

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS
GCE Advanced Subsidiary Level and GCE Advanced Level

**MARK SCHEME for the October/November 2011 question paper
for the guidance of teachers**

9084 LAW

9084/22

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, 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.

- Cambridge will not enter into discussions or correspondence in connection with these mark schemes.

Cambridge is publishing the mark schemes for the October/November 2011 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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This mark scheme includes a summary of appropriate content for answering each question. It should be emphasised, however, that this material is for illustrative purposes and is not intended to provide a definitive guide to acceptable answers. It is quite possible that among the scripts there will be some candidate answers that are not covered directly by the content of this mark scheme. In such cases, professional judgement should be exercised in assessing the merits of the answer.

Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the mark scheme for each question or question part.

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.

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- 1 (a) Under the Criminal Justice Act (CJA) 2003 a statement made not in oral evidence can be admitted under s.116(1) if the court is satisfied that the evidence is admissible, the person is identified and one of the five conditions is satisfied. In this case Amjad is too ill to come to court to give evidence and under s.116(2)(c) the court will admit his evidence.

Under the CJA 2003 a statement could be admitted under s.116(2)(a) subject to the conditions in s.116(1); Kaila cannot come to court as she has died as a result of the attack.

For Band 4, answers must include a conclusion.

- (b) Soraya cannot come to court because she is too frightened. Under s.116(2)(e) she can be excused from giving oral evidence but the court must give leave and state that to admit this statement it is in the interests of justice, having regard to any risk that its admission or exclusion will result in unfairness to any party.

For Band 4, answers must include a conclusion.

- (c) Rashid cannot challenge these statements on the basis of the Human Rights Act and seek to have these statements withheld because it was his action that caused the witness to be absent and according to R v Sellick [2005] the defendant cannot later complain that his rights under Article 6(3) have been infringed. For max marks (8–10) answers must discuss correct article of the European Court of Human Rights.

For Band 4, answers must include a conclusion.

- (d) The Criminal Prosecution Service (CPS) was introduced in 1986 as an independent agency to prosecute cases; it is headed by the Director of Public Prosecutions. The functions of the CPS are to give advice to the police about the admissibility of evidence before a charge is brought; to review all cases passed to them by the police to see if there is sufficient evidence for the case to proceed; and also to be responsible for all cases passed to them by the police. They are also responsible for conducting cases through the Crown Court and the Magistrates' Court. Good answers will include a definition of who the CPS comprises, a description of their function and a discussion of their background.

To obtain 14–20 marks answers must include a discussion of the way cases come to court for criminal trial.

- 2 (a) Pavan would be found liable for an offence under the Town Police Clauses Act 1847 as, although he was parked on private land, the position of his vehicle was such that he appeared to be 'plying for hire' and his taxi appeared to be positioned in such a way that the offer of services was aimed at people in the street. To obtain 7–10 marks answers must include a comparison between the two scenarios, e.g. how he could escape prosecution and why he may be prosecuted and some mention of the case Eastbourne Borough Council v Stirling.

For Band 4, answers must include a conclusion.

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- (b) Pavan would only be guilty of an offence under Town Police Clauses Act 1847 when he parked in his friend's drive if he could be said to have positioned his car in such a way that he had aimed to attract people from the street. If someone happened to ask him to take him somewhere in the taxi, Pavan would not have committed an offence. As in (a), for answers in top band 7–10 marks there must be a comparison between the two scenarios, e.g. how he could escape prosecution and why he may be prosecuted and some mention of the case Eastbourne Borough Council v Stirling.

For Band 4, answers must include a conclusion.

- (c) Credit for any sensible discussion of any of the rules of interpretation, literal, golden, mischief and purposive. The mischief rule would be appropriate in this case. There are similarities with Smith v Hughes (1960). For marks in band 7–10 there should be discussion of a court's approach in this case, e.g. to look at the mischief aimed at in the Act, which in this case was to prevent taxi drivers from operating without a licence and competing with taxi drivers who were properly licensed.

Max 5 marks for discussion and application of the literal rule. Candidates who discuss the literal rule and suggest the golden rule can be credited with the full range of marks where they justify its use.

All answers should have some citation.

Max 7 marks for no case law apart from Stirling.

- (d) Discussion of the three rules. The literal rule should be criticised for its narrow literalist approach. The golden rule has its advantages but it can only be used where there are two alternative meanings. The mischief rule of course allows the court wider powers of interpretation. The purposive rule is the widest rule of all because it allows the court discretion in interpretation but there is the concern that it allows for judicial law-making. Answers should include some reference to the rules of language but discussion of intrinsic and extrinsic aids, presumptions and other aids to interpretation would not be expected.

Band 2: very general discussion of main rules of statutory interpretation.

Band 3: explanation of **either** the three rules in detail with citation **or** explanation of the three rules as well as the rules of language in less detail but some citation **or** good explanation of the three rules.

Band 4: fully developed answer on three rules of statutory interpretation and some mention of rules of language. Good use of supporting cases. Some discussion of purposive approach.

Answers in range 18–20 marks should be selective in the use of both rules and cases and should include a critical analysis of statutory interpretation.

Very good answers which discuss the three rules and the purposive approach can reach max 16 marks without the rules of language.