Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/12**

Paper 1 **October/November 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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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	**Describe the selection process for the jury. Assess how far this process can ensure that those selected as jurors can fulfil their role without bias.** **Indicative Content** **Responses may include –** Juries Act 1974, Criminal Justice Act 2003, Criminal Justice and Courts Act 2015, selected from electoral roll, by computer, qualifications; age, electoral roll, residence, no mental disorder, not disqualified by criminal convictions or lack of capacity, may be excused or deferred, vetting *Ex P Brownlow 1980, R v Mason, ABC Trial*, challenge to array; *Romford Case, R v Fraser 1987, R v Ford*, for cause; *R v Wilson, R v Sprasson, stand by; AG's Guidelines 1988.* **Evaluation:** those with poor English, homeless not on roll, deaf and blind jurors, legal professionals who can now sit on a jury, unwilling jurors, rationale behind the removal of those with lack of capacity or convictions, effectiveness of challenge and vetting, use of discretionary excusals**.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic description of the selection process for jurors, but with little accurate detail and vague evaluative comment. **Band 3 [7–12 marks]** Candidate gives a basic description of the selection of jurors with some detail and/or refers to the evaluative issues in general terms. **Band 4 [13–19 marks]** Candidate gives a reasonable description of selection of jurors perhaps including qualification, disqualification, eligibility, excusal, and challenge and vetting. At the upper end of the mark band candidates may include some case and statute citation to support their explanation. Candidate attempts to link to the evaluative component of the question and discuss whether the processes are effective in removing bias. **Band 5 [20–25 marks]** Candidate gives a very good description of the selection of jurors including qualification, disqualification, eligibility, excusal, and challenge and vetting. Candidate includes appropriate citation of cases and statute to support their answer. Candidate discusses the validity of using these processes to remove bias and draws well-reasoned conclusions.	**25**

Question	Answer	Marks
2	**Explain how Equity developed to solve problems caused by the common law. Assess the extent to which it has been successful in solving these problems.** **Indicative Content** **Responses may include –** account of the development of common law and equity, modern use of maxims to avoid issues such as unfair decisions, lack of remedies, time lapse, *Berry v Berry 1929, Leaf v International Galleries 1950, D&D Builders v Rees 1965, Chappell v Times Newspapers 1975, Kennaway v Thompson 1980, Warner Bros v Nelson 1937, Mareva Compania v International Bulk Carriers 1975, Anton Piller KG v Manufacturing Processes 1976*, use of injunctions in domestic violence, employment law and where there was no other relevant remedy, deserted wives equity, use of mortgages and trusts to avoid issues of property transfer, new concepts, *Central London Properties Ltd v High Trees House Ltd 1947*. **Evaluation**: problems with common law, equity still takes precedence where conflict, maxims still used today, range of 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 the concept of equity, but goes no further and /or refers to evaluative issues in general terms. **Band 3 [7–12 marks]** Candidate gives a basic explanation of the development of common law and equity. There may be brief mention of concepts, maxims, or remedies, but these may be superficial, poorly explained and not well linked to the question. There is unlikely to be any discussion of detail and very little, if any, reference to the evaluative issues within the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the development of common law, equity. Better candidates may begin to address the evaluative issues of the modern use of Equity within the question, using maxims, concepts, and remedies as illustration 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 the development of common law and equity with detailed and wide-ranging illustration. Candidate evaluates the issues of modern use within the question well, using maxims, concepts, and remedies as illustration.	**25**

Question	Answer	Marks
3	**Explain the rights granted to citizens by the Human Rights Act 1998. Assess the extent to which this Act has been successful in protecting human rights.** **Indicative Content** **Responses may include –** Council of Europe 1949, created European Convention on Human Rights, incorporated into English law by the Human Rights Act 1998, (as Schedule 1 of the Act): Art 2 right to life, Art 3 freedom from torture, Art 4 slavery, Art 5 right to liberty and a fair trial, *Sander v UK 2000*, Art 6 fair hearing within a reasonable time, *Hanif v UK 2012,* Art 7 not to be found guilty of an action which was not a crime at the time, Art 8 right to privacy, *Nicklinson 2014*, *Douglas v Hello! Ltd 2001, Hatton v UK 2001*, Art 9 right to freedom of thought and religion, Art 10 freedom of expression, Art 11 right to peaceful assembly, Art 12 right to marry. **Evaluation:** through use of case law illustrating successful use of HRA, effect of HRA on statutory interpretation, *Re Medicaments 2001, Mendoza v Ghaidan 2002*, declarations of incompatibility *H v Mental Health Tribunal 2001, A v S of S for the Home Department 2004,* remedial orders *B & L v UK 2006* **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the creation and content HRA but is unlikely to include any detail beyond general aims/articles and/or refers to the evaluative issues in general terms **Band 3 [7–12 marks]** Candidate gives a basic explanation of the creation of HRA and its effect on the protection of the rights of the citizen in the UK. There is unlikely to be any detail beyond brief citation of Articles or sections of the act. Candidate may do little more than rehearse the rights protected by the act. The evaluative aspect of the question is unlikely to be considered in much detail. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the creation HRA and its impact on citizens. At the upper end of the band there may be good examples drawn from case law and detail on the relevant articles. At the upper end of the band the candidate makes attempts to address the evaluative component of the question. **Band 5 [20–25 marks]** Candidate gives a clear explanation of the creation HRA with good citation of the act/articles (as in Band 4) and a wide range of relevant case law. Candidate clearly addresses the evaluative component of the question.	**25**

