

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and Advanced Level

MARK SCHEME for the June 2005 question paper

9084 Law

9084/02

Paper 2, (Data Response) maximum mark 25

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 initially instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began. Any substantial changes to the mark scheme that arose from these discussions will be recorded in the published *Report on the Examination*.

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 discussion or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the June 2005 question papers for most IGCSE and GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



Grade thresholds for Syllabus 9084 (Law) in the June 2005 examination.

| | maximum mark available | minimum mark required for grade: | | |
|-------------|------------------------|----------------------------------|----|----|
| | | A | B | E |
| Component 2 | 25 | 18 | 16 | 10 |

The thresholds (minimum marks) for Grades C and D are normally set by dividing the mark range between the B and the E thresholds into three. For example, if the difference between the B and the E threshold is 24 marks, the C threshold is set 8 marks below the B threshold and the D threshold is set another 8 marks down. If dividing the interval by three results in a fraction of a mark, then the threshold is normally rounded down.



June 2005

GCE ADVANCED SUBSIDIARY/ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 25

SYLLABUS/COMPONENT: 9084/02

LAW
(Data Response)



| | | | |
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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1: The answer contains no relevant material.

Band 2: 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.

Band 3: 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 adopts 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

OR

The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4: 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.

Band 5: The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

Maximum Mark Allocations:

| Question | 1 | 2 | 3 | 4 | 5 | 6 |
|-----------------|----------|----------|----------|----------|----------|----------|
| Band 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Band 2 | 6 | 6 | 6 | 6 | 6 | 6 |
| Band 3 | 12 | 12 | 12 | 12 | 12 | 12 |
| Band 4 | 19 | 19 | 19 | 19 | 19 | 19 |
| Band 5 | 25 | 25 | 25 | 25 | 25 | 25 |

| | | | |
|---------------|-----------------------------------|-----------------|--------------|
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- 1 (a) This question expects the candidates to read the source material on PACE to ascertain when a police officer can arrest without a warrant, i.e. for an arrestable offence. Credit should also be given if they include that police can also arrest without warrant under various statutes, e.g. Prevention of Terrorism Act 1974 and Sexual Offences Act 1956, Official Secrets Act.

Max 2 – 3: if source materials only.

Max 4: if developing the definitions further but does not include other circumstances of warrant for arrest. **[5]**

- (b) D is charged with burglary – indictable offence. Therefore can be prosecuted in Crown Court and tried by judge and jury, if pleads Not Guilty. Candidates should also state that the initial stages of every prosecution begins in the Magistrates Court and this is the first court to which D will go. Credit for explaining nature of the offence and that can be tried in Magistrates Court. N.B: (b) can have cross referencing from (c). **[5]**

- (c) This question deals with appeal from the Crown Court. Appeal to Court of Appeal (Criminal Division). Requirement of leave/permission. HL on point of law of general public importance. Leave required from CA or HL. Access to Justice Act 1999 allow appeals by way of case stated from Crown Court to Divisional Court. **[5]**

Max 4: if only discuss one route of appeal.

- (d) Outline of legal education and training. Training for barristers and solicitors is different. Outline the work of each including similarities and differences.

Advantages: lay client would only have to pay for one lawyer thereby reducing costs and delay. Reduces possibility for error and misunderstandings. Less duplication. More continuity. Specialist area of law. Ending of monopoly and restrictive practices. Removal of outdated traditions.

Disadvantages: divided profession has stood the test of time. Steeped in history and tradition. Possibly confusion between the old and new system. Cab-rank rule disappears. Loss of objectivity and independence of the Bar. Loss of expertise built up over time. Lowering of standards. Loss of traditional links between the Bar and judiciary. Reduction in availability of specialist advice and advocacy skills.

Candidates who include the provisions of the Courts and Legal Services Act 1990 under which solicitors now have the right of audience if they successfully complete the required training will reach higher mark band.

Max 8: if no mention of education and training. **[10]**

| Page 3 | Mark Scheme | Syllabus | Paper |
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- 2 (a) Candidates will see that that this question invokes Article 8 which gives rights to respect privacy and family life. ECHR states that the essential object of Art 8 is to protect the individual against abuse by public authorities. Investigations into private life must be justified – *Smith and Grady v UK 2000* – unless surveillance was necessary to retain public order. The particular case is not necessary for top mark.

Is this the case here? They also need to consider whether the supermarket is a public or private company and the difference that makes to the application of Art 8.

Max 4: marks for no reference to case law or other sources. Anticipate answers which agree that you will be successful. **[5]**

- (b) Similar to (a) above but different outcome. *Malone v UK 1984; Halford v UK 1997; Khan v UK 2000*.

Max 4: if no reference to other case law.

Max 3: without *Malone v UK*. Difficulty of establishing violation of rights must be discussed. **[5]**

- (c) This question invokes Art 4 which guarantees freedom from (in this case) forced or compulsory labour. Candidates need to consider whether this work could be classified as a 'normal civic duty'. If this is so, then no violation and government would not be in breach.

Can still score 5 marks without any case law but must mention Art 4 in detail. **[5]**

- (d) This question requires the candidates to recognise that whilst the ECHR has been incorporated into Human Rights Act 1998 it still does not constitute a Bill of Rights for the UK which might be more effective in protecting the rights of its citizens. Only a narrow range of rights are protected in UK.

Advantages: Keeps a check on the executive; promote general judicial attitude and practice. HRA only requires the courts to interpret legislation in a way which is compatible with Convention Rights, as far as it is possible to do so. Therefore, if a judge decides that the Act breaches a Convention right, the Act prevails.

Failure of existing common law safeguards. Better public awareness. In line with other western countries.

Disadvantages: Increased power for the judiciary who are likely to interpret the Bill too narrowly influenced by their class-based view of rights. Encourage too much litigation. Inflexible and/or too much flexibility.

Max 10: must be a balanced answer and include defects in HRA and consider the need for a Bill of Rights. **[10]**