

## CMD LAW EXAMINATION 2009

### MARKING GUIDE

#### Question 1

a) Rules should include:

- the objects and purposes of the club 1
- the election and admission of members 1
- the payment of subscriptions 1
- the resignation, disciplining, suspension and expulsion of members 1
- the removal of officers and committee men 1
- the management of club affairs 1
- general meetings of the members, to gain information and take decisions 1
- the admission of guests 1
- the alteration of rules and the making of new rules 1
- authority for fixing the hours for the sale and supply of alcohol 1
- the dissolution of the club and the disposal of assets 1

b) Advantages of a club registering as an Industrial and Provident Society are:

- club may sue and be sued in its registered name 1
- limited liability 1
- machinery provided for the settlement of disputes and dissolution of the club 1
- transfer of assets from an unregistered club to a registered club is automatic, no legal conveyance is required and no stamp duty is payable 1
- property investments, contracts, agreements etc. are held in the name of the club 1
- a floating charge can be given over the club's assets making it easier to raise finance 1

Disadvantages of a club registering as an Industrial and Provident Society are:

- an annual return and accounts have to be filed with the Financial Services Authority and a statutory audit may be required 1
- the Financial Services Authority has the power to appoint an inspector to examine the affairs of a society 1
- annual fees are payable 1

#### Question 2

a) Insurances

- property (includes fire, theft, water damage and subsidence) 1
- contents 1
- business interruption 1
- money/fidelity insurance of officials 1
- personal accident for committee, members and employees – not compulsory 1
- employer's liability 1
- public and products liability 1

**(10 marks for a full and detailed answer)**

b) Performing Right Society

- protects the interests of the owners of musical copyright 2
- PRS is an association of authors, composers, publishers and other owners of musical copyright 2
- PRS was established to protect and enforce their rights to restrain unauthorised use of their works and to collect fees for permission to perform such works in public 2

Phonographic Performance Limited

- gives protection to the maker of the recording as distinct from and in addition to the protection given to the composer or copyright owner of the music recorded 2
- was formed for the purpose of issuing licences for the public performance of records, CDs, tapes and other recording media 2

Question 3

a) Terms of employment

- identify all parties 1
- date employment commenced 1
- details of continuous service 1
- scale, method and intervals of remuneration 1
- hours of work/overtime arrangements 1
- entitlement to holiday and sickness pay 1
- details of any pension scheme 1
- periods of notice 1
- title of job 1
- details of disciplinary/grievance rules and procedures 1
- whether a contracting out certification is in force. 1

b) Eligibility to claim redundancy and unfair dismissal:

- employee must have two years of continuous employment to claim redundancy 1
- employee must have one year of continuous employment to claim unfair dismissal 1
- no qualifying period is required where the dismissal is for one of the following:
  - trade union membership or activities 1
  - pregnancy or maternity 1
  - being an occupational pension scheme trustee 1
  - being an elected employee representative or a candidate in an election for one 1
  - asserting a statutory employment right 1
  - carrying out legitimate health and safety activities 1
  - refusing to work in contravention of the Working Time Regulations 1998 1

Question 4

a) Licensing objectives:

- the prevention of crime and disorder 1
- public safety 1
- the prevention of public nuisance 1
- the protection of children from harm 1

b) Conditions to be a qualifying club:

- members must not be admitted without at least two days between nomination or notification and admission 1
- that the club is established and conducted in good faith as a club 1
- that the club has at least 25 members 1
- that alcohol is not supplied to members on the premises otherwise than by or on behalf of the club 1
- purchase and supply of alcohol is managed by a committee of elected members of the club all aged over 18 years 1
- no person to receive any commission or similar payment with reference to the purchase of alcohol by the club 1
- no person to derive monetary benefit from the supply of alcohol to members or guests 1

c) The following information must be included in a Club Operating Schedule:

- the qualifying club activities to which the application relates 1
- the proposed hours of those activities and any other times during which it is proposed that the premises are to be open to the public 1
- where the relevant qualifying club activities include the supply of alcohol, whether the supplies are for consumption on and/or off the premises 1
- the steps which it is proposed to take to promote the licensing objectives e.g. door security 1
- such other information as is required to be included by the Secretary of State. 1

d) The following information must be submitted to the licensing authority:

- a completed application form including operating schedule 1
- a plan of the premises in the required form 1
- a copy of the club's rule book 1
- the required fee based on the rateable value of the premises 1

Question 5

a) Gaming machine categories are:

- B3A (Lottery machine). Maximum stake of £1 and a prize of £500 2
- B4. Maximum stake of £1 and a prize of £250 2
- C. Maximum stake of 50p and a prize of £35 2
- D. Maximum stake of 10p and a prize of £5 cash; or a 30p stake and £8 prize in a non-money prize machine 2

b) Location of gaming machines:

