

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced/Advanced Subsidiary Level

MARK SCHEME for the November 2005 question paper

9084 LAW	
9084/01	Paper 1
Maximum raw mark 75	

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*.

The minimum marks in these components needed for various grades were previously published with these mark schemes, but are now instead included in the Report on the Examination for this session.

- CIE will not enter into discussion or correspondence in connection with these mark schemes.

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

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1 Assess the impact of the introduction of the Human Rights Act 1998 on the rights of an individual in the United Kingdom. [25]

The Act introduces the European Convention on Human Rights into English law. This is not new and it has been possible to rely on the Convention since the UK signed the convention back in the 1950s. The main impact has been the right to rely on the convention in UK courts rather than to pursue an action through the European court of human rights. *R v Secretary of State for Home department ex p Brind* (1991) Reference to the various articles e.g. right to life Art 2, right to marry Art 12, freedom of thought, conscience and religion Art 9. It is anticipated that these will be dealt with fairly briefly. However the fact that the state can interfere with all but a very few of the rights detracts from their impact.

Legislation must include a statement of compatibility. The Act also requires courts to take into account any previous decision of the ECHR. The courts can only act against a public authority.

The judiciary cannot simply declare a piece of legislation to be unenforceable but simply state that it is incompatible. There is fast track procedure which would allow any necessary changes to bring legislation into line.

There are restrictions on the HRA in particular the convention has a limited impact as many of the articles are out of date. We have no Human rights Commission and so its impact is rather piecemeal. The act did not come into force until Oct 2000 so its impact so far has been limited.

Credit must be given for discussion of any case law based on the Act e.g. *Brown v A-G for Scotland*

2 It has been said that a jury should be ‘independent, impartial and representative’. How far does the jury meet these ideals in the United Kingdom? [25]

Selection of the jury. Random selection from the electoral role should achieve independence as they are not under the control of any one body. They are kept separate from the judge and deliberately away from court. The jury remains impartial because any attempt to put pressure on the jury has been fiercely crushed e.g. *Bushell’s case*. See also the cases which show the jury can be impartial such as *R v Knonlid*;

They may not be representative of the public as a whole because there are too many excusals and many sections of society have traditionally been ineligible such as clergymen and anyone associated with the administration of justice. Recent changes to eligibility should be discussed.

3 There are many advantages in using tribunals, but some people, given the choice, would prefer to use a court as a means of resolving conflict. Explain why an individual may be reluctant to use a tribunal. [25]

Growth of tribunals in brief. Compare tribunals with courts. Tribunals are relatively new but have a huge jurisdiction. Examples anticipated are the employment tribunal and the rent tribunal but other more unusual examples should be rewarded well.

The obvious advantages are that they are often cheaper, quicker and relatively informal. The defendants will have experts listening to the issues, which is preferable to having a judge who may be less well informed.

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Reluctance may stem from lack of legal aid and lack of right to appeal. The unpredictability because there is no recognised system of precedent although the employment tribunal now resembles a court. With fairly formal procedure.

Marks in the higher mark bands will be awarded for answers which see the potential disadvantages of tribunals. They are not always faster and not always cheaper and the litigants may be at a disadvantage because they have not got legal representation.

The lack of a right to appeal may be a real disadvantage also. The brighter candidate might point out that judges may be more experienced in actual procedure.

- 4 A friend's son has been convicted of theft in the Magistrates Court and wishes to know whether there is any chance to appeal the decision. Explain the routes of appeal available to him and discuss whether you think the right to appeal from the Magistrates' decision is adequate. [25]**

There are two routes for an appeal against conviction. It could be an appeal to the Queens Bench Divisional court. This would be based on a case stated from the magistrate's court where the facts would be agreed and the case is based on a point of law or that the magistrates acted beyond their jurisdiction. The friend's son could only proceed if there was a point of law involved. The case would be heard by a court of two or more judges and one will be a lord justice of appeal. There is a further appeal of the House of Lords but it must be a point of law of general public importance. Both the defence and the prosecution can proceed in this way but to omit this would not prevent the answer from getting into the higher mark bands.

The alternative route would be to appeal to the Crown Court but the friend's son must have pleaded not guilty at his trial. The appeal against sentence is a separate appeal and can proceed irrespective of whether he pleaded guilty or not. The case proceeds de novo. The case is heard by a judge and between two and four magistrates sitting in the Crown Court.

- 5 'The rights of defendants are given considerable protection under the Police and Criminal Evidence Act 1984 (PACE)'. Using appropriate case law to support your views, discuss the extent to which you consider this to be an accurate statement. [25]**

General appraisal of PACE and the areas which are still governed by provisions of the Act. These should govern the right to arrest and the protection of arrested persons. Some of the areas are still governed by common law a distinction which should be credited. Specific sections such as s.24 would be expected but a general reference to the provisions would be enough for a mark in a higher mark band. *Lewis v Chief Constable of the South Wales Constabulary* (1991), *DPP v Hawkins* (1998), *G v DPP* (1989). Stop and Search may also be discussed and also the search of premises which could come within the ambit of the question.

The brighter student might then discuss the revised codes of practice which have restated and changed previous principles making it more difficult to stop and search unless there are reasonable grounds and emphasising that the power must only be used reasonably.

Procedure on arrest is also governed by PACE *DPP v Hawkins* (1988); *Nicholas v Parsonage* (1987) s.8 covers search warrants and general safeguards for defendants.

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It is anticipated that one area that is generally well known is the interrogation and questioning of a suspect and the general provisions about detention without charge. Such as access to legal advice *R v Parris* (1989).

Other areas may be discussed.

There should be a conclusion about the overall effect of the Act

6 Analyse the value of the doctrine of stare decisis in the English legal system. Describe the methods available to judges to avoid some of the effects of this doctrine.

Firstly the doctrine of stare decisis must be fully explained. Must explain that it is the basis of precedent. Some reference to the hierarchy of the courts and the relationship of the House of Lords and the Court of Appeal.

The contrast between the position of the House of Lords and the Court of Appeal may be highlighted. This question suggests that there are disadvantages to the system so the candidate who shows these disadvantages should be well rewarded e.g. that the system becomes inflexible.

Methods of avoidance would include distinguishing; cases could include *Anisminic v Foreign Compensation Commission* [1969] distinguished by *R v Sec of State for the Environment ex p Ostler* [1977].

The exceptions in *Young v Bristol Aeroplane* are also relevant.

A decision made *per incuriam* need not be followed by the Court of Appeal nor a decision which has been impliedly overruled by the Court of Appeal.