

MARK SCHEME for the October/November 2006 question paper

9084 LAW

9084/01 Paper 1, maximum raw 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 instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began.

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.

The grade thresholds for various grades are published in the report on the examination for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses.

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CIE is publishing the mark schemes for the October/November 2006 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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1 The magistrates court is the main pillar of the English Legal System. Discuss this statement.

The magistrates court has an extensive jurisdiction both criminal and civil.

Criminal: This covers all summary offences and offences which can be tried in either court. The court has a number of other functions such as the decision about where a case is going to be tried and also whether bail should be granted and other administrative procedures. It has an extensive jurisdiction over youth offences for which magistrates will receive special training.

Special credit should be given to discussion of the new powers to grant ASBOs which shows court adapts and is still regarded as playing a valuable part in the court system.

Civil: This covers family matters and also matters such as debt collection. The licensing jurisdiction has recently been transferred so extra credit should be given to candidates who mention this and explain how it has reduced their workload.

Candidates should consider whether the magistrates court is the main pillar of the English Legal System i.e. taking the strain of the caseload from each separate court in the system or is this work quite trivial in comparison to the work of a higher court such as the Queen's Bench Division. Extra credit should be given to answers which look at issues arising from the quote.

Max 18 for discussion of magistrates rather than jurisdiction.

2 The Human Rights Act represents a watershed in the development of the rights of individuals. Consider with appropriate examples the validity of this statement.

The Act incorporates the European Convention on Human Rights into English law. This is not new and it has been possible to rely on the Convention since the UK signed the convention back in the 1950s. The main impact has been the right to rely on the convention in UK courts rather than to pursue an action through the European court of human rights. *R v Secretary of State for Home department ex p Brind (1991)* Reference to the various articles. E.g. right to life Art 2, right to marry Art 12, freedom of thought, conscience and religion Art 9. It is anticipated that these will be dealt with fairly briefly. However the fact that the state can derogate from all but a very few of the rights under the Convention detracts from their impact. Legislation must include a statement of compatibility. The Act also requires courts to take into account any previous decision of the ECHR. The courts can only act against a public authority.

The judiciary cannot simply declare a piece of legislation to be unenforceable but simply state that it is incompatible. There is fast track procedure which would allow any necessary changes to bring legislation into line.

There are restrictions on the HRA in particular the convention has a limited impact as many of the articles are out of date. We have no human rights commission and so its impact is rather piecemeal. The Act did not come into force until Oct 2000 so its impact so far has been limited.

Credit must be given for discussion of any case law based on the Act. e.g. *Brown v A-G for Scotland*.

3 Equity still has a role to play in the English Legal system. Discuss.

Some historical development on the growth of equity. The defects in the common law and the introduction of new remedies and new rights such as the trust and the mortgage.

There is still a role for equity today. The candidates may consider the equitable rights in property. Deserted Wives' equity leading to the MHA now the FLA 1996. Particular credit should be given to candidates who discuss the remedies introduced over the past 20 years such as the *mareva* injunction and the *Anton Pillar* order.

Max 19 for remedies alone.

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4 To what extent do you think that the role of the solicitor and the barrister have merged into one or whether it is better to have a fused legal system or two separate roles.

The UK still has two distinct branches of the legal profession in spite of moves towards a fused profession. Candidates may trace the development of this area looking firstly at the Ormrod Report and then considering the Courts and Legal Services Act 1990 and other changes statutory or otherwise.

The barrister still is more likely to represent a client in court while a solicitor is more likely to prepare the case. There has been a move towards fusion. In particular the solicitor can represent clients in all higher courts provided he/she has the relevant advocacy certificate. Education is still separate for the professional states although non-law students will study on the same conversion course.

The arguments for a fused profession traditionally focus on cost. The fact that small solicitors firms would close down and only large city-based firms would survive was a reason against fusion but that has not necessarily been the case.

Use of specialists?

5 Consider the role of the judiciary as interpreters of legislation. To what extent are they able to interpret legislation freely?

Rules of statutory interpretation. The freedom of the judiciary to use different rules. The limits of the literal approach and the width of the mischief rule and purposive rule. The rules of language. Candidates may consider the rules in depth but particular credit must be given to any candidate who understands that the judiciary are free to choose whatever rule they wish to use. Rules of language may also be discussed. Appropriate case law will be expected before an answer will be able to reach the higher mark bands.

The better candidates may also look at the role of precedent in statutory interpretation.

Max 16 for only three rules of interpretation but must be done very well.

6 Delegated legislation threatens the democratic system and is too high a price to pay for its contribution as a source of law. Discuss this statement.

Definition of delegated legislation. Different types of delegated legislation e.g. statutory instruments, bye-laws, orders in council. Who can introduce it? The threat posed lies in the fact that it is not directly debated in parliament. Challenge made to democracy because it is not discussed by directly elected members of parliament.

The safeguards, such as parliamentary controls and judicial controls. Are these enough? The courts are able to regard a piece of law as ultra vires and therefore unenforceable is significant. There are arguments that the contribution in the saving of time and the use of expertise is so great that the threat to democracy is far less important and can be controlled through safeguards.

Max 16 for pure discussion of delegated legislation and no discussion of controls.

