Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/11**

Paper 1 **May/June 2021**

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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Social Science-Specific Marking Principles (for point-based marking)

1 Components using point-based marking:

- Point marking is often used to reward knowledge, understanding and application of skills. We give credit where the candidate's answer shows relevant knowledge, understanding and application of skills in answering the question. We do not give credit where the answer shows confusion.

From this it follows that we:

a DO credit answers which are worded differently from the mark scheme if they clearly convey the same meaning (unless the mark scheme requires a specific term)

b DO credit alternative answers/examples which are not written in the mark scheme if they are correct

c DO credit answers where candidates give more than one correct answer in one prompt/numbered/scaffolded space where extended writing is required rather than list-type answers. For example, questions that require *n* reasons (e.g. State two reasons …).

d DO NOT credit answers simply for using a 'key term' unless that is all that is required. (Check for evidence it is understood and not used wrongly.)

e DO NOT credit answers which are obviously self-contradicting or trying to cover all possibilities

f DO NOT give further credit for what is effectively repetition of a correct point already credited unless the language itself is being tested. This applies equally to 'mirror statements' (i.e. polluted/not polluted).

g DO NOT require spellings to be correct, unless this is part of the test. However spellings of syllabus terms must allow for clear and unambiguous separation from other syllabus terms with which they may be confused (e.g. Corrasion/Corrosion)

2 Presentation of mark scheme:

- Slashes (/) or the word 'or' separate alternative ways of making the same point.
- Semi colons (;) bullet points (•) or figures in brackets (1) separate different points.
- Content in the answer column in brackets is for examiner information/context to clarify the marking but is not required to earn the mark (except Accounting syllabuses where they indicate negative numbers).

3 Annotation:

- For point marking, ticks can be used to indicate correct answers and crosses can be used to indicate wrong answers. There is no direct relationship between ticks and marks. Ticks have no defined meaning for levels of response marking.
- For levels of response marking, the level awarded should be annotated on the script.
- Other annotations will be used by examiners as agreed during standardisation, and the meaning will be understood by all examiners who marked that paper.

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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.

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	**Compare the role of barristers and solicitors. Assess the extent to which these roles have changed since the Courts and Legal Services Act 1990.** **Indicative Content** **Responses may include:** **Roles:** Barristers: independent practice, employed by CPS, businesses, local government, civil service, Bar Council, Inns of Court, chambers, clerk role, tenancy, advocacy, specialisation, opinions, cab rank rule, Solicitors: partnerships, sole practitioners, CPS, local authorities, government departments, Law Society, general practice, advising clients, writing letters, contracts, wills, conveyancing, some advocacy. **Evaluation and changes in roles:** Candidates should discuss the premise of the CLSA 1990 which essentially allowed solicitors who have completed a Certificate of Advocacy to have rights of audience in all courts, Access to Justice Act 1999, Bar Direct, Alternative Business Structures **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the role and/or organisation of barristers and/or solicitors and/or makes reference to the evaluative issues in very general terms. **Band 3 [7–12 marks]** Candidate gives a basic explanation of the difference in role and/or organisation of barristers and/or solicitors, but this is unlikely to have any illustration and little or no reference to the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the role and organisation of the two professions, but this may not be balanced. Candidates who look at only one profession will not be able to achieve Band 4. There will be reference to detail on the role of each profession, how the profession works and the way it interacts with the public as well as detail on the areas of law covered. At the upper end of the band there may be some reference to statutory authority. There will be some attempts to link to the evaluative components of the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the role and organisation of barristers and solicitors with good levels of detail and statutory authority where relevant. Stronger responses may include details of complaints which can be credited. Candidates will address the evaluative components of the question (as in Band 4) in some detail, discussing the reforms of the 1990s and beyond.	**25**

