

CMD LAW EXAMINATION 2010

MARKING GUIDE

Question 1

a) What must be contained in an employee's written statement of terms and conditions 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 certificate is in force. 1

b) Describe fully an employee's entitlement to redundancy pay.

- Must have two years of continuous employment. 1
- Payment is limited to the last 20 years before redundancy. 1
- Service before 18 and after 65 may be taken into account. 1
- The following redundancy payments must be made:
 - Age 16 to 21 = $\frac{1}{2}$ x gross weekly wage 1
 - Age 22 to 40 = 1 x gross weekly wage 1
 - Age 41 to dismissal = $1\frac{1}{2}$ x gross weekly wage. 1
- Maximum amount of a week's pay for the purpose of calculation is £380. 1
- Maximum payment under the scheme is £11,400. 1

(20 marks for a full answer)

Question 2

a) What 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

b) What types of entertainment are described in the Licensing Act 2003 under Regulated Entertainment?

- Performance of a play. 1
- Exhibition of a film. 1
- Indoor sporting event. 1
- Boxing or wrestling. 1
- Performance of live music. 1
- Playing of recorded music. 1
- Performance of a dance. 1
- Entertainment of a similar description to live music, recorded music or dance. 1

c) Temporary Events Notices have certain limitations placed on them. What are these limitations?

- No more than 499 people (including staff and organizers) attending at any one time. 1
- An individual is limited to giving 5 TENs in a calendar year, unless they are a personal license holder for the sale of alcohol, in which case they can give 50. 1
- A limit of 12 TENs may be given in respect of any particular premises in a calendar year. 1
- An event may last for no more than 96 hours. 1
- The maximum aggregate duration of the periods covered by TENs on any individual premises is 15 days. 1

(20 marks for a full answer)

Question 3

a) State what you know about betting in a registered club.

Betting in itself is not illegal ✓

- Although it is an offence to allow betting transactions on unlicensed premises (i.e. the occupier of which does not hold either a Betting Office Permit or a Betting Agency Permit). 2
- Any penalty relates to the Club, the Club Secretary or other officer who knowingly or negligently allows illegal betting transactions to take place. 2
- Betting transactions include not only the collection of bets, but also the settling of bets and payment of winnings thereon. 2
- Any Union club convicted of permitting infringement of the betting law is liable to be summoned before the executive to show cause why it should not be expelled from Union membership. 2
- Committees of Union clubs are recommended to refuse membership to Bookmakers and at all club events to ensure that they or their registered agents do not conduct their business on club premises. 1

b) Under what conditions can bingo be played in a club?

• **Played as a club activity**

- No limit on stakes or prizes. 1
- Participants must be members or their bona-fide guests or associate members and, if the club rules allow, their guests also. 1
- Maximum participation fee of £1 per person, per day (or £3 plus VAT where a club gaming permit is held). 1
- Games cannot be linked to other premises. 1
- No deduction from sums staked or won. 1
- Under 18's cannot participate (Unless a club admits under 18s to membership and the club does not have a rule against them playing. Bona fide guests under 18 may also play if club members in the same age group are allowed to play.) 1

• **Played at a non-commercial event**

- No private gain; participants must be told that the object is to raise funds for club or other non-commercial cause. 1
- Maximum payment by way of participation fee, stake or other charge is £8 per game. 1
- Value of prizes for all games at the event not to exceed £600. 1
- If a series of events are held on the same premises the value of prizes at the final event is not to exceed £900. 1
- Under 18s cannot participate (Unless a club admits under 18s to membership and the club does not have a rule against them playing. Bona fide guests under 18 may also play if club members in the same age group are allowed to play.) 1

Question 4

Various Acts of Parliament give powers to duly authorised officers to enter club premises. Under what circumstances do the following officials have the right to enter and inspect club premises?

a) A police officer

- If s/he reasonably believes that there is likely to be a breach of the peace. 1
- If s/he believes that a drugs offence is taking place. 1
- If in pursuit of a criminal. 1
- Under a warrant of a Justice of the Peace. 1
- On application for the issue of a Club Premises Certificate, or for its variation, or where an application has been made for its review. 48 hours notice must be given to the club and the inspection should take place within 14 days after the making of the relevant application . 3
- In order to determine whether gaming carried on there is in accordance with the statutory conditions or the terms of any club gaming or club machine permit. 2

b) A member of the fire service

- On application for the issue of a Club Premises Certificate, or for its variation, or where an application has been made for its review. 48 hours notice must be given to the club and the inspection should take place within 14 days after the

making of the relevant application. 3

c) A member of staff of the local authority.

