Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/11**

Paper 1 Structure and Operation of the English Legal System **October/November 2020**

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 out 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.

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.

Question	Answer	Marks
1	**Describe the role of parliament, the judiciary, public opinion and pressure groups when generating ideas for new law. Assess which of these is most likely to be successful.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Candidate gives a very basic discription of the contribution of pressure groups, and/or parliament, and/or the judiciary and/or public opinion to law creation. Candidates are unlikely to offer any illustration and no reference to the evaluative issues within the question is expected. **Band 3** **[7–12 marks]** Candidate gives a generally accurate discription of the contribution of pressure groups, and/or parliament, and/or the judiciary and/or public opinion 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. If only one area is considered candidates may not achieve marks beyond Band 3. **Band 4** **[13–19 marks]** Candidate gives a reasonable discription, with illustration, of the contribution of pressure groups, parliament, the judiciary and public opinion to law creation, but may not have wide-ranging illustration at the lower end of the band. Better responses may give include 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 discription of the contribution of pressure groups, parliament, the judiciary and public opinion 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 four areas and draws well-informed conclusions on their effectiveness. If all areas of the question are not considered, candidates may not achieve marks in Band 5.	**25**

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Question	Answer	Marks
2	**Explain the process by which a jury is selected. Assess the extent to which this ensures that a jury reflects its community.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Candidate gives a very basic explanation of the selection process for juries, but with little accurate detail and vague evaluative comment. **Band 3** **[7–12 marks]** Candidate gives a basic explanation of the selection of juries with some detail and some limited evaluative comment. **Band 4** **[13–19 marks]** Candidate gives a reasonable explanation of selection of juries in criminal trials perhaps including qualification, disqualification, eligibility, excusal, challenge and vetting. Some attempt to link to the evaluative component of the question, but at the lower end of the band this may mainly comprise generic advantages and disadvantages. **Band 5** **[20–25 marks]** Candidate gives a clear explanation of the selection of juries in criminal trials including qualification, disqualification, eligibility, excusal, challenge, and vetting. Clearly illustrates the criticism of composition using case law to illustrate the discussion where relevant and drawing well-reasoned conclusions.	**25**

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Question	Answer	Marks
3	**Describe the current structure of the tribunal system. Assess the extent to which it is more effective than the civil courts.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Candidate gives a very basic discription of the concept of and structure of tribunals. Candidates are unlikely to offer any illustration and no reference to the evaluative issues within the question is expected. Candidates who do not mention the post 2007 reforms may not achieve marks above Band 2. **Band 3** **[7–12 marks]** Candidate gives a generally accurate discription of the structure of tribunals, but this is likely to be weak and poorly explained. There is unlikely to be any discussion on the new tiers in detail and very little reference to the evaluative issues within the question. **Band 4** **[13–19 marks]** Candidate gives a reasonable discription, with illustration, of the organisation, composition and function of some tribunals, but may not have wide-ranging illustration. There may be some detail on the new tiers, the function of different tribunals within each tier, and any appeals processes. There may be some detail on composition and function. Better responses may begin to address the evaluative issues within the question, comparing the effectiveness of tribunals and the courts, but this will not be wide-ranging at the lower end of the band. Issues considered may include cost, speed, lack of formality, lack of need for legal representation in tribunals as compared with the civil courts. **Band 5** **[20–25 marks]** Candidate gives a clear and very detailed discription of a variety of tribunals with good levels of illustration and explanation. There will be good detail on the new tiers, the function of different tribunals within each tier, and any appeals processes. There will be good detail on composition and function. Candidate evaluates the issues within the question well, covering the effectiveness and success of tribunals, comparing them to court processes, and draws well-informed conclusions on their effectiveness. Issues considered may include cost, speed, lack of formality, lack of need for legal representation in tribunals as compared with the civil courts.	**25**

