blank space, dash, question mark and a response that bears no relation to the question constitutes a 'no response'.

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.

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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

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.

Maximum Mark Allocations:

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

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1 Jurors are unrepresentative in the way they are selected and unpredictable in the decisions they reach.

To what extent are these criticisms justified? [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of the selection and role of juries in either criminal or civil trials but this will have little detail or accurate content.

Band 3 (7–12) Candidate gives a basic explanation of the selection and role of juries in criminal and/or civil trials.

Band 4 (13–19) Candidate gives a reasonable explanation of the selection and role of juries in both criminal and civil trials. Some link to the analytical component of the question and a discussion of the criticisms of jury trial.

Band 5 (20–25) Candidate gives a clear explanation of the selection and role of the jury in both criminal and civil trials. Defines and illustrates the merits and problems of the selection and role.

Examples of the type of issues candidates might consider include; (a) inclusion of wide range of public in the process; (b) cheaper; (c) local knowledge (d) not case hardened; (e) judgment by peers;(f) no training; (g) inconsistent and irrational verdicts; (h) open to interference and also persuasion from the press etc. (i) juries not transparent; (j) jury equity

2 "In legal matters some degree of certainty is at least as valuable a part of justice as perfection." Lord Hailsham, *Cassell & Co Ltd v Broome* (1972)

Critically assess how the system of precedent can achieve both certainty and justice. Use case law to support your answer. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of precedent, but with no real detail or accuracy. Candidates may make brief reference to the concepts of certainty and justice.

Band 3 (7–12) Candidate gives a brief but generally accurate explanation of the workings of precedent. These are, however, likely to be superficial and poorly explained and bear little relevance to the question. There is unlikely to be any discussion of detail or examples to illustrate the answer and little reference to the analytical aspect of the question.

Band 4 (13–19) Candidate gives a reasonable explanation of the concepts of precedent with some useful detail and example. Candidates may consider ratio, obiter and the position of the various courts with reference to the ability to achieve certainty and justice. Better candidates will go on to illustrate this with a range of case law and examples, but this may be limited at the lower end of the mark band. Candidates may address some of the analytical issues concerning the abilities of the courts to achieve both certainty and justice, and relate this to the question.

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Band 5 (20–25) Candidate gives a clear and very detailed explanation of the concepts of precedent (as in Band 4) with good levels of illustration and explanation. Candidate clearly links the powers of the courts i to the question and presents a logical and reasoned argument.

3 Denise, aged 16, has been arrested by the police in connection with a robbery.

Describe the police powers concerning detention, body searches and interview at the police station in such a case. Critically consider whether the law strikes a fair balance between the need to deal with crime and the liberty of the suspect. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of the police powers of detention, search and interview but is unlikely to include any detail or any reference to the scenario within the question.

Band 3 (7–12) Candidate gives a basic explanation of the police powers of detention search and interview. There is unlikely to be any detail or citation of statute, codes or case examples. The scenario may not be addressed. The analytical aspect of the question is unlikely to be considered.

Band 4 (13–19) Candidate gives a reasonable explanation of the police powers of detention search and interview. At the upper end of the band there may be references to PACE and the relevant codes, perhaps with some illustration using case law. This is linked to the scenario. Candidate makes attempts to address the analytical component of the question

Band 5 (20–25) Candidate gives a clear explanation of the police powers of detention search and interview with good citation of statute, codes and case law. This is well linked to the scenario. Candidate clearly addresses the analytical component of the question.

4 Critically examine the effect of the Human Rights Act 1998 on the role of the judge in deciding cases. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of the HRA but is unlikely to include any detail beyond general aims.

Band 3 (7–12) Candidate gives a basic explanation of the HRA and its effect on the role of the judge in the UK. There is unlikely to be any detail or citation of Articles or sections of the act. Candidates may do little more than rehearse the rights protected by the act. The analytical aspect of the question is unlikely to be considered.

Band 4 (13–19) Candidate gives a reasonable explanation of the HRA and the way in which it can influence judicial decisions. At the upper end of the band there may be references to declarations of incompatibility and the consequences of this. Better candidates may recognise the impact on statutory interpretation and precedent. Candidate makes attempts to address the analytical component of the question.

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Band 5 (20–25) Candidate gives a clear explanation of the HRA with good citation of the act (as in Band 4) and an awareness of the impact on statutory interpretation. Candidate clearly addresses the analytical component of the question.

5 The current selection process for the judiciary ensures that the right people are selected for the job.

Explain how judges are selected and consider critically whether this statement is accurate. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of the types and appointment of judges but with no real detail or accuracy. The Lay Magistracy is **not** the focus of this question and a discussion of them will not attract any credit.

Band 3 (7–12) Candidate gives a brief account of the appointment of the judiciary. These are, however, likely to be superficial and poorly explained. Candidate may introduce some commentary on the analytical issues but this is likely to be informal and lacking in legal detail.

Band 4 (13–19) Candidate gives a reasonable explanation of the appointment of the judiciary with some useful detail and example. Better candidates will attempt to include some analytical content concerning the type of people chosen, but this may be vague and lacking in detail or reasoned argument. Some better candidates may be able to discuss the differences in appointment between the superior and inferior judiciary.

Band 5 (20–25) Candidate gives a clear and very detailed explanation of the appointment of the judiciary with good levels of illustration and explanation. Candidates are able to demonstrate clear understanding of the issues and including reasoned analytical commentary. Candidates will appreciate the difference in appointment for different levels of judiciary. Better candidates will include consideration of the position of the Lord Chancellor, separation of powers and recent reforms.

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6 Explain the various forms of Alternative Dispute Resolution (ADR). Discuss whether ADR provides a better outcome than the civil courts. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of the idea of ADR but there will be no coherent explanation.

Band 3 (7–12) Candidate gives a basic explanation of some of the different types of ADR and the circumstances in which each type would be used. Some understanding on why it can provide a better solution.

Band 4 (13–19) Candidate gives a reasonable explanation of most of the different types of ADR and the circumstances in which each type may be used. Candidates may offer some discussion of the various merits of each type and a comparison to the use of the courts.

Band 5 (20–25) Candidate gives a clear explanation of the all the different types of ADR and the circumstances in which each type would be used. Candidates make clear and informed links to the analytical component of the question e.g. an explanation of why the use of ADR may or may not be preferable to that of the courts.

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