- gaming machines situated on the premises must be located in a place within the premises so that their use can be supervised, either by staff whose duties include such supervision (including bar or floor staff) or by other means. 1
- permit holders must have in place arrangements for such supervision 1
- gaming machines shall be located in a place that requires a customer who wishes to use any ATM made available on the premises to cease gambling at the gaming machine in order to do so. 1

Access to gambling by children and young persons:

- permit holders should put into effect procedures intended to prevent under age gambling. 1
- only members and their guests may play the machines; under 18's may not 1
- procedures should include for checking the age of apparently under age customers, and 1
- refusing access to anyone who appears to be under age and who tries to use Category B or C gaming machines and cannot produce an acceptable form of identification 1
- permit holders should also take all reasonable steps to ensure that all relevant employees understand their responsibilities for preventing under age gambling 1
- permit holders should only accept identification which
  - contains a photograph from which the individual can be identified: 1
  - is valid, legible and has no visible signs of tampering or reproduction 1
- acceptable forms of identification include: those carrying the PASS logo, driving licence, and passport 1
- procedures should be in place for dealing with those cases where a child or young person repeatedly attempts to gamble on category B or C machines, including warnings, reporting the offence to the Gambling Commission and the police, and making available information on problem gambling 1

#### Question 6

- consult the club rules 1
- summon member in writing to appear before committee giving three clear days notice 1
- letter must state time and date of hearing and the specific charge and that the member can call witnesses and be represented if s/he so wishes 1
- if the member fails to or cannot appear, consider giving another opportunity to appear 1
- at the hearing the secretary must read out the charge and call witnesses in support 1
- the member is entitled to cross-examine the witnesses 1
- the member and his/her witnesses must be allowed to put their side of the case 1
- the committee can cross-examine the witnesses 1
- witnesses should remain in the room after giving evidence until all submissions have been made 1
- after all submissions have been made everyone should leave the room except the adjudicating members of the committee and the secretary in an advisory capacity 1
- the committee should decide, by a simple majority, if the member is guilty or not guilty 1
- if guilty, a two-thirds majority (check rules) is required to carry through any proposal 1
- maximum 12 month suspension 1
- call member back and give him/her the decision 1
- committee decision should, ideally, be put to the member in writing and the decision recorded in the minute book 1
- if suspended or expelled s/he must hand over his/her membership and associate cards 1
- tell the member s/he has the right to appeal against any decision 1

**(20 marks for a full answer)**

#### Question 7

- a) Main offences under the Food Safety Act 1990 are:

- selling/possessing for sale food that does not comply with food safety requirements 1
- rendering food injurious to health 1
- selling food that is not of the nature, substance or quality demanded 1
- falsely/misleadingly describing/presenting food 1

b) Personal hygiene matters

- Every person working in a food-handling areas should:
  - maintain a high level of personal cleanliness. 1
  - wear suitable clean clothing and, where necessary, protective clothing 1
  - keep hair tied back and wear suitable head covering when preparing food 1
  - not wear watches or jewellery when preparing food (except a wedding band) 1
  - not touch their face and hair 1
  - not smoke, spit, sneeze, eat or chew gum when handling food 1
- Staff that work with food must wash their hands properly:
  - when entering the food handling area, e.g. after a break or going to the toilet 1
  - before preparing food 1
  - after touching raw food, such as meat/poultry or eggs 1
  - after food waste or emptying a bin 1
  - after cleaning 1
  - after blowing their nose 1
  - staff should dry their hands on a disposable towel – harmful bacteria can spread more easily if hands are wet or damp 1
- The following should not handle food or enter a food handling area if they:
  - are suffering from, or carrying, a disease likely to be transmitted through food 1
  - have infected wounds, skin infections, sores 1
  - have diarrhoea (staff with diarrhoea or vomiting should not return to work until they have had no symptoms for 48 hours) 1

Question 8

a) Powers and duties of a club committee are:

- to perform administrative functions such as ordering goods for the club 1
- to decide on new build or alterations to the club 1
- to discipline members of staff 1
- to make bye-laws or regulations under the rules 1
- to act judicially in accordance with the rules of natural justice and in good faith with the club rules for determining disputes. 2

b) A typical agenda for a meeting of a club's management committee would be:

- apologies for absence 1
- minutes of previous meeting and matters arising 1
- finance committee report 1
- accounts to be paid 1
- reports e.g. stock (by the secretary, sub-committees or delegates) 1

- election of new members 1
- motions 1
- correspondence. 1

c) Scrutineers and their role in an election:

- usually appointed by members in a general meeting 1
- officers, nor members of the committee nor candidates should be scrutineers 2
- to take charge of the ballot and count votes 1
- they should not recommend candidates 1
- record votes cast for each candidate and indicate which have been elected 1