

MARK SCHEME for the October/November 2007 question paper

9084 LAW

9084/01

Paper 1, maximum raw mark 75

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.

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 discussions or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the October/November 2007 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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1 Discuss the role of the Crown Prosecution Service in the administration of England and Wales.

The CPS deals with the vast majority of criminal cases *ab initio*.

Credit should be given for any historical consideration of the setting up of the CPS in 1986, in response to the growing demand for a prosecuting body independent of the police, in the wake of the Maguire, Ward, Birmingham 6 cases in the 1970s.

Organisation – 42 areas, corresponding to local policing authorities, each headed by a Chief Crown Prosecutor. Staffed by lawyers, case workers and administrators. DPP appointed for 5 years as head of the whole service.

Early problems e.g. rights of audience, lack of funding and direction, hostility from police etc.

Work of Crown Prosecutors in Magistrates' Court and of CPS Higher Court Advocates in Crown Court as a more recent development.

Particular credit should be given to those who point out the recent closing of the gap between police and CPS in the wake of the introduction of CPS lawyers in major police stations and to those who offer any thoughtful criticism of this.

2 Consider critically the options open to a judge when a statute appears to be imprecise or contradictory. [25]

This is a straightforward question on statutory interpretation and one would hope for some passing recognition of the role of the judge and the courses open to him/her. For a top band answer expect a discussion of why a statute may be imprecise or contradictory.

The three main rules should be covered, supported by case law in the better answers, as should the battery of statutory aids.

Some critical awareness of the growing importance of the purposive approach should be apparent, along with an understanding of the significance of the ruling in Pepper vs Hart.

Answers covering the '3 rules' only should not reach the two top bands.

3 'There is far too much delegated legislation and too little known about it.' Evaluate the advantages and disadvantages of delegated legislation, and consider to what extent you would agree with this statement. [25]

The question asks candidates to define clearly what delegated legislation is, how it arises and why it may be fraught with dangers. The reason for its sheer abundance should be considered, along with the problems that may arise. Similarly, its unknown, unpublicised nature should be discussed, given that ignorance of the law is not generally a defence.

Candidates should look at ways of keeping it in check, in particular parliamentary scrutiny and the possibility of challenge where legislation is *ultra vires*. Where a candidate does not address controls then it is still possible to reach the highest mark band but the answer must be excellent and include some case law.

Some sort of conclusion should be reached.

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4 'Twelve people ignorant of the law, directed by a judge who is likely to be who touch with ordinary life.' Would you say that this is a fair description of a trial in the Crown Court? Give reasons for your answer.

The question asks for consideration of the roles of both judge and jury in the Crown Court. Some explanation of the method by which a jury is selected is required; their task at court; whether they are up to that task intellectually; cases where the jury has been shown to be manifestly perverse or unreliable; and the effect of all this on the defendant. Purely descriptive accounts of juries will not reach the higher mark bands. The much-repeated argument for abolition of the jury in complex fraud trials is of relevance. Candidates should then look at the role of the judge in summing up and directing the jury; whether defendants suffer as a result of the generally esoteric and privileged background of the judiciary. Better answers will perhaps consider past cases where tensions have arisen between judge and jury and attempt to reach a conclusion as to the fairness and efficiency of the whole process. Answers should consider both judge and jury and any imbalance marked accordingly. MAX 21 for omission of judge entirely; MAX 14 for purely descriptive discussion of trial in the crown court.

5 'The system of precedent merely slows down the proper development of the law.' Discuss this statement. [25]

Candidates will need to define 'precedent', touch upon its origins and explain how it operates through the hierarchy of the courts. The role of the House of Lords and the importance of the 1966 Practice Direction need to be considered. Any critical discussion of its limitation should be rewarded. Candidates might usefully touch upon areas of law which have been brought into line with contemporary society by over-ruling e.g. child trespassers in BRB v Herrington, marital rape in R v R; and the rationalisation of the law in cases such as R v Shivpuri. For purely descriptive answers MAX 13 where answer contains no case law at all. MAX 18 for a purely descriptive answer which includes some case law.

6 'The courts are the very last places in which a litigant would be advised to seek resolution of a civil dispute.' Discuss the strengths and weaknesses of the civil court system. Consider the alternatives to taking a civil case to court. [25]

Candidates should look at the shortcomings of the civil courts – slowness, expense, formality etc – and consider whether there are better alternatives, notwithstanding the Woolf reforms in recent years. Those who nonetheless see merits in the orderliness, finality and authority of the courts, particularly their adherence to precedent, should be rewarded. Marks should then be awarded for any decent discussion of the alternatives available e.g. small claims court, A.D.R. and tribunals, with an awareness that not all of them are a panacea for all kinds of dispute. Furthermore, good answers might pick up on the weaknesses of the alternatives – representation problems, lack of finality, the uneven system of appeals etc. ADR only MAX 18. If answer discusses only civil trial then MAX will be 18.