

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and Advanced Level

MARK SCHEME for the November 2004 question paper

9084 Law

9084/01

Paper 1, (Essay Questions) 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 November 2004 question papers for most IGCSE and GCE Advanced Level syllabuses.



Grade thresholds taken for Syllabus 9084 (Law) in the November 2004 examination.

| | maximum mark available | minimum mark required for grade: | | |
|-------------|------------------------|----------------------------------|----|----|
| | | A | B | E |
| Component 1 | 75 | 49 | 43 | 21 |

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.

November 2004

GCE ADVANCED SUBSIDIARY/ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/01

LAW
(Essay Questions)



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Question One

Both juries and magistrates should be discussed.

Candidates achieving high marks would be expected to look more at the value of their role rather than the actual contribution made.

It is also important that they do not concentrate too much on the appointment of these lay persons.

Juries

Useful to include the general public in the administration of justice, relatively cheap, only concentrate on the facts not the law, complex cases rarely come before them. The legal system cannot operate without them because of a lack of manpower and because of the cost. Disadvantages: can be slow, inefficient, jurors are resentful, can lead to bizarre decision-making, can lead to greater cost because slows the courts down.

Magistrates

Given some training so have some knowledge of the law, work in groups of three so combine opinions and ideas, saves money as unpaid, gives lay people some insight into the working of the law, only deal with relatively minor offences and cases. The clerk plays a useful role in advising on the law but can be too powerful. Waste time and money and often become set in their ways resulting in larger numbers of cases going on appeal. A single stipendiary magistrate or district judge would be more efficient and save time and money. Disadvantage: do not understand the law or procedure, both of which may then be ignored.

Max 19 [for one aspect only]

Max 25 [where both juries and magistrates mentioned but one in less detail]

Question Two

The doctrine of precedent. The hierarchy of the courts, the value of law reporting. The role of the House of Lords. The 1966 Practice Statement. *Miliangos v George Frank (Textiles) Ltd* [1975], *Re United Railways of the Havana and Regla Warehouses Ltd* and *Schorsch Meier GmbH v Henin*.

The Court of Appeal. Generally bound with some exceptions *Young v Bristol Aeroplane* [1944], *Davis v Johnson* [1979]. Lord Denning's willingness to disregard previous decisions. Other examples may be used e.g. *R v R* [1991].

Candidates must analyse the impact of the doctrine on the development of the law if they wish to reach the higher mark bands. They may look at the relatively few times that previous decisions of the House of Lords are overruled suggesting that this might be the same for the Court of Appeal. Very good candidates will point out that in fact many more appeal to the CA because it is easier to get leave and cheaper and generally less intimidating so the impact of allowing the CA to depart from their previous decisions may be greater.

Contrasts between the civil division and the criminal division would be expected. Greater freedom to depart from previous decisions would be expected in the criminal division. Misapplication of the law or a misunderstanding of the law. Applies where people's liberty is involved. *R v Taylor*.

Max 20 [for little or no criticism of *stare decisis*]

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Question Three

The main focus of the question looks at the advantages of using delegated legislation

Nature of Delegated Legislation

Types of delegated legislation: byelaws, Orders in Council, Statutory Instruments.

The advantages are mainly practical. Saves time, uses expertise that may not be available amongst MPs. Mainly used for minor details which would be a waste of parliamentary time.

Disadvantages: Could be seen as undermining democracy. Could allow legislation to be passed without full scrutiny. Controls are insufficient.

Controls may be discussed.

Candidates who discuss the quotation in any detail should reach the higher mark bands.

Case Law: *Aylesbury Mushrooms/Gardiner v Sevenoaks BC*.

Credit for specifically addressing the quote

Question Four

An outline of the growth of common law. The need for centralisation of the judiciary. The gradual change from a dynamic and adaptable system to a system that would not be flexible. Examples could include the problems with the writ system and the lack of flexible remedies.

The growth of equity. The increase in numbers of remedies and rights e.g. the rights of the beneficiary under a trust.

The question whether there are rights under equity or whether equity really is a 'gloss on the common law'.

Particular credit to be given to candidates who consider the quotation.

The development of equity today. The growth of new remedies. Anton Pillar orders (search orders). The mareva injunction and use of interim injunctions (freezing orders).

Max 15 [Purely historical answers with little reference to present day use of equity]

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Question Five

Law Reform bodies and more informal means of achieving changes in the law.

The Law Commission. History of its growth. Estd. 1965 to review the law of England and Wales. Aims to codify the law, remove anomalies, repeal obsolete and unnecessary enactments, and consolidate the law, generally to simplify and modernise the law. Purely advisory. The Law Commission contends that between 1965 and 2000, 102 of its law reports have been implemented. The Contracts (Rights of Third parties) Act 1999 was based on recommendations of the Law Commission.

The Law Reform Committee 1952. Part time. Considers areas of civil law. Main achievement the Occupiers Liability Act 1957.

The Criminal Law Revision Committee. Set up in 1957. Part-time body recommending changes in the criminal law. One of its main achievements: The Theft Acts 1968, 1978.

Royal commissions e.g. the Benson Report.

The media.

Private Members Bills. These depend on a Member of Parliament being successful in the ballot.

The courts. Some discussion here may be made of the operation of precedent and the freedom of the courts to change rules. *BRB v Herrington*.

Criminal Appeals Revision Committee: Forced rehearings of cases/issues.

Question Six

Pre-sentence Reports.

There are several aspects to the task of the judge in sentencing: the offence, the background of the offender and the aims of sentencing.

Some offences carry fixed terms e.g. life imprisonment for murder. The judge has little effect on this except to recommend a minimum term. Other offences carry a tariff and the judge then has to work within this.

A very good candidate might refer to the increasing intervention of Parliament and government in the sentencing process. However, it will still be possible to get into the higher mark bands even if this is ignored. The background of the offender will include previous convictions, reports including medical and financial.

The aims include retribution, denunciation, deterrence and incapacitation. Some emphasis should be placed on rehabilitation and how this can be achieved e.g. by the use of community sentencing.

Credit for differentiation between custodial and non-custodial sentences. Guidance from statute as to when a custodial sentence will be imposed.

Max 16 [Answers purely based on aims and no examples of sentences]