

**MARK SCHEME for the October/November 2010 question paper
for the guidance of teachers**

9084 LAW

9084/02

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.

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CIE is publishing the mark schemes for the October/November 2010 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



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- 1 (a) (i) Gasper is unlikely to be charged with an offence and unlikely therefore to be found guilty since under the Act he must be in possession of lit tobacco. For MAX 6 marks, must include sources.
- (ii) Rasper is not in premises which are substantially enclosed s.2(4). For MAX 6 marks, must include sources.
- (iii) Jasper is in premises open to the public and has a lit cigarette and is guilty under s.1(1)(2),s.7. For MAX 6 marks, must include sources.

An additional 2 marks for discussion of possible defence of landlord's failure to put up notices in the public house.

- (b) The Act clearly identifies the offence as a summary offence, so candidates should explain that this will be tried in the Magistrates' Court, with appeal to the Crown Court or QBD on a point of law. Credit for sensible discussion of any further appeal. MAX 5 marks if discuss the trial itself with no discussion of appeals.
- (c) In considering the rules of statutory interpretation, the candidates should consider whether the purposive rule is more likely to allow the court to interpret and apply the purpose behind the legislation. Other rules to be discussed and compared are the three rules which are rather outdated and limited in application. Candidates must support answers with some case law. MAX 12 if no real discussion of the purposive rule. MAX 14 for brief reference to the purposive rule but no proper development. MAX 18 if no mention of the influence of Europe.
- 2 (a) this question considers whether jury members are eligible to sit on a jury.
1. Juror A was fined so is not disqualified and it was more than ten years ago. Must include sources for MAX 6 marks.
 2. Juror B is disqualified because he had a community order imposed 8 years ago. Must include sources for MAX 6 marks.
 3. Juror C would be disqualified under s.7(3). Must include sources for MAX 6 marks. Extra marks for conclusions on the jurors.
- (b) CJA would allow the judge to discharge the jury if he thinks there has been jury tampering and he can now continue without the jury, but only if he thinks it is fair to the defendants. MAX 10 must include source material and must state that the trial can continue without a jury and must also have some application.
- (c) The merits of using the jury are based on the use of lay people in the criminal justice system who may be less biased than a judge and the fact that they may be more sympathetic to the defendant's case than a case-hardened professional. The candidate who also considers the disadvantages will be given credit. MAX 15 for strengths and weaknesses of the jury system without any other discussion. MAX 10 for purely factual accounts of the jury system.