Cambridge International AS & A Level

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LAW **9084/22**

Paper 2 **May/June 2018**

MARK SCHEME

Maximum Mark: 50

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
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.

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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Question	Answer	Marks
1(a)	**Consider how the Criminal Justice Act 2003 will apply to the trial of Jerome.** **Band 1 [0 marks]** Irrelevant answer. **Band 2–3 [1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Jerome's trial will go ahead without a jury **and/or** • Reference to s44 Criminal Justice Act 2003 and/or R v Twomey with little or no development. **Band 4 [6–7 marks]** Some development of any of s44 and/or R v Twomey and some application. **Band 5 [8–10 marks]** Full development of the relevant sections. Conclusion Jerome's trial will go ahead without a jury under s44(3). He is being charged with an indictable offence under s44(1) and the application has been made to the Crown Court judge under (2). There is evidence under (4) and (5) that Jerome's previous trial was affected so the current trial is covered by (6)(b). According to Twomey this means the trial must go ahead without a jury. Credit an alternative argument based on s44(4) that there is no real and present danger as the threats were only rumoured to have taken place and so they would would not be sufficiently substantial under (5). In consequence there is no valid example under (6) and the trial judge would refuse the application for trial without a jury under (3). If this line of reasoning is followed maximum marks can be achieved without any reference to Twomey.	**10**

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Question	Answer	Marks
1(b)	**Consider how the Criminal Justice Act 2003 will apply to the trial of Freddie.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Freddie's trial will have to begin again. **and/or** • Reference to s46 Criminal Justice Act 2003 with little or no development. **Band 4** **[6–7 marks]** Some development of any of s46 and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion: the judge's decision will not be valid and Freddie will have to be tried again. The trial may come within s46(1)(a) because the case is one to be tried on indictment and (b) due to the note sent to the judge. She meets (2)(a) as she tells the parties she intended to discharge the jury but she breaches (2)(b) by not giving reasons for her decision and (c) by not allowing representations from the lawyers. Although the trial can go ahead under (3) it would seem better under (4) to terminate it in the interests of justice.	**10**
1(c)	**Consider how the Criminal Justice Act 2003 will apply to the trial of Katrina.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Katrina's trial is lawful. **and/or** • Reference to s44 Criminal Justice Act 2003 with little or no development. **Band 4** **[6–7 marks]** Some development of some of s44 and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion: Katrina's trial is lawful. She was tried for an indictable offence under s44(1) and there was a valid application under (2). Her trial might be covered by (6)(c) as there was intimidation of a witness by Katrina's brother in her previous trial and so he could do the same again. However, under (4) there was no real and present danger and no substantial risk under (5) since Katrina's brother was in prison and so the judge's refusal to grant the application under (3) was valid.	**10**

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Question	Answer	Marks
1(d)	**Evaluate the selection process of juries in the Crown Court.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Describes and/or evaluates juries in the Crown Court in very general terms. **Band 3** **[7–13 marks]** Some more detailed references to the selection processes of juries in the Crown Court, perhaps focused on factual aspects, and some general evaluation. **Band 4/5** **[14–20 marks]** Very good detail on the selection processes of juries in Crown Court trials alongside good evaluation with relevant examples. To reach higher marks both parts of the question need to be dealt with in detail showing good critical awareness.	**20**

Question	Answer	Marks
2(a)	**Explain how the Supreme Court Practice Direction will apply to Mumtaz's application** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Mumtaz's application will not be successful. **and/or** • Reference to Supreme Court Practice Direction 3 with little or no development. **Band 4** **[6–7 marks]** Some development of 3.1.2 and/or 3.1.3 and/or 3.1.4 and/or 3.1.7 and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion: Mumtaz's application will not succeed. Peter's document is too long and hard to read under 3.1.2. Although the grounds are valid under 3.1.3(b) and Mumtaz can act as Peter's agent under 3.1.4 the application will also fail as she does not include the fee required under 3.1.7.	**10**

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Question	Answer	Marks
2(b)	**Explain how the Supreme Court Practice Direction will apply to Robert's application.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Robert's application will be successful. **and/or** • Reference to Supreme Court Practice Direction 3 with little or no development. **Band 4** **[6–7 marks]** Some development of 3.1.2 and/or 3.1.4 and/or 3.1.5 and/or 3.1.7 and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion: Robert's application will be successful. He has taken advice on his draft and submitted everything in the correct format under 3.1.2. His application is valid because it is signed as required under 3.1.4. He fulfills 3.1.5 as he has cited the previous appeal and he meets the requirements for submission at the Registry under 3.1.7.	**10**
2(c)	**Explain how the Supreme Court Practice Direction will apply to this application.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Ellen's application will not be successful. **and/or** • Reference to Supreme Court Practice Direction 3 with little or no development. **Band 4** **[6–7 marks]** Some development of 3.1.1 and/or 3.1.2 and/or 3.1.3 and/or 3.1.4 and/or 3.1.7 and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion: Ellen's application will not be successful under 3.1.2 as although it is the correct length ABC Fisheries have not set out the reasons for their appeal. The application would be valid under 3.1.3(c), it meets 3.1.4 as Ellen signs it and it fulfills 3.1.7 as she includes the fee and the necessary paperwork. The application will fail under 3.1.1 as the required minimum of three Justices are not available.	**10**

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Question	Answer	Marks
2(d)	**Describe the role of the Supreme Court in developing precedent and assess its effectiveness in doing so.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Describes the role of the Supreme Court in precedent or makes very basic comments. **Band 3** **[7–13 marks]** Some more detailed references to the role of the Supreme Court, perhaps with a factual basis, and some general discussion of its effectiveness. **Band 4/5** **[14–20 marks]** Very good detail on the role of the Supreme Court in developing precedent and very good discussion of its effectiveness in doing so. To reach higher marks all aspects of the question need to be dealt with showing good critical awareness.	**20**

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