Question	Answer	Marks
2	**The ideas for Acts of Parliament can come from a variety of sources. Evaluate the role of judges, public opinion and pressure groups in law-making.** **Indicative Content** **Responses may include:** Candidates may start with an introduction about why law reform is needed: changes in society, changes in technology, response to events, media influence or changes in government. **Judges:** use of precedent and statements within judgements e.g. R v R, Law Reform (Year and a Day Rule) Act 1996, Offences Against the Person Act 1861. **Public opinion:** euthanasia, Diane Pretty Case, Hunting Act 2004. **Pressure groups:** sectional groups e.g. Law Society, BMA, Trades Unions, cause groups e.g. Greenpeace, Amnesty International, Fathers for Justice. **Evaluation** – Judges: constitutional position, cannot consult experts, deals with only the case before them. Public opinion: e-petitions, private members' bills. Pressure Groups: can be successful, may use illegal tactics. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the contribution of judges and/or public opinion and/or pressure groups to law creation and/or makes reference to the evaluative issues in very general terms. **Band 3 [7–12 marks]** Candidate gives a basic explanation of the contribution of judges and/or public opinion and/or pressure group to law creation, but this is likely to be weak and poorly explained. There is unlikely to be any discussion of detail and very little reference to the evaluative issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation, with some illustration, of the contribution of judges, public opinion and pressure groups to law creation, but this may not be balanced or have wide-ranging illustration at the lower end of the band. Stronger responses may give higher levels of detail and example and offer some detail on the evaluative issues within the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the contribution of judges, public opinion and pressure groups to law creation, with good levels of illustration and explanation. Candidate evaluates the issues within the question well, covering the effectiveness and success of all three areas and draws well-informed conclusions on their effectiveness.	**25**

Question	Answer	Marks
3	**Describe the allocation and trial processes of fast-track and multi-track cases. Assess the extent to which the reforms proposed by Lord Woolf in 1996 have been achieved.** **Indicative Content** **Responses may include:** Candidates may introduce their answer by talking briefly about the Civil Procedure Rules and their introduction after a report by Lord Woolf. **Fast-track:** disputes of £10 000 to £25 000. PI cases over £1000 and up to £25 000 also dealt with. DJ sends out allocation questionnaire, makes decision. Strict timetable, case heard within 30 weeks. Trial by CJ or DJ, open court, formal process, hearing limited to one day, limited expert witnesses. **Multi-track:** cases over £25 000 or complex cases under this amount. If starts in CCt likely to be tried there. Can be sent to HCt if claim over £100 000. CJ, case management, timetables, possibility of ADR. Candidates may talk about the Divisions of the High Court and their respective roles – whilst this is not wholly relevant, it could be regarded as relevant if it relates to the track allocation. **Reforms:** previous process slow, complex, expensive. Now more settlements before court, less delay, better management, Jackson Report in 2011 highlighted still costly, need for more dispute resolution. Candidates may look in detail here at the LASPO Act 2012 for the law relating to legal funding, though this should not be in so much detail that the candidate diverts to an answer on legal funding. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the allocation and trial processes of one or both types of case and/or evaluates the effectiveness of the civil justice system in very general terms. **Band 3 [7–12 marks]** Candidate offers basic references to the allocation and trial processes of one or both types of case, perhaps focused on factual aspects such as the financial and legal complexity points alongside the formality and structure of trial processes and/or some general assessment of the effectiveness system after the Woolf reforms in terms of areas such as expense, delay, reform and legal aid. **Band 4 [13–19 marks]** Candidate gives a reasonable account of the allocation and trial processes of both types of case and good assessment of the effectiveness of the civil justice system. At the upper levels of the band there will be more detail on the processes, perhaps with examples. The evaluation will include more developed discussion relating to examples. To reach higher marks, all parts of the question need to be dealt with in detail showing good critical awareness. **Band 5 [20–25 marks]** Very good detail on the allocation and trial processes of both types of case and good assessment of the effectiveness of the civil justice system with high levels of accuracy, citation and critical awareness.	**25**

Question	Answer	Marks
4	**In England and Wales there were over 275 000 stop and search incidents in 2017–2018.** **Describe the powers of the police to stop and search. Assess the extent to which stop and search is successful in preventing and detecting crime.** **Indicative Content** **Responses may include:** Candidates may introduce the Police and Criminal Evidence Act 1984 and the reasons for its introduction – that is, to prevent miscarriages of justice and to enable the police to be accountable. Ss1–7 PACE 1984, Code of Practice A, s23 Misuse of Drugs Act 1971, s44 Terrorism Act 2000, s60 Criminal Justice and Public Order Act 1994. Public place, reasonable grounds, not based on personal factors, prohibited articles, giving name and police station, unlawful searches, request to remove outer jacket, coat, gloves only, Osman v DPP1999, Michaels v Highbury Corner Magistrates' Court 2009, voluntary searches. **Evaluation:** misuse of powers, Best Use of Stop and Search Scheme 2014, reduction of use in 2014–2015, effectiveness of stop and search, arrest rate after stop and search 14%. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the police powers of stop and search and/or evaluates the effectiveness in very general terms. **Band 3 [7–12 marks]** Candidate gives a basic description of the police powers of stop and search. There is unlikely to be any detail or citation of statute, codes or case examples. The evaluative aspect of the question is unlikely to be considered in any depth. **Band 4 [13–19 marks]** Candidate gives a reasonable description of the police powers of stop and search. At the upper end of the band, there may be references to PACE and the relevant codes, perhaps with some illustration using case law. Candidate makes attempts to address the evaluative component of the question. **Band 5 [20–25 marks]** Candidate gives a very good description of the police powers of stop and search with good citation of statute, codes and case law. Stronger responses may link to statistics showing a relationship between stop and search frequency and arrest. Candidate clearly addresses the evaluative component of the question drawing logical and reasoned conclusions.	**25**

