

MARK SCHEME for the October/November 2008 question paper

9084 LAW
9084/02 Paper 2, maximum raw mark 50

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 (a) The will is enforceable as it satisfies s.9 Wills Act 1837. It is in writing, signed and witnessed. The gardener does not benefit under the will. Maximum 5 if correct conclusion but no source material included. Maximum 7 if discussion of the fact that the testator signed the envelope but witnesses have signed the paper and candidate uses the sources.
- (b) The gardener can claim the £5000 left to him as it is not left to him under the will but outside the terms of the will and according to R v Young this gift will be upheld. Maximum 3: s.15 and R v Young used but incorrect conclusion. Maximum 5: correct conclusion but no sources. Maximum 10: must refer to s.15 and the principle and some reference to the gift operating as a secret trust.
- (c) The court would not uphold the claim of the secretary as under s.15 Wills Act 1837 any witness to a will or a witness's spouse is unable to benefit under the will. Maximum 3: correct conclusion but incorrect source material. Maximum 3 if incorrect conclusion but discusses s.15. Maximum 10 must refer to s.15 and the principle.
- (d) The contribution of equity mainly relates to property law and in particular the introduction of new rights and remedies such as the mortgage and the trust. The remedies under equity include the injunction and the decree of specific performance and rescission and rectification. Special credit should be given for the more up to date contributions e.g. the newer injunctions such as the Anton Pillar (search order) order and the Mareva injunction (freezing order); the role of equity in jointly owned property. Maximum 20 must be wide ranging to include rights (trusts/and/or mortgage); remedies and some other issues e.g. maxims of equity. Maximum 15: two out of these three e.g. rights and maxims and no other issues such as promissory or proprietary estoppel. Expectation of source material e.g. case law for marks in top band Leaf v International Galleries for remedies or Gissing v Gissing for constructive trusts. Expectation that all answers will include some discussion on the development of equity.
- 2 (a) Bilal would have committed an offence under the Criminal Damage Act according to the decision in R v Caldwell because he did not think of the possibility of there being a risk. He was young but under R v Caldwell no discount would be made of the fact that he was too young to have seen the obvious risk and could not be described as a reasonably prudent person. Under R v G Billy he would not be held to be reckless as he was too young to be fully aware of the risk. Credit should be given to some discussion of his age and the fact that he could have been aware of the obvious risk. Maximum 15 if Caldwell is ignored completely without explanation. Maximum 10 if ignore CDA 1971 completely.
- (b) Procedure will cover the initial proceedings at the Magistrates Court and then the possibility of trial at the Crown Court. Details should fall short of the trial itself since this is expressly excluded by the question. 0 marks for discussion of PACE. Particular credit if candidates discuss procedures at the Youth Court.
- (c) The marks should be spread between both parts. Part (i) House of Lords can overrule past decisions. Candidates should trace the development from the London Tramways case to the 1966 Practice Direction. Some discussion of the sparing use of the Practice direction should be included. Part (ii) Court of Appeal cannot overrule their own decision except if the case comes within the Young v Bristol Aeroplane exceptions or can be distinguished on the facts. Maximum 20 must include some discussion of both courts although can achieve maximum marks if concentrate on one more than the other.