

MARK SCHEME for the May/June 2010 question paper
for the guidance of teachers

9084 LAW

9084/21

Paper 21, 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.

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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) The different types of delegated legislation include orders in council, statutory instruments and bye-laws. The type of delegated legislation here is a statutory instrument. If candidates interpret qn 1(a) as asking for examples of statutory instruments then max 10 can be awarded.
MAX 4 for just one type of DL only; could include S.I. MAX 7 for two types of DL but some explanation must be given.
- (b) The regulation can be challenged if it has not been passed according to the procedure. It can be challenged in the High Court by Judicial Review and can be declared ultra vires. The challenge will be based on failure to adhere to procedure. Expect discussion of ultra vires. This part requires reference to source material. MAX 10 must answer both parts. MAX 7 for no source material.
1(b) half marks for discussion of making the challenge; 6 marks for discussion of the cases; 2 marks for discussion of grounds/judicial review.
- (c) A challenge could be made by arguing that the regulation had not been laid before parliament. Such a procedure may involve a negative or affirmative procedure. If it is negative then it will take legal effect if after 40 days of being laid before the House no prayer to annul it has been put to the House and carried. If it requires an affirmative vote then the statutory instrument will have to be put to the House and will have to be approved before being made law. The need for an affirmative resolution will be included in the enabling Act. MAX 7 for no source material.
- (d) Delegated legislation has many advantages, mainly saving parliament valuable time and also using experts who are specialists in a particular field rather than using the whole House who may lack that expertise. It is also frequently quicker to pass complex legislation by delegated legislation. MAX 20 should include some disadvantages of DL. MAX 17 for excellent discussion with supporting source material but no ref to disadvantages.
- 2 (a) (i) Under s.24 [2] PACE a police officer has the right to arrest anyone who he believes has committed an offence and here Fouz has walked out of the supermarket without paying; MAX 5 for no source material. MAX 7 for correct citation of statute.
- (ii) Under s.24 [A] PACE other persons may also arrest but only if the person is in the act of committing the offence or where it has been committed as here then the person must have reasons for believing it to have been committed. The power to arrest is subject to the provisos of s.24 [A]; the security guard will not be treated as if he/she is a police constable. MAX 10 Some discussion as well as correct citation of source material. Particular credit where candidate draws a distinction between the police officer and the security guard pointing out the difference.
- (iii) The conclusions will be the same as in (b). Analogy drawn with security guard should receive particular credit.
- (b) The main safeguards of PACE concern the circumstances of an arrest and the rights whilst in custody. The police have powers to search an arrested person and also to search on detention. Answers should include discussion of the way PACE has attempted to safeguard rights for individuals. E.g. Access to legal advice; phone call/provision of food and drink; appointment of the custody officer. MAX 17 for no discussion of PACE and protection of rights. NO credit for discussion of rights post-police station.