

**MARK SCHEME for the October/November 2009 question paper
for the guidance of teachers**

9084 LAW

9084/11

Paper 11, 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, which would have considered the acceptability of alternative answers.

Mark schemes must be read in conjunction with the question papers and the report on the examination.

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CIE is publishing the mark schemes for the October/November 2009 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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MARK BANDS

- 0 marks** the answer contains no relevant material
- 1–6 marks** the candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
- OR** the candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.
- 7–12 marks** the candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.
- OR** the candidate adapts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules/principles.
- OR** the candidate attempts to introduce material across the range of potential content but it is weak or confused so that no real explanation/conclusion emerges.
- 13–18 marks** where there is more than one issue the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.
- OR** the candidate presents a more limited explanation of all parts of the answer but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.
- 19–25 marks** the candidate presents a detailed explanation and discussion of all areas of relevant law and while there may be some minor inaccuracies and/or some imbalance a coherent explanation emerges.

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1 Candidates will no doubt wish to discuss the broad principles of sentencing, such as rehabilitation, deterrence etc. They also need to consider the options available to the sentencing court. This is a high-value breach of trust, and committal for sentence will be uppermost in the court's mind. I suspect that few candidates will mention it. They should also consider imprisonment (immediate or suspended); a community order; substantial fine and/or compensation; and, although unlikely, conditional discharge.

Any discussion of remorse, the preparation of pre-sentence reports, early discount for a guilty plea should be rewarded. Comparison of both defendants will also be credited.

2 Straightforward precedent question. Requires consideration of the hierarchy of the courts and more detailed discussion of the significance of the 1966 Practice Direction and the circumstances in which it has been applied. Answers should be illustrated from the wealth of relevant case law. Max. 13 for good overall answer with no case law.

3 The structure is there for the candidates, who should show an understanding and knowledge of the PACE codes of Practice, and in particular:

- stop and search
- the nature of the search
- whether the constable actually tells Pete that he is under arrest
- the fact that no appropriate adult is present at interview
- the brushing aside of legal representation
- the failure to bail the defendant

Better answers might consider the purpose of the codes and the potential harm done here to the prosecution case.

4 Candidates need to discuss the selection of juries; their role in both civil and criminal proceedings; their value and representativeness; their shortcomings and failures; and their future prospects.

5 'Ambiguity' and 'absurdity' appear as helpful signals. Candidates should consider the literal, golden and mischief rules as they arise and the options a judge has in selecting the appropriate approach to difficulties of interpretation. Answers really should be illustrated from decided cases and arrive at a considered conclusion to reach the top two bands. Max. 13 for answer which concentrates solely on the three rules.

6 Candidates should consider the broad process by which an Act of Parliament comes about and the fact that this will, in this context, operate as the enabling act for ancillary delegated legislation. This is likely, as here, to take the form of statutory instruments or bye-laws, although any spectacular failure of the statute might conceivably give rise to an Order in Council.

There should be some discussion of the dangers of delegated legislation, the curbs which might validly be placed upon it, particularly in light of its relative obscurity and lack of publicity. Candidates should consider its constitutionality and the effectiveness of judicial review and other safeguards.

What is important is the concept of an enabling Act and what flows there from.