Question	Answer	Marks
5	**Describe the function of the Crown Prosecution Service (CPS). Discuss the extent to which the CPS has been successful.** **Indicative Content** **Responses may include:** **Functions:** Prosecution of Offences Act 1985, Code for Crown Prosecutors, charging, evidential test (candidates may give examples here of reliable and unreliable evidence – examples would be expected for the higher bands), public interest test (candidates may expand on some of these points and explain them in more detail, there are around seven questions in the Public Interest test so candidate will look at some or all of them in varying amounts of detail), preparation of prosecution cases, Code of Practice for Victims 2020, prosecuting in court. **Evaluation:** prevention of miscarriages of justice (Guildford and Birmingham cases) discontinuation of cases, failure to prosecute, inefficiency, expense. Candidates may support these points with some statistics or reference to the Glidewell report which was a report into the effectiveness of the CPS, published in 1999, though there are also more recent press releases outlining the efficiencies or otherwise of the CPS. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the organisation function of the CPS and/or makes reference to the evaluative issues in very general terms. **Band 3 [7–12 marks]** Candidate gives a basic but generally accurate description of the organisation and function of the CPS. There may be brief mention of detail, but this may be superficial and poorly described. There is likely to be very little, if any, reference to the evaluative issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable description of the organisation and function of the CPS, but this may not be wide-ranging or detailed. Candidate can describe the criteria used in prosecution decisions. Stronger responses may begin to address the evaluative issues and discuss some cases as examples of miscarriages of justice prior to the creation of the CPS but at the lower end of the mark band this may be limited and unfocussed on the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed description of the organisation and function of the CPS with detailed description of the prosecution criteria and use of cases to illustrate this. Candidate considers the evaluative issues concerning miscarriages of justice in some detail, drawing well-reasoned conclusions.	**25**

Question	Answer	Marks
6	**When interpreting statutes, judges use the literal, golden and mischief rules.** **Describe these rules and assess how effective they are in helping judges to perform this task.** **Indicative Content** **Responses may include**: Candidates may introduce their answer by giving a brief introduction to why we need statutory interpretation and the problems judges face when interpreting statutes. *Literal Rule,* R v Judge of City of London Court 1892, Whiteley v Chappell 1868, LNER v Berriman 1946. *Golden Rule,* Re Sigsworth 1935, Adler v George 1964, Jones v DPP 1962. *Mischief Rule,* Heydon's Case 1584, Smith v Hughes 1960, Eastbourne BC v Stirling 2000, RCN v DHSS 1981 **Evaluation:** *Literal rule*: follows words used, respects judges' role, easier to know what law is, but leads to absurdity, act may be unclear. *Golden Rule:* respects words in act, escape route from Literal rule, but limited in use, unpredictable*. Mischief rule:* promotes purpose of law, lets judges fill in the gaps, produces just result but risks judicial law making, leads to uncertainty. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the named approaches to interpretation, but goes no further. No illustration by way of case law. There may be limited points of evaluation but these are not developed. **Band 3 [7–12 marks]** Candidate gives a brief but generally accurate description of the named approaches. There may be brief mention of other tools of interpretation, but these may be superficial and poorly described. There is unlikely to be any discussion of detail and very little, if any, reference to the evaluative issues within the question. Candidates who do not use any case law may not achieve more than 12 marks. **Band 4 [13–19 marks]** Candidate gives a reasonable description of named approaches to interpretation, but may not have wide-ranging case or example illustration at the lower end of the band. Stronger responses may begin to address the evaluative issues of the power of the judiciary within the question, but at the lower end of the mark band this may be limited and unfocussed on the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed description of the named approaches, with detailed and wide-ranging illustrations. Candidate evaluates the issues lack of predictability dependant on approaches, covering the differing effects of the various approaches in particular and drawing well-reasoned conclusions.	**25**