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LAW **9084/11**

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MARK SCHEME

Maximum Mark: 75

Published

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.

Cambridge International will not enter into discussions about these mark schemes.

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Generic Marking Principles

These general marking principles must be applied by all examiners when marking candidate answers. They should be applied alongside the specific content of the mark scheme or generic level descriptors for a question. Each question paper and mark scheme will also comply with these marking principles.

GENERIC MARKING PRINCIPLE 1:

Marks must be awarded in line with:

- the specific content of the mark scheme or the generic level descriptors for the question
- the specific skills defined in the mark scheme or in the generic level descriptors for the question
- the standard of response required by a candidate as exemplified by the standardisation scripts.

GENERIC MARKING PRINCIPLE 2:

Marks awarded are always **whole marks** (not half marks, or other fractions).

GENERIC MARKING PRINCIPLE 3:

Marks must be awarded **positively**:

- marks are awarded for correct/valid answers, as defined in the mark scheme. However, credit is given for valid answers which go beyond the scope of the syllabus and mark scheme, referring to your Team Leader as appropriate
- marks are awarded when candidates clearly demonstrate what they know and can do
- marks are not deducted for errors
- marks are not deducted for omissions
- answers should only be judged on the quality of spelling, punctuation and grammar when these features are specifically assessed by the question as indicated by the mark scheme. The meaning, however, should be unambiguous.

GENERIC MARKING PRINCIPLE 4:

Rules must be applied consistently e.g. in situations where candidates have not followed instructions or in the application of generic level descriptors.

GENERIC MARKING PRINCIPLE 5:

Marks should be awarded using the full range of marks defined in the mark scheme for the question (however; the use of the full mark range may be limited according to the quality of the candidate responses seen).

GENERIC MARKING PRINCIPLE 6:

Marks awarded are based solely on the requirements as defined in the mark scheme. Marks should not be awarded with grade thresholds or grade descriptors in mind.

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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 our work should be marked unless the candidate has replaced with an alternative response.
- Poor spelling, handwriting or grammar should not be penalized as long as the answer makes sense.
- 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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The mark bands and descriptors applicable to all questions on the paper are as follows.

Band 1 [0 marks]
The answer contains no relevant material.

Band 2 [1–6 marks]
The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.

Band 3 [7–12 marks]
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 [13–19 marks]

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 [20–25 marks]
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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Question	Answer	Marks
1	**Luca, aged 30, has been found guilty at Barchester Crown Court of causing grievous bodily harm (an indictable offence) to Bilal.** **Explain the types of sentence available to the judge and assess how well they reflect the aims of sentencing.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the aims of sentencing and/or sentences available but with no detail. There may be very limited points of evaluation and links to the scenario but these are not developed. **Band 3 [7–12 marks]** Candidate gives a basic but generally accurate explanation of aims of sentencing and/or available sentences. However, these lack detail and candidate fails to link aims to sentences with any consistency. The scenario may not be considered **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the aims of sentencing with some links to relevant sentences. Better candidates may address the evaluative aspect of the question within the question, but at the lower end of the mark band this may be limited and unfocused on the question. The scenario is considered within the answer towards the upper end of the mark band **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the aims of sentencing and the relevant available sentences. Candidate addresses the evaluative aspect of the question well, with developed arguments and reasoned conclusions. The scenario is clearly considered in the answer	**25**

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Question	Answer	Marks
2	**Magistrates and jurors are not legally qualified and get many decisions wrong.** **Compare the role of magistrates and juries and assess how far the statement above is true.** **Band 1 [0]** Irrelevant answer **Band 2 [1–6]** Candidate gives a very basic explanation of the role of the lay magistrates and/or the jury in the civil and/or criminal system but with no real detail or accuracy. There is unlikely to be anything beyond very minimal and unfocused commentary. **Band 3 [7–12]** Candidate gives a basic account of the role of the lay magistrate and/or jury in the criminal and/or civil system. This is, however, likely to be superficial and poorly explained. Any analytical content is likely to be vague and unfocused. **Band 4 [13–19]** Candidate gives a reasonable explanation of the role of the lay magistrates and/or jury in the civil and/or criminal systems with some useful detail and example. Better candidates will attempt to include some analytical content addressing the question, but this may be vague and lacking in detail or reasoned argument. Candidates would be unlikely to achieve more than 15 marks if they discuss only one of the two lay elements, or if they restrict their discussion to only civil or criminal functions. **Band 5 [20–25]** Candidate gives a clear and very detailed explanation role of both the lay magistrate and the jury in both the civil and criminal systems with good levels of illustration and explanation. Candidate will address the analytical component well, with clear analysis, presenting well-reasoned arguments and drawing logical and well informed conclusions.	**25**

