

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and Advanced Level

MARK SCHEME for the June 2005 question paper

9084 Law

9084/01

Paper 1, (Structure and Operation of the English Legal System)

maximum mark 75

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which Examiners were initially instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began. Any substantial changes to the mark scheme that arose from these discussions will be recorded in the published *Report on the Examination*.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the *Report on the Examination*.

- CIE will not enter into discussion or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the June 2005 question papers for most IGCSE and GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



Grade thresholds for Syllabus 9084 (Law) in the June 2005 examination.

| | maximum mark available | minimum mark required for grade: | | |
|-------------|------------------------|----------------------------------|----|----|
| | | A | B | E |
| Component 1 | 75 | 54 | 49 | 32 |

The thresholds (minimum marks) for Grades C and D are normally set by dividing the mark range between the B and the E thresholds into three. For example, if the difference between the B and the E threshold is 24 marks, the C threshold is set 8 marks below the B threshold and the D threshold is set another 8 marks down. If dividing the interval by three results in a fraction of a mark, then the threshold is normally rounded down.

June 2005

GCE ADVANCED SUBSIDIARY/ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/01

LAW

(Structure and Operation of the English Legal System)



| | | | |
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1 Explanation of terms. A brief introduction to delegated legislation. Law introduced in Parliament with broad principles which are later filled in by non-elected bodies with expertise in the particular field who have law making powers. Examples include byelaws, statutory instruments, orders in council. The risks are that unelected bodies can misuse their position and law making is no longer democratic. It may not be subject to debate so may be flawed. The risks may be reduced by ensuring that delegated legislation is subjected to scrutiny by Parliament. Candidates should look at the controls in place today such as the affirmative or negative procedures in Parliament and also the controls by the courts who can declare legislation to be ultra vires if it has gone beyond the ambit of the enabling act.

[25]

2 Emphasis should be on the jurisdiction of magistrates rather than on the selection process. However, marks should be awarded for identifying who can sit as magistrates. Jurisdiction over minor criminal offences. Reference to their administrative role and civil jurisdiction. Their huge case load each year. The real problem is their lack of expertise but this is offset by the fact that they have some training and are dealing with minor cases. They have the assistance of a court clerk. The value is having members of the public becoming involved in the court process. It saves money as they are unpaid. May be less satisfactory as fewer cases get to the Crown Court and it is important that an expert is used. Could be replaced by experts. This would save time and possibly money as single magistrates would sit alone. Would lose the involvement of the public in the legal process. Consider role as providing local justice. Particular credit for any reference to use of/reference to District Judges.

Max 18: if no reference to civil jurisdiction.

[25]

3 Answers in the higher mark bands may comment that sentencing principles apply to all cases whether they are for adult or juvenile offenders and these should be cited e.g. denunciation, rehabilitation, retribution, reformation, protection of the public etc. The fact that a young person commits an offence does, however, introduce several points which apply simply because of their age. The need to rehabilitate. The need to keep a young person out of custody wherever possible. Custodial institutions should always be separate from adults, the need to maintain access to education. Credit for those candidates who emphasise the principals of sentencing rather than generalised comments. Reparation should be rewarded well.

Max 15: if no mention of youth or age.

Max 12: if generalized answers or sentencing.

[25]

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- 4 This question brings in several aspects of statutory interpretation. Firstly, there may be a general discussion of the literal rule of statutory interpretation. The strict interpretation of words in a statute which may result in an absurd result. Older cases such as *Whiteley v Chappell (1868)* and *London & North Eastern Railway Co v Berriman (1846)* may be used to illustrate the rule, or perhaps more recent cases such as *Clarke v Kato (1998)*, *R v Human Fertilisation and Embryology Authority ex parte Blood (1996)*.

Secondly, discussion of the purposive approach which looks at what Parliament was trying to achieve. See *Magor and St Mellons v Newport Corporation (1950)*. Relevance of influence of Europe.

The third aspect of interpretation is the way the courts set about finding what is Parliament's intention. This is mainly achieved by using intrinsic and extrinsic aids to interpretation. The most significant aid to interpretation which is highlighted by the quote is the use of Hansard. Some discussion of *Pepper v Hart* and when courts may use Hansard, e.g. legislation which is ambiguous or obscure or leads to an absurdity; and the material relied on consists of one or more statements by a minister or other promoter of the bill together with such other Parliamentary material as is necessary to understand such statements and their effect; and also where the statements relied on are clear.

The answer should address the quotation and come to a balanced opinion as to whether or not it is true.

Max 19: if there is no reference to quotation in the question. **[25]**

- 5 The rights include the protection of a beneficiary under a trust and the rights of the mortgagor. The remedies include rescission, specific performance, injunctions and rectification. It should be explained that they are only awarded on a discretionary basis. Role of the maxims such as 'must come to court with clean hands'. The common law could only award damages and would not recognise the rights of the beneficiary and the mortgagor. Reasons why the rights and remedies are important should be given. Case law illustrating them should be given. A good answer will then look at the extension to remedies through the Anton Piller order and the Mareva injunction.

[25]

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- 6** Who are the judges? The different levels of the judiciary should be discussed. Judges are drawn from practising lawyers. The emphasis is on barristers. There is no formal application process although posts are now being advertised. Traditionally recruitment has been through a system of recommendation rather than through a formal application system. Education is in the hands of the Judicial Studies board. This is mainly based on observation of judges and some short training courses on aspects such as racial awareness and equal treatment. The system of education is on going but it is often criticised as being either too basic for practitioners in a particular field nor basic enough for judges from a different field. The system allows civil lawyers to sit in Crown Courts. Indeed it is a prerequisite of becoming a judge. This aspect is not satisfactory. Still woefully unrepresentative of the population as a whole. Few women or ethnic minorities and those with disabilities. Often traditional backgrounds although this is changing slowly as the legal profession is opened up to a wider range of people. Particular credit for good critical approach to the issues. **[25]**