Question	Answer	Marks
4	**Describe how a defendant found guilty of a criminal offence in the Magistrates' court might appeal against conviction or sentence. Discuss the factors a defendant might consider when making any appeal.** **Indicative Content** **Responses may include –** Appeals to Crown Court; if plea of guilty, only appeal against sentence, if not guilty plea can appeal against conviction/sentence, no leave needed, rehearing at Crown Court judge + 2 magistrates, confirm, reverse, vary decision, can confirm, increase, or decrease sentence. If on a point of law can be decided by Crown Court or further appeal by way of case stated to QBD. Case stated appeals*;* On point of law to QBD, can be direct from Magistrates' Court, state case, set out findings of fact and decision, panel of 2/3 High Court Judges in QBD, only by defendant to challenge a conviction, not sentence, can vary, reverse, or remit case to Magistrates' Court. Further appeal to Supreme Court; from QBD, only of certified point of law of general public importance, with leave from QBD or SC, *C v DPP 1994.* **Evaluation:** Few appeals are successful, approx. 12 000 per year, appeal allowed in less than half cases, hard to arrange appeal if D is in prison or is of limited means, technical, requires legal advice. 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 refer 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 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 defence. Better candidates 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 defence. Candidate clearly addresses the evaluative aspect of the question.	**25**

Question	Answer	Marks
5	**Explain the law that governs the treatment of individuals in custody at a police station. Assess whether the law is adequate to protect individuals in these circumstances.** **Indicative Content** **Responses may include –** PACE 1984, Codes of Practice C, E, right to have someone informed, s56 PACE, right to legal advice, *R v Samuel 1988, R v Grant 2005*, interviews, cautioning, recording *R v Halliwell 2012*, appropriate adult, *R v Aspinall 1999*, prevention of oppression s76 PACE, exclusion of evidence s78 PACE, searches, fingerprints, body samples, ss54, 55 and 61 PACE, right to silence CJPO Act 1994. Relevant links to Bail Act. **Evaluation:** Commentary on the effectiveness of these protections and discussion of cases. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6]** Candidate gives a very basic explanation of the law concerning those in custody at the police station but is unlikely to include any detail or any reference to authority. Any reference to the evaluative issues may be in general terms. **Band 3 [7–12]** Candidate gives a basic explanation of the law concerning those in custody at police station. 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 detail. **Band 4 [13–19]** Candidate gives a reasonable explanation of the law concerning those in custody at the police station. 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 some attempts to address the evaluative component of the question. Candidate would be unlikely to gain more than 13 marks without reference to relevant acts/codes of practice/cases. **Band 5 [20–25]** Candidate gives a very good explanation of the law concerning those in custody at the police station with good citation of statute, codes and case law. Candidate clearly addresses the evaluative component of the question and draws well-argued conclusions.	**25**

Question	Answer	Marks
6	**Explain the role of solicitors and their rights of advocacy. Assess the extent to which changes to their role and rights of advocacy have improved the service they can offer.** **Indicative Content** **Responses may include –** Role*;* private practice in firms/partnerships/CPS/government departments. May work as sole practitioner. General advice, consumer issues, housing, business, family issues, wills, interviewing clients, writing letters, drafting contracts, conveyancing. May represent clients in court if has rights. Alternative Business Structures (ABS), Legal Services Act 2007 Rights of advocacy; always been able to represent clients in Magistrates' Court and County Court, *Abse v Smith 1986*, Courts & Legal Services Act 1990, can apply for certificate of advocacy in higher courts, granted if evidence of experience and passes an exam on rules of evidence. Access to Justice Act 1999, in 2015 system of accreditation created to allow work as criminal advocate. Level 1 Magistrates' Court and Crown Court. Level 2 more serious criminal cases at Crown Court with assessment. Can then progress to higher levels by further assessment. Can also be appointed as QC/KC when higher levels achieved. **Evaluation:** by 2015 only 6500 had higher rights of audience, better for public as can use one lawyer for whole process, but limited numbers. Overlap of professions allows barristers and solicitors to be able to work together in ABS, reduces costs and avoids public having to seek out two types of professional. **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Candidate gives a very basic explanation of the role and/or rights of advocacy of solicitors. 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 basic explanation of the role and/or rights of advocacy of the solicitor, but this is unlikely to have any illustration and little or no clear reference to evaluative aspects of the question. **Band 4 [13–19 marks]** Candidate gives a reasonable explanation of the role and rights of advocacy of solicitors but the two elements may not be balanced. There will be reference to the role of the profession and detail on the acquisition of rights of audience. There may be some reference to statutory authority. There will be some attempts to link to the evaluative components of the question, considering impact on the public. **Band 5 [20–25 marks]** Candidate gives a clear and very detailed explanation of the role and rights of advocacy of solicitors with good levels of detail and statutory authority where relevant. Candidates will address the evaluative components of the question and draw well-reasoned conclusions.	**25**