Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/11**

Paper 1 Structure and Operation of the English Legal System **May/June 2022**

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	**Explain the types of sentence which are available to a judge when sentencing a young offender. Assess which of these types of sentence might be most appropriate to encourage the offender to rehabilitate.** **Indicative Content** **Responses may include –** YO all offenders under 21, various provisions for those under 18, 16 and 14. **Custodial sentences:** YOI, offenders from 16 to 20, minimum 21 days, if YO becomes 21, transferred to adult prison; Detention & Training orders, Crime & Disorder Act 1998, minimum 4 m, maximum 24 m, half in custody, half in community, offenders aged 12 to 21, but if u15 only persistent offenders, offence to breach order; 1Detention for serious crimes courts can detain for longer periods, 10–13 year olds only if crime carries max sentence of 14 years, or is indecent assault on a woman s14 Sexual Offences Act 1956, 14–17 year olds also for causing death by careless driving under influence; detention at HM Pleasure offender 10–17 if convicted of murder. **Youth Rehabilitation Order:** Criminal Justice and Immigration Act 2008 mix and match of orders; activity, supervision, unpaid work, curfew etc. **Discharges:** usually for first time offenders. **Referral Orders:** involves Youth Offending Team. **Parental responsibility:** parents can be bound over if they agree. **Evaluation:** linking each type of sentence to how effective/desirable it might be for rehabilitation. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the sentences available but with no detail. There may be very limited points of evaluation but these are not developed. **Band 3 [7–12 marks]** Candidate gives a brief but generally accurate explanation of the types of available sentences. However, these lack detail and candidate fails to link sentences to rehabilitation with any consistency. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of 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 unfocussed on the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the relevant available sentences. Candidate addresses the evaluative aspect of the question well, with developed arguments and reasoned conclusions.	**25**

Question	Answer	Marks
2.	**Describe how Parliament creates Acts of Parliament. Assess the advantages and disadvantages of this method of law-making.** **Indicative Content** **Responses may include –** Green Paper, White paper, House of Commons, House of Lords, Public Bills, Private Bills, Private members' Bills, 1st reading, 2nd reading, Committee stage, Report stage, 3rd reading, same process in HL, Royal Assent. **Evaluation:** long process, acts often over elaborate, internal structure of acts illogical, hard to find law, language used but does pass through scrutiny and is created by elected representatives in HC **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the process in Parliament but goes no further and/or refers to the evaluative issues in general terms. **Band 3 [7–12 marks]** Candidate gives a basic description of the process in Parliament, including all of the stages 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 description of the process in Parliament 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, but at the lower end of the mark band this may be limited and unfocussed. **Band 5 [20–marks]** Candidate gives a very good description of the process in Parliament 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**

Question	Answer	Marks
3	**Explain the role of the jury in both civil and criminal cases. Assess the extent to which jurors may be influenced by their personal feelings or opinions.** **Indicative Content** **Responses may include** **Criminal Role**; Juries Act 1974, listens to evidence, retires to jury room, elect foreperson, discussion in private, returns verdict of guilty or not guilty, may give majority verdict, 10–2 or 11–1 since 1967, *R v Pigg 1983*. **Civil role**; s69 Senior Courts Act 1981, s66 County Courts Act 1984, right to a jury in defamation, false imprisonment, malicious prosecution and fraud cases, can be requested in personal injury cases, *Ward v James 1966, Singh v London Underground 1990*. **Evaluation –** May be biased, effect of media, *R v Taylor & Taylor 1993, R v West* 1996, use of social media, *R v Karakaya 2005*, unwillingness of jurors to act, psychological impact of evidence, lack of remuneration, lack of understanding, racial bias, *Sander v UK 2000,* civic duty, true cross section, perverse decisions/ jury equity, *Randle & Pottle 1991*, jury secrecy, *R v Mirza 2004,* issues of damages awards in civil cases, problems with technicalities in civil cases *Ward v James 1966*, *Singh v London Underground 1990,* use of vetting/challenge to avoid bias. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the role of the jury in civil and/or criminal cases but with no real detail or accuracy. There may be reference to the evaluative issues but expressed only in general terms. **Band 3 [7–12 marks]** Candidate gives a basic explanation of the role of the jury in civil and/or criminal cases. This is, however, likely to be superficial and poorly explained. There is unlikely to be any detailed evaluative content beyond limited and unfocussed advantages and disadvantages which do not directly address the command in the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the role of the jury in civil and criminal cases with some useful detail, example, and where appropriate, statutory authority. Better candidates will attempt to include some evaluative content but at the lower end of this band this content may be vague and unfocussed on the question. **Band 5 [20–25 marks]** Candidate gives a very good explanation of the role of the jury in civil and criminal cases with good levels of illustration and explanation. Candidate will address the evaluative component well, presenting clear, focused and supported evaluation of the role and drawing logical and well-informed conclusions.	**25**

