

MARK SCHEME for the October/November 2008 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 2008 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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- 1 Those candidates who merely answer on the theories of sentencing should not be rewarded with marks in the two highest bands. Any discussion of the mechanics of sentencing – mitigation, victims’ personal statements etc. – should be rewarded.

Candidates should then consider the numerous sentencing options, preferably avoiding the ever-popular “rehab”, which the court will consider before arriving at a custodial sentence. Considerable credit should be given to any discussion of recent sentencing “policy” and of the circumstances in which custody becomes inevitable. At that point, consideration of the revitalised suspended sentence and of intermittent custody ought to score very highly indeed.

Max 20 if process is not addressed at all.
Max 15 if question solely concentrates on aims of sentencing.

- 2 The reference to HOLLEY is a mere cunning disguise of an invitation to consider the process of statutory interpretation. Pedestrian accounts of the “three rules” ought not to go higher than half marks. Better answers will cover aids to interpretation and explore the persuasive nature of the kind of “obiter dicta” with which the question begins, as well as looking at the respective roles of Parliament and the judiciary in this context.

Max 13 for description of the three rules only.
Max 20 where second half of the question is not addressed.

Illustration from decided cases and a clear conclusion are expected.

- 3 The answer should include at the very least, competent factual knowledge of the nature and function of lay magistrates and the jury. Better answers will incorporate critical points along the way.

Credit should be given generously for any discussion of the increased training of magistrates and the value of their experience in court.

Similarly reward any intelligent discussion of the tension between English law’s affection for trial by one’s peers and the apparent desire in some quarters for increasing professionalism.

Max 14 where answer concentrates exclusively on one or other e.g. magistrates or juries.

Examples of the type of arguments in favour of retention of lay participation: i) inclusion of the public in the process; ii) cheaper; iii) local knowledge; iv) not case hardened; v) judgment by peers.

Examples of arguments against retention of lay participation: i) no training; ii) not professional lawyers; iii) inconsistent; iv) open to interference and also persuasion from the press etc v) juries not transparent.

Credit to be given for discussion of civil role of the jury and the magistrates but maximum marks can still be achieved if not included.

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4 A fair amount of credit should be given to any discussion of legislation protecting human rights in English law – HRA – the basic rights, such as freedom of movement, family life, religion, and access to a fair trial etc. I see no need to be too prescriptive where either a decent range of rights is considered or a smaller number discussed in greater depth. Higher mark bands would be reached by those who consider more thoughtfully the impact of such legislation on the well-being of society as a whole e.g. does the right to a fair trial inhibit the police or the courts from containing serious crime?

Max 13 for purely pre-HRA discussion.
Max 16 for commentary alone on ECHR and pre-1998 discussion.
Max 18 if second part of question is not addressed at all.

5 This question requires a knowledge of civil procedure and the routes of appeal. Candidates should identify the small claim against the credit card company and how Samantha would proceed. Discussion of the work of the Small Claims Court should be included, along with the absence of any effective appeal.

Candidates should then identify the appropriate venue for the larger civil claim against the builders and its likely progress (or lack of progress) through the courts.

Availability of appeal.

Delays and expense.

Alternative solutions? – reward any discussion of this.

Credit for ADR should be given but maximum 13 for answer solely on ADR.

Maximum marks can only be achieved if the appeal process is addressed.

6 Candidates should identify the main types of delegated legislation, giving examples where appropriate. For higher marks, they should consider the implications of extra-Parliamentary law-making and its dangers, particularly the lack of publicity in a jurisdiction which holds that ignorance of the law is no excuse.

One would expect some critical examination of the safeguards built into the system, as well as the saving of Parliamentary time and public money, also the flexibility of delegated legislation in meeting a variety of situations where regulation is apparently to be desired.

Credit to be given where judicial or parliamentary controls are discussed but not necessary for maximum marks.