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LAW **9084/12**

Paper 1 **October/November 2017**

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.

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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	**Judges have so many tools available in statutory interpretation that it is difficult to predict the outcome of any case.** **Explain how judges interpret statutes and discuss the accuracy of the above statement.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the main 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 explanation of the main approaches. There may be brief mention of other tools of interpretation, but these may be superficial and poorly explained. There is unlikely to be any discussion of detail and very little, if any, reference to the analytical issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of main approaches to interpretation, rules of language and other aids to interpretation, but may not have wide ranging case or example illustration at the lower end of the band. Better candidates may begin to address the analytical issues of the power of the judiciary 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 approaches, rules of language and aids to interpretation with detailed and wide ranging illustrations. Candidate evaluates the issues lack of predictability dependant on approaches etc. used question well, covering the differing effects of the various approaches in particular and drawing well-reasoned conclusions.	**25**

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Question	Answer	Marks
2	**Describe the appointment and role of lay magistrates. Discuss the problems which might arise from the use of lay personnel in such an important role.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the appointment and/or role of magistrates in criminal and/ or civil cases. There may be some very limited analytical content but it is unlikely to be developed. **Band 3 [7–12 marks]** Candidate gives a basic explanation of the role of magistrates in criminal and/or civil cases and/or appointment. Candidate gives an outline of the qualities and qualifications needed but this will not have wide range or accuracy. There is unlikely to be any consideration of the analytical component of the question beyond simplistic points of disadvantages. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the role of magistrates in civil and criminal cases. Candidates will include some reasonable detail on the qualifications and qualities needed. Candidates at the upper end of the band may make an attempt at a discussion of the analytical component of the question. **Band 5 [20–25 marks]** Candidate gives a very clear explanation of the role of magistrates in civil and criminal cases. Candidates will offer detail on the qualifications and qualities expected from magistrates. Candidates will offer clear and informed analysis of the problems of using magistrates in trials.	**25**

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Question	Answer	Marks
3	**Delegated legislation gives too much power to too many people.** **Describe the different types of delegated legislation and evaluate the validity of the above statement.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of delegated legislation, perhaps offering very basic definitions of the three main types. Candidates are unlikely to offer any illustration and no reference to the analytical issues within the question is expected. **Band 3 [7–12 marks]** Candidate gives a generally accurate explanation of the three main types of delegated legislation, with some examples or illustration, but this is likely to be weak and poorly explained. There is unlikely to be any discussion beyond the three types and no reference to the analytical issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation, with illustration, of the three main types of delegated legislation. Some reference to controls and methods of creation may be included, but may not have wide ranging illustration or explanation at the lower end of the band. Better candidates may link the comment in the question to the need for controls over the use of such powers **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the three types of DL, with good levels of illustration and explanation. Candidates explain the controls and the need for them in some detail and evaluate the issues within the question well and draw well informed conclusions.	**25**

Question	Answer	Marks
4	**Outline the law concerning bail. Consider whether the criteria used by the police and the courts in granting or refusing bail are satisfactory.** **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. There will be little or no attempt to address the application issues in the question. **Band 3 [7–12 marks]** Candidate gives a basic account of the concept of bail. This is, however, likely to be superficial and poorly explained. Candidate may introduce some attempts at analysis, 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, statutory reference and example. Better candidates will attempt to include some analysis, but at the lower end of the band this may be limited and lacking in detail or reasoned argument. Better candidates may include reference to both police and court bail. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of bail, 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 analytical issues and draw reasoned and logical conclusions.	**25**

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Question	Answer	Marks
5	**The Crown Prosecution Service (CPS) was created after a report by the Phillips Commission identified shortcomings in the prosecution process. Explain the function of the CPS and evaluate its effectiveness.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the function of the CPS but goes no further. 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 function of the CPS. There may be brief mention of detail, but this may be superficial and poorly explained. There is likely to very little, if any, reference to the analytical issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the function of the CPS, but this may not be wide ranging or detailed. Candidate can explain the criteria used in prosecution decisions. Better candidates may begin to address the analytical 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 unfocused on the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the function of the CPS with detailed explanation of the prosecution criteria and use of cases to illustrate this. Candidate considers the analytical issues concerning miscarriages of justice in some detail drawing well-reasoned conclusions	**25**

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Question	Answer	Marks
6	**Explain, with examples, the various methods of alternative dispute resolution (ADR) available. Discuss why these methods may be preferable to commencing a case in the civil courts.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the idea of ADR but there will be no coherent or detailed explanation of the various types. **Band 3 [7–12 marks]** Candidate gives a basic explanation of some of the different types of ADR. Candidates may demonstrate some limited understanding on why it can provide a better solution then using the courts. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of all of the different types of ADR and the circumstances in which each type may be used. Candidates include some discussion of the various merits of each type and a comparison to the use of the courts. **Band 5 [20–25 marks]** Candidate gives a clear explanation of the all the different types of ADR and the circumstances in which each type would be used. A discussion of tribunals can be credited, but candidates need to recognise that Tribunals are not really an alternative but a requirement in some areas. Candidate offers clear and informed links to the analytical component of the question.	**25**

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