Question	Answer	Marks
4	**Explain the most common equitable maxims and remedies. Assess whether they are still relevant to society today.** **Indicative Content** **Responses may include –** very brief history (little credit). **Maxims:** *Berry v Berry 1929, Leaf v International Galleries 1950, D&D Builders v Rees 1965, Chappell v Times Newspapers 1975.* **Remedies:** injunctions: *Kennaway v Thompson 1980, Warner Bros v Nelson 1937*, can be served by internet now, super injunction, freezing orders: *Mareva Compania v International Bulk Carriers 1975,* search orders: *Anton Piller KG v Manufacturing Processes 1976*, use of injunctions in domestic violence and employment law, specific performance, rectification, rescission. Candidates may also include: deserted wives' equity, Matrimonial Homes Act 1967, promissory estoppel: *Central London Properties Ltd v High Trees House Ltd 1947.* **Evaluation**: equity now works alongside common law, no longer separate courts/judges; equity still takes precedence where conflict, equitable remedies available in all courts, though discretionary, solving the problem of damages alone, now more formal, uses precedent. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of equity and/or refers to the evaluative issues in general terms. There may also be vague and unsupported statements concerning fairness **Band 3 [7–12 marks]** Candidate gives a basic explanation of remedies and/or maxims, but this may be superficial and poorly focussed on the question. There is unlikely to be any discussion of detail or citation and very little, if any, reference to the evaluative issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of remedies and maxims, but these may not have wide ranging detail or citation at the lower end of the band. Better candidates may be able to link this to modern needs and the way equity works today alongside common law, 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 very good explanation of remedies/maxims (as in Band 4). Candidate is able to clearly link these to the idea of modern use.	**25**

Question	Answer	Marks
5	**Describe the composition of the Judicial Appointments Commission (JAC) and its role in selecting inferior judges. Assess whether the JAC ensures that the best candidates are selected.** **Indicative Content** **Responses may include –** JAC created by Constitutional Reform Act 2005 to administer the recruitment of judges. **Composition:** 6 lay members, 5 judges, 1 barrister, 1 solicitor, 1 magistrate, 1 tribunal member. **Role:** appointments made on merit, JAC selects over 500 people a year, advertises selection exercises on website, JAC assesses merit and selects candidates for appointment, must consult LCJ and another judge of equivalent experience before recommending appointment, looks for judicial qualities; intellectual capacity, personal qualities, ability to deal fairly, authority and communication skills, efficiency, of good character, *R v Graham Stuart Jones v JAC 2014***.** For lower court appointments process separate from executive Crime & Courts Act 2013, LC powers transferred to LCJ. **Evaluation:** process now more open, solicitors now potentially able to reach higher levels of judiciary, posts advertised, people from outside the judiciary may apply (practising law, teaching law or acting as mediators, arbitrators, CILEX lawyers, etc.), women and those from BME increasingly becoming judges at all levels**.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the role and/or composition of the JAC but with no real detail or accuracy and/or refers to the evaluative issues in general terms. **Band 3 [7–12 marks]** Candidate gives a brief description of the role and/or composition of the JAC. This is, however, likely to be superficial and poorly explained. Candidate may introduce some commentary on the evaluative issues, but this is likely to be informal and lacking in detail. **Band 4 [13–19 marks]** Candidate gives a reasonable description of the role and composition of the JAC with some useful detail and example. Better candidates will attempt to include some evaluative content concerning the type of people 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 description of the role and composition of the JAC with good levels of illustration and explanation. Candidate demonstrates clear understanding of the issues and including reasoned evaluative commentary.	**25**

Question	Answer	Marks
6	**After charge, but before trial, an individual can be remanded on bail by the court.** **Explain how a court makes this decision and what conditions might be imposed. Assess the extent to which the granting of bail to an individual charged with a crime imposes risks on society.** **Indicative Content** **Responses may include** – Bail Act 1976, reasons to refuse bail (fail to surrender to custody, commit an offence on bail, interfere with witnesses), factors considered (seriousness of offence, character of defendant, defendants record, strength of evidence), sureties, appeals, conditions, restrictions on bail where the offence is murder, manslaughter, rape, restrictions for adult drug users, appeals against refusal of bail. **Evaluation:** The danger of the imprisonment of a person not yet found guilty of an offence, balancing this with protection of public, prevention of further crime, interference with evidence or witnesses, danger of flight etc. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the concept of bail, but with no real detail or accuracy and/or refers to the evaluative issues in general terms **Band 3 [7–12 marks]** Candidate gives a basic explanation of the concept of bail. This is, however, likely to be superficial and poorly explained. Candidate may introduce some attempts to address the evaluative issues, but this is likely to be informal and lacking in legal detail. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of bail with some useful detail, and perhaps statutory reference and example. Better candidates will attempt to include the reasons for allowing or refusing bail (type of offence, lack of violence, previous history, community ties etc.) and link this to a reasoned response to the question. Candidate offers a limited attempt at the evaluative element of the question. However, at the lower end of the band 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 bail, (as in band 4) with good levels of illustration (including references to statutes and perhaps high-profile cases of reoffending on bail) and explanation. Better candidates will address the evaluative with balanced and well-reasoned arguments.	**25**

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