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Question	Answer	Marks
4	**Explain how a judge might avoid a precedent. Assess the extent to which it is possible for a judge to create new laws.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Candidate gives a very basic explanation of precedent, but with no real detail or accuracy. Candidate may make brief reference to concept of judicial lawmaking, but this may be underdeveloped and list-like. **Band 3** **[7–12 marks]** Candidate gives a brief, but generally accurate explanation of the workings of precedent. These are, however, likely to be superficial and poorly explained and bear little relevance to the question. There is unlikely to be any discussion of detail or examples to illustrate the answer and little developed reference to the evaluative aspect of the question. **Band 4** **[13–19 marks]** Candidate gives a reasonable explanation of the concepts of precedent with some useful detail and example. Candidate may consider ratio, obiter, and the position of the various courts with reference to the ability to develop law. Better responses will illustrate this with a range of case law and example, but this may be limited. Candidate may address some of the evaluative issues concerning judicial lawmaking, such as flexibility, speed of response to social change, fairness, consistency, rigidity, volume of case law and the democratic argument against judicial lawmaking and relate these issues to the question. **Band 5** **[20–25 marks]** Candidate gives a clear and very detailed explanation of the concepts of precedent (as in Band 4) with good levels of illustration and explanation. Candidate clearly links the evaluative aspect of the question and presents a logical and reasoned argument which might include some of the evaluative issues concerning judicial lawmaking, such as flexibility, speed of response to social change, fairness, consistency, rigidity, volume of case law and the democratic argument against judicial lawmaking, and relate these issues to the question.	**25**

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Question	Answer	Marks
5	**Leah has been charged with theft of a valuable painting, a triable either way offence.** **Explain the process through which her case will pass from Leah's first appearance in court to the commencement of her trial. Discuss the factors which will have to be considered when deciding the court in which she is to be tried.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Candidate gives a very basic explanation of the issues, but with no real detail or accuracy. Candidates are unlikely to offer any explanation of the type of crime, but may make some confused references to criminal courts. **Band 3** **[7–12 marks]** Candidate gives a brief but generally accurate explanation of the courts involved. These are, however, likely to be superficial and poorly explained. There is unlikely to be any discussion of detail and very little reference to the situation set out within the question. **Band 4** **[13–19 marks]** Candidate gives a reasonable explanation of the courts involved and identifies the courts and processes involved (Magistrates' Court, early administrative hearing, plea before venue, mode of trial process, Crown Court, etc.) with some useful detail. Better responses may begin to address the evaluative issues within the question, such as reasons for choice of venue, and application to the scenario, but this may be limited. Points to support use of the Crown Court may include formality, professional judges, the tendency of juries to acquit, whilst argument for the Magistrates' Court may include speed of trial, lower potential sentences and lack of publicity. **Band 5** **[20–25 marks]** Candidate gives a clear and very detailed explanation of the process (as described in Band 4) with good levels of illustration and explanation. Candidate considers the issues of choice of venue within the question well, and draws well informed conclusions, making good reference to the scenario. Points to support use of the Crown Court may include formality, professional judges, the tendency of juries to acquit, while argument for the Magistrates' Court may include speed of trial, lower potential sentences and lack of publicity. Candidates who make no reference to the scenario will not be able to achieve marks in Band 5.	**25**

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Question	Answer	Marks
6	**Compare the role of a barrister with the role of a solicitor. Assess the extent to which the public might be better served by having only one legal profession.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the role of barristers and/or solicitors, but is unlikely to include any detail or any reference to the evaluative issues within the question. **Band 3 [7–12 marks]** Candidate gives a basic explanation of the role of barristers and/or solicitors. There is unlikely to be any detail or comparison of the professions. The evaluative aspect of the question is unlikely to be considered in any depth. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the role of both barristers and solicitors and draws points of comparison and difference, but at the lower end of the mark band this may not have extensive detail or be fully balanced. Candidate makes attempts to address the evaluative component of the question. Comparisons in role may include working within specialist areas of law, rights of advocacy for both (though limited for solicitors as advocates), contact with clients, new working practices, alternative business structures, work with the CPS, appointment as QC and as judges. Candidate may include discussion of Courts & Legal Services Act 1990, Access to Justice Act 1999, Legal Services Act 2007. **Band 5 [20–25 marks]** Candidate gives a clear explanation of the role of the two professions and draws clear and well explained points of comparison and difference over role. Candidate clearly explains and addresses the evaluative component of the question by recognising changes to the roles of the profession. Comparisons in role may include; working within specialist areas of law, rights of advocacy for both (though limited for solicitors), contact with clients, new working practices, multi-disciplinary practices, work with the CPS. Candidate may include discussion of Courts & Legal Services Act 1990, Access to Justice Act 1999 Legal Services Act 2007. Candidate draws reasoned and well supported conclusions.	**25**

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