

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and Advanced Level

MARK SCHEME for the November 2004 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 November 2004 question papers for most IGCSE and GCE Advanced Level syllabuses.



Grade thresholds taken for Syllabus 9084 (Law) in the November 2004 examination.

| | maximum mark available | minimum mark required for grade: | | |
|-------------|------------------------|----------------------------------|----|----|
| | | A | B | E |
| Component 2 | 25 | 20 | 18 | 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.

November 2004

GCE ADVANCED SUBSIDIARY/ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 25

SYLLABUS/COMPONENT: 9084/02

LAW
(Data Response)



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Question One

- (a) This part of the answer expects the candidates to apply the Treasure Act to different situations. It expects the candidates to be able to read the statute and understand the way the sections interrelate. Clearly Darwin and Columbus want to try and argue that the items are not treasure.
- (i) Under s.1(1) these items have a precious metal content in excess of 10% and will therefore be treasure under the Act.
- (ii) Although these coins are bronze and therefore not precious metal as defined in the Act, they are still treasure because they are found at the same time as the other coins. The question says that they are found at the same time, in the same box.
- s.1(1)(iii)
- (iii) This may be treasure again if found as part of the same find. Building nearby can still be within the Act.
- S.3(3)
- (iv) The fact that this item has a 10% silver content will make this treasure even though it is not 10% of the total content.
- s.1(1)(a)(i) has a metallic content of which at least 10% by weight is precious metal.
- s.1(1)(d)

Max 4 marks for purely rules of interpretation and no link made

- (b) The use of Hansard has been the subject of much discussion and candidates may trace the development of its use in cases, looking at earlier decisions such as *Davis v Johnson* and culminating with *Pepper v Hart*. Candidates reaching the top markbands on this section must be able to show that they understand that Hansard is only available in limited circumstances.

The Law Commission Report is also admissible in the case.

Three Rivers Case. *Council & Others v Bank of England* (1996), Black Clouston (1975)

Max 4 if no Law Commission mentioned

- (c) Here the candidates should distinguish between intrinsic evidence and extrinsic evidence. Intrinsic matters will include the long and short title of the act, the preamble and any headings. N.B. marginal notes are not intrinsic aids but credit for schedules definition section.

Max 4 for good explanation of intrinsic aids

- (d) This part of the answer looks at the rules of language such as *eiusdem generis* and *expressio unius exclusio alterius* and also *noscitur a sociis*. Case law should be used to illustrate the answer. e.g. *Powell v Kempton Park Racecourse* (1899).

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Question Two

Candidates should consider whether it would be fair to admit evidence under Section 78 of PACE and whether the defendants can have a fair trial under Article 6. In practice, there is no substantial difference between the two tests. Under the Convention, national courts are permitted to operate their own rules of evidence.

The issue in regard to each of the defendants is whether the Police have incited the commission of offences (the Teixeira case) or whether they have merely given the defendants the opportunity to break the law of which they took free advantage (*Nottingham City Council v Amin*). Candidates who distinguish between the two cases without specifying the exact difference should still be able to reach the higher markbands.

Candidates should give judgment on each of the five issues separately.

(a) The setting up of the shop does not breach PACE nor Article 6. It merely gave Sykes, Fagin and Weed the opportunity to commit offences. Sykes freely brought in the goods and admitted the burglaries. The evidence against Sykes is admissible.

(b) The evidence is also admissible against Fagin on the handling charge. He freely brought in the goods and admitted the handling.

Article 6. Consider whether this is relevant.

(c) There is more scope for a different conclusion when looking at Fagin on the drugs charge. On the one hand it could be argued that Officer B incited Fagin by, in effect, inviting him to bring in drugs. The better answer is that the Officer was merely inquiring as to whether Fagin had access to drugs. It was Fagin who freely decided to sell cocaine.

(d) The evidence is admissible against Weed on the cannabis charge. See S78, PACE 1984.

(e) Here Officer C could be said to have incited Weed to commit an offence which he would not otherwise have committed by offering him the inducement of cut-price cigarettes. The evidence should, therefore, be ruled inadmissible under both PACE and Article 6.

Use of rules of statutory interpretation will be credited. Also credit may be given for analysis of sources but incorrect conclusion.