Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/12**

Paper 1 **October/November 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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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.

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	**Tatleen has been charged with the theft of £2000 from her place of work. Theft is a triable either way offence.** **Explain the pre-trial process for Tatleen after she has been charged. Discuss the issues she should consider when deciding on a venue for trial.** **Indicative Content** **Responses may include** – Bail, Bail Act 1976, mode of trial, plea before venue, s. 176, Anti-Social Behaviour, Crime and Policing Act 2014, Magistrates' jurisdiction, s19 Magistrates Court Act 1980, s19(4) Magistrates Court Act 1980, defendants election. **Evaluation:** Crown Court: more formal, legal representation, better chance of acquittal, may take longer to get to trial, benefit if remanded in custody. Magistrates Court: quicker process, level of publicity, less chance of acquittal, lower maximum sentence, refers to scenario. **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 may make some confused references to criminal courts and/or reference to the evaluative issues in general terms. **Band 3 [7–12 marks]** Candidate gives a basic explanation of the courts and processes 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 or the evaluative issues. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the courts involved and identifies the courts and processes involved with some useful detail. Better responses may begin to address the evaluative issues within the question, but this may be limited at the lower end of the band. Candidates who make no reference to the scenario may gain no more than 13 marks. **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.	**25**

Question	Answer	Marks
2	**Describe the training of lay magistrates and their role in both civil and criminal cases. Assess whether the training ensures effective lay personnel.** **Indicative Content** **Responses may include –** Civil: non-payment of council tax, non-payment of TV licenses, appeals from refusal of licences for the sale of alcohol by the local authority, licences for betting and gaming establishments, family court concerning adoption orders and proceedings under the Children Act 1989. Criminal: trying summary and TEW cases, preliminary hearings for indictable cases, bail, remand hearings, youth court, hearing appeals in the Crown court. Training: supervised by Magisterial Committee of Judicial College, carried out in local areas by clerk or through local universities, 30 courses run each year, provides bench books and good practice guides. Introductory training, on organisation administration and role, key skills, knowledge, attend court to observe, visits, mentors, for first two years. Appraisal. **Evaluation:** unqualified in law, qualifications ensure links with community, tries to prevent bias, training gives experience and advice from established magistrates, visits allow understanding, legal training ensures competence. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the training and/or role of magistrates in criminal and/or civil cases. There may be reference to the evaluative issues in general terms. **Band 3 [7–12 marks]** Candidate gives a basic outline of the training and/or civil and/or criminal role but this may not have wide range or accuracy. There is unlikely to be any consideration of the evaluative component of the question beyond simplistic points of advantages/disadvantages. **Band 4 [13–19 marks]** Candidate gives a reasonable description of the role of magistrates in civil and criminal cases and the training process. Candidates at the upper end of the band may make an attempt at a discussion of the evaluative component of the question, explaining how training may remove the problems of amateurism. **Band 5 [20–25 marks]** Candidate gives a very good description of the role of magistrates in civil and criminal cases. Candidate gives very good levels of detail on the training of magistrates. Candidates will offer clear and informed evaluation of the problems of using unqualified magistrates in civil and criminal cases.	**25**

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Question	Answer	Marks
3	**Describe the process through which a Bill must pass to become an Act of Parliament.** **Discuss the extent to which this process leads to the creation of effective laws.** **Indicative Content** **Responses may include** – 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 responses 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 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
4	**The rules of precedent mean that law is static and cannot change.** **Explain how precedent works. Assess the accuracy of the statement above.** **Indicative Content** **Responses may include** – ratio, obiter, binding, original and persuasive precedents, law reporting, hierarchy of courts, position of Supreme Court and Court of Appeal, distinguishing, overruling and reversing, all with relevant case examples. **Evaluation:** ability of SC to overrule previous decisions, desirability of these changes, ability of CA to avoid previous decisions and the limitations imposed by Young, Lord Denning's attempt to free CA from binding effect of SC decisions, effectiveness and desirability of distinguishing. **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 law-making, but this may be under-developed and list-like. There may be reference to the evaluative issues in very general terms. **Band 3 [7–12 marks]** Candidate gives a basic 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 concerning the ability to change. Candidates who do not use any case examples may gain no more than 12 marks. **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 the freedom of judges to make/change law and relate these to this question. **Band 5 [20–25 marks]** Candidate gives a very good 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.	**25**

Question	Answer	Marks
5	**In 2018, research showed that 29% of judges were female.** **Describe the recruitment and appointment processes for the judiciary. Assess whether these processes can improve diversity in the judiciary.** **Indicative Content** **Responses may include –** Constitutional Reform Act 2005, Crime & Courts Act 2013, Judicial Appointments Commission, judicial qualities, qualifications, Courts & Legal Services Act 1990, Tribunals, Court and Enforcement Act 2007, processes for Justices of the Supreme Court, Lords Justices of Appeal, High Court Judges, and inferior judges. **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, 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 recruitment and appointment processes of the judiciary 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 account of the recruitment and appointment procedures for the judiciary. 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 legal detail. **Band 4 [13–19 marks]** Candidate gives a reasonable description of the recruitment and appointment procedures for the judiciary with some useful detail and example. Candidates may compare the new procedure with the older process. Better responses 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. Some better responses may be able to discuss the differences in appointment between the superior and inferior judiciary. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed description of the appointment of the judiciary with good levels of illustration. Candidates are able to demonstrate clear understanding of the issues and including reasoned evaluative commentary making use of the statistics given. Candidates will appreciate the difference in appointment for different levels of judiciary. Better responses may include consideration of the position of the Lord Chancellor and the separation of powers.	**25**

Question	Answer	Marks
6	**Describe the routes of appeal open to both prosecution and defence against conviction and sentence in the Crown Court. Assess the effectiveness of this process in achieving justice.** **Indicative Content** **Responses may include** – Criminal Appeal Act 1995. Defendant: conviction, sentence, leave to appeal from CA, granted if conviction is unsafe, effect of HRA 1998, new evidence, CA can allow appeal and quash conviction, can vary conviction, can uphold conviction, can reduce sentence, can order retrial. Double jeopardy rules. Prosecution: appeals against acquittal only of jury 'nobbling' or new and compelling evidence, removal of double jeopardy Criminal Justice Act 2003 for serious offences only, can refer a point of law (Attorney General's Reference Criminal Justice Act 1972), appeals against lenient sentence s36 Criminal Justice Act 1988. P and D may appeal further to Supreme Court (SC) only if the case is certified as involving a point of law of general public importance, with leave. **Evaluation:** Defendant, leave difficult to obtain, few appeals are successful even if leave granted, hard to arrange appeal if D is in prison or is of limited means, retrials now more common, Prosecution, increase in appeals concerning lenient sentencing. In general a function of a just system to allow a second hearing. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the concept of appeal and/or refers to the evaluative issues in general terms. **Band 3 [7–12 marks]** Candidate gives a brief but generally accurate description of the paths and grounds of appeal for prosecution and/or defence, perhaps naming some relevant courts. This may be presented in rather a generic way, with little detail or development, or focus on the evaluative issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable description of the routes and grounds of appeal for prosecution and/or defence. Better responses may begin to address the specific issues of grounds and routes in more detail and deal with both prosecution and defence issues, but at the lower end of the mark band this may be limited and unfocussed on the evaluative aspect of the question. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed description of the grounds for and routes of appeal for both prosecution and defence. Candidate clearly addresses the evaluative aspect of the question.	**25**