

MARK SCHEME for the May/June 2006 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 May/June 2006 question papers for most IGCSE and GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



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- 1 In what circumstances will a court choose to grant a community sentence as opposed to a custodial sentence? Using appropriate examples, show how the court comes to its decision. [25]**

Definition of custodial sentences and community sentences and examples. Why are custodial sentences used? The courts have to impose a custodial sentence in some circumstances and cannot choose to impose a community sentence. Prison sentence should only be used as a last resort. If the case does not pass the custody threshold then a community sentence must be passed. Criminal Justice Act 1991.

The court will rely on the pre-sentence report.

Practical examples of when a community sentence may be used e.g. lesser crimes, and crimes not involving violence; defendant's mitigating circumstances; where the defendant shows remorse; age of the defendant. Examples could be sentences for specific crimes. Theft carries a sentence of imprisonment. A defendant who shows remorse, has mitigating circumstances such as a sick close relative, the theft was relatively minor and no violence was used could expect to avoid a custodial sentence. By way of comparison a defendant who has used violence or breached a position of trust in a case of theft and shows no remorse can expect to have a prison sentence imposed on him. Custodial sentences may be passed where community sentences have been passed for previous offences as a last resort.

- 2 'Equity is irrelevant in the modern world'. Discuss. [25]**

The growth of equity from the defects in the common law is relevant. The early contribution of equity in new procedures, remedies and also rights. Explanation of the two distinct systems until the Judicature Acts 1873-1875.

Relevance in the modern world can be shown by the development of certain remedies in the 1970s such as the Anton Pillar Order or search order and the Mareva Injunction the freezing order. Equity has also allowed the development of various types of estoppel including promissory estoppel and proprietary estoppel. Recognition of the distinction between the two should be credited i.e. that promissory estoppel only gives rise to negative rights allowing a claimant to rely on a promise and preventing the promisor from going back on that promise but proprietary estoppel can give rise to positive rights.

Reference may be made to equitable maxims such as 'he who seeks equity must do equity, he who comes to equity must come with clean hands and where the equities are equal the first in time prevails'.

Some reference may be made to the attempt by Denning to give rights in equity to married women. Any discussion of equitable and legal rights in property and the distinction between the two should be credited generously.

- 3 Evaluate the protection given to persons taken into custody for questioning by the police. Do you think it is adequate? [25]**

Candidates should display a detailed understanding of the main legislation in particular PACE and should concentrate on protection after arrest as the question focuses on questioning in custody. The type of offence should be considered. The most obvious sections concern the rights of the defendant on arrival at the police station covered on Part V of PACE ss53-65 e.g. right to legal advice, right to have someone informed of the arrest, also rights when searched and concerning the taking of samples.

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The better answers will distinguish between those rights available to all and those rights which can be denied because it is a serious arrestable offence e.g. a person can be kept in custody for up to 36 hours before an application must be made to the magistrates court; the right to have someone informed of your arrest can be withheld for 36 hours.

- 4 'The doctrine of stare decisis restrains the natural development of the law'. To what extent do you agree with this statement? Discuss the judicial tools available to the judiciary to ensure that the law continues to develop. [25]**

Definition of stare decisis. The courts lose flexibility in decision making because a lower court is always bound by a decision of a higher court where the facts are similar. There are a number of ways that a court can resist its more serious effects such as distinguishing. This means that a judge finds that the material facts of the case he is deciding are sufficiently different for him to draw a distinction between the present case and the previous precedent. e.g the facts of *Balfour v Balfour* in contract were distinguished in *Merritt v Merritt* on the grounds that there was a legally enforceable contract. Overruling allows a higher court to overrule a decision made in an earlier case by a lower court e.g. the House of Lords overruling a decision of the Court of Appeal. Reversing allows a court higher up in the hierarchy to overturn a decision of a lower court on appeal in the same case e.g. the Court of Appeal may disagree with the legal ruling of the High Court and come to a different view of the law. Some courts have more flexibility than others so the House of Lords is not bound by its own previous decisions and in some cases the Court of Appeal is also not bound by its own previous decisions. *Young v Bristol Aeroplane* where there are conflicting decisions in past Court of Appeal cases and the court can choose which one to follow and which it will reject; where there is a decision of the House of Lords which effectively overrules a Court of Appeal decision the Court of Appeal must follow the decision of the House of Lords and where the decision was made *per incuriam* that is carelessly or by mistake because a relevant act of Parliament or other regulation has not been considered by the Court. There are strong arguments in favour of the Court of Appeal being able to ignore House of Lords judgments since so few cases reach the House of Lords there is a danger that decisions will become entrenched in the law. Relevant case law includes *Milangos v George Frank (Textiles) Ltd (1976)* *Havanna Railways (1961)* *Schorsch Meier GmbH v Henning (1975)*.

Any discussion of statutory interpretation which shows the way it has contributed to the development of the law will be given credit.

- 5 The law provides a number of alternative methods for the resolution of disputes. Evaluate these methods and compare their effectiveness with the use of the court system. [25]**

Alternative dispute resolution involves mediation, conciliation, arbitration and negotiation. Tribunals are not strictly alternative methods of dispute resolution but credit should be given for them if included particularly if it is emphasised that they are outside the court system.

Points of difference lie in procedures and lack of publicity although tribunals may be seen as much closer to courts. There are many practical advantages of using these methods such as flexibility of timing, place of hearing and cost. The disadvantages come from the lack of legal representation because legal aid is not available for ADR, the lack of an appeal procedure. All methods of ADR have certain disadvantages such as cost so arbitration may prove to be as expensive as a court hearing because of the cost of hiring an arbitrator.

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- 6 For many years the English Legal System has relied on untrained and unqualified members of the public. Consider whether this system can be justified in a society which demands a greater degree of professionalism. [25]**

Identify who are the untrained and unqualified members of the public:

- (a) magistrates
- (b) jurors.

Candidates should look at both and explain briefly matters such as jurisdiction and appointment. This is not restricted to criminal courts so the jurisdiction over civil matters will be relevant.

The question specifically looks at training and qualifications. Magistrates have some training but it does not make them professionals. Magistrates are unqualified. They are lay people and are not lawyers so they do not have specific legal training. Jurors are not trained. Recently lawyers as well as members of the judiciary have been included in the list of potential members of the jury.

Should the jury and magistrates be replaced by professional lawyers? Traditional arguments include the need to involve members of the public in the judicial process; the savings in cost; the fact that the matters the magistrates deal with are relatively trivial and not complex matters of law. There may be some reference to other lay people such as MacKenzie friends which should be credited.