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Question	Answer	Marks
3	**Describe the process before trial for a defendant charged with an offence triable either way.** **Discuss factors a defendant should take into account when electing the venue for trial.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate shows a very basic understanding of the Magistrates' and/or Crown Court, but is unable to discuss the processes involved. There may be very limited points of evaluation but these are not developed or well explained. **Band 3 [7–12 marks]** Candidate gives a basic but generally accurate explanation of the TEW process in the Magistrates' and/or Crown Court including all of the stages as a list with no detail or some of the stages with very little detail. There may be limited and undeveloped points of evaluation. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the process including all of the stages with some detail, or most of the stages with good detail. Better candidates may address the evaluative aspect of the question within the question, but at the lower end of the mark band this may be limited and unfocused on the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the process including all of the stages with good levels of detail. Candidate addresses the evaluative aspect of the question well, with developed arguments and reasoned conclusions.	**25**

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Question	Answer	Marks
4	**The law has to be interpreted by a judge before it can be applied and interpretation is a creative activity.** **Explain the common law rules of statutory interpretation and evaluate the truth of the statement above.** **Band 1 [0 marks]** Irrelevant answer **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the common law rules/approaches to statutory interpretation. There is unlikely to be any detailed citation or analytical content. There is unlikely to be any case citation **Band 3 [7–12 marks]** Candidate gives a basic explanation of the common law rules/approaches to statutory interpretation. This may be supported by limited case illustration, but it is unlikely to have much detail or link to the question. Cases may be described rather then used to illustrate the approaches There will be little relevant analytical content. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the common law rules/approaches to statutory interpretation supported by relevant case law. Case law is used well to illustrate the approaches and at the upper end of the mark band links clearly to the analytical aspect of the question. **Band 5 [20–25 marks]** Candidate gives a very clear explanation of the common law rules/approaches statutory interpretation well supported by detailed and relevant case law which is clearly linked to the analytical aspects of the question. Candidate is able to draw reasoned conclusions.	**25**

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Question	Answer	Marks
5	**Describe the selection process for judges and assess how far it ensures that the right people are appointed.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the selection process for a limited number of the levels of the judiciary but with no detail or accuracy. **Band 3 [7–12 marks]** Candidate gives a basic account of the selection process for some levels of the judiciary. This is 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 marks]** Candidate gives a reasonable explanation of the selection process for some levels of the judiciary with some useful detail and example. Better candidates will attempt to include some analytical content concerning whether the right people are chosen, but this may be vague and lacking in detail or reasoned argument. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the selection process for all levels 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. The better candidates will include consideration of the position of the Lord Chancellor, separation of powers and recent reforms.	**25**

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Question	Answer	Marks
6	**Delegated legislation is an undemocratic method of law making.** **Describe the different types of delegated legislation and assess whether the available controls ensure that delegated powers are not misused.** **Band 1 [0 marks]** Irrelevant answer **Band 2 [1–6 marks]** Candidate gives a very basic description of the types delegated legislation. **Band 3 [7–12 marks]** Candidate gives a basic description of the different types of delegated legislation and the circumstances in which each type would be used. Candidate may display some understanding of why it may need control, there may be some limited explanation of parliamentary and/or court control, but it may lack detail. If a candidate fails to discuss controls they will be unlikely to achieve more than 10 marks. **Band 4 [13–19 marks]** Candidate gives a reasonable description of the different types of delegated legislation and the circumstances in which each type would be used. A reasonable attempt to make a link with the analytical component of the question and to explain why controls (parliamentary and/or court) over the creation of DL are necessary. **Band 5 [20–25 marks]** Candidate gives a clear and detailed description of the different types of delegated legislation and the circumstances in which each type would be used. Clear and informed links to the analytical component of the question considering whether the described controls are effective.	**25**

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