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LAW **9084/21**

Paper 2 **May/June 2016**

MARK SCHEME

Maximum Mark: 50

Published

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General Marking Guidance

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.
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]**

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Yoshi was unlawfully detained.
  and/or
- Reference to Human Rights Act 1998 and European Convention on Human Rights 1950 Article 5 with little or no development. **[1–5]**

Band 4: Reference to parts of Article 5 with little development. **[6–7]**

Band 5: Full development of the relevant sections. Conclusion: Yoshi's detention may be lawful under Article 5(1)(c) but 5(2) is breached because the police do not speak Japanese and withhold a phone call. Article 5(3) is also breached as Yoshi is detained for 10 days. **[8–10]**

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

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Gregor's trial is unlawful.
  and/or
- Reference to Human Rights Act 1998 and European Convention on Human Rights 1950 Article 6 with little or no development. **[1–5]**

Band 4: Reference to parts of Article 6 with little development. **[6–7]**

Band 5: Full development of the relevant sections. Conclusion: Gregor's trial is likely to be unlawful. There is nothing to suggest a breach of Article 6(1) but there is a breach of Article 6(3)(a) as he has not been told in Russian about what is happening and a breach under (e) as he does not have access to an interpreter in court. **[8–10]**

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

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Hamish's trial may be held to be unlawful.
  and/or
- Reference to Human Rights Act 1998 and European Convention on Human Rights 1950 Article 6 with little or no development. **[1–5]**

Band 4: Reference to parts of Article 6 with little development. **[6–7]**

Band 5: Full development of the relevant sections. Conclusion: Hamish's trial may not be lawful. There is no breach of Article 6(1) as the trial can be held in private. There may be a breach of Article 6(3)(c) as Hamish's lawyer is not up to the task and a breach of Article 6(3)(d) due to the way he is treated by the judge in court. **[8–10]**

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

Band 2: Describes and/or discusses human rights in very general terms. **[1–6]**

Band 3: Some more detailed references to the HRA, perhaps focused on limited aspects and some general mention of advantages and disadvantages, perhaps restricted to one side of the argument or very basic points on both sides of the argument. **[7–13]**

Band 4–5: Very good discussion of the role and provisions of the HRA. To reach higher marks there is a need to deal with both parts of the question in detail and to look at both advantages and disadvantages with good critical awareness and linked to the question. **[14–20]**

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

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Lord Malton's resignation is not valid.
  and/or
- Reference to House of Lords Reform Act 2014 s1 with little or no development. **[1–5]**

Band 4: Reference to some of s1(1) and/or (2) and/or (3) with little development. **[6–7]**

Band 5: Full development of the relevant sections. Conclusion: Lord Malton's resignation is not valid. Under s1(1) he has not written to the right person. Under s1(2)(a) he has specified a date but under (b) a witness has not signed the letter. **[8–10]**

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

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Lord Yorkshire can still sit in the House of Lords.
  and/or
- Reference to House of Lords Reform Act 2014 s3 with little or no development. **[1–5]**

Band 4: Reference to some of s3(1) and/or (2) and/or (6) and/or (7) with little development. **[6–7]**

Band 5: Full development of the relevant sections. Conclusion: Lord Yorkshire can still sit in the House of Lords. Under s3(1) and (2) he is not entitled to sit as he has been convicted of a serious criminal offence and a certificate will have been issued under s3(6). However when his appeal is successful he is covered by s3(7)(b) and so able to sit again. **[8–10]**

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

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Lord Downton is still a member of the House of Lords.
  and/or
- Reference to House of Lords Reform Act 2014 s2 with little or no development. **[1–5]**

Band 4: Reference to some of s2(1) and/or (2) and/or (4) with little development. **[6–7]**

Band 5: Full development of the relevant sections. Conclusion: Lord Downton can still sit in the House of Lords. Although he may come under s2(1) and (2), especially (a) as he does not attend at all and (b) as he has not been given permission to be absent, the session is only 4 months long and so under s2(4) he is still a member. **[8–10]**

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

Band 2: Describes how legislation is made in very general terms. **[1–6]**

Band 3: Some more detailed references to legislative processes, perhaps with examples, and a general discussion of its importance and effectiveness. **[7–13]**

Band 4–5: Very good discussion of the way legislation is created as well as a detailed consideration of its value as a form of lawmaking using relevant examples. To reach higher marks there needs to be good critical awareness, including of the role of the House of Commons and House of Lords. **[14–20]**

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