- On application for the issue of a Club Premises Certificate, or for its variation, or where an application has been made for its review. 48 hours notice must be given to the club and the inspection should take place within 14 days after the making of the relevant application. 3
- Under the Food Safety Act 1990 an authorised officer has the right to enter at all reasonable hours upon production (if so required) of a document showing his/her authority and has the power to inspect, seize and retain records/food. 2
- Under the Gaming Act 2005 an authorised officer may enter premises in respect of which an application has been made for a club gaming permit or a club machine permit. 2

(20 marks for a full answer)

Question 5

A club president has asked the secretary to prepare for the committee a comprehensive check sheet of the procedure the club should follow when dealing with member discipline cases. Draft such a check sheet.

- 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
- The Committee usually has power to reprimand, suspend (maximum 12 month suspension) or expel. 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 6

- a) Describe fully the procedure that should be followed by a committee when disciplining a member of staff.
- Consult the employee's contract of employment and disciplinary procedure. These should comply with the basic principles of good practice in conducting disciplinary action are now set out in the ACAS Code of Practice on Disciplinary action in the ACAS Code of Practice on Disciplinary and Grievance Procedures and guidance booklet entitled Discipline and Grievances at Work: The ACAS Guide. 2
 - An employee must be informed of the complaints against him/her and given an opportunity to state his/her case to the managing committee before the decision is reached. 2
 - An employee has the right to be represented by a Trade Union representative or by a colleague at any stage of the procedure. 2
 - Investigations of potential disciplinary matters will be carried out without unreasonable delay. 1
 - Before a penalty is imposed the reasons for such and imposition should be explained to the employee. 1
 - Usual steps are: oral warning, written warning, final written warning and dismissal 2
 - Except in cases of gross misconduct, employees should not be dismissed for a first breach of discipline. 1
 - Disciplinary action should not be taken by the club until the case has been fully investigated. 2
 - If dismissal, statutory /contract periods of notice must be complied with. 1
 - Employee should be given a right of appeal in respect of any disciplinary matter. 2
- b) Give at least three examples of gross misconduct by a member of staff.
- Theft.
 - Breach of food hygiene regulations.
 - Fighting. any 3 = 3
 - Falsification of accounts.
 - Adulteration of alcoholic drinks.
 - Serving after time.

(20 marks for a full answer)

Question 7

- a) What are the powers and duties of the following?

A club committee:

- To perform administrative functions such as ordering goods for the club. 1
- To decide on new build or alterations to the club. 1
- May have power to discipline members. 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

A club secretary:

- To conduct correspondence, collect subscriptions from the members and perform other clerical or organising duties as the committee may think necessary 3
- If the club is registered under the Friendly Act or the Industrial and Provident Act s/he must notify the FSA of any change in the registered office of the club. Know the club rules and advise the chairman and the committee as required. 1
- Make necessary returns on time. 1
- See that no breach of the law takes place. 1
- Be the executive officer between meetings. 1
- The secretary will be personally liable to third parties where s/he orders goods without the authority of the club committee. For this reason, all orders should be placed on club notepaper or order forms clearly indicating in what capacity the secretary is acting. 2
- A secretary is liable to the club where, as a direct and foreseeable result of failure to carry out his/her duties, causes loss to the club. 1

b) What is a scratch committee and what powers does it have?

- A meeting of a part only of the elected committee at a time other than the usual time for holding meetings. 2
- Has no power to pass effective resolutions or to transact business. 2

Question 8

Under the Food Safety Act 1990 what are the General Requirements for food premises that are necessary to comply with basic rules of hygiene?

- Layout, design, construction, site and size of premises must:
 - Allow adequate maintenance, cleaning and/or disinfection. 1
 - Avoid or minimise air-borne contamination. 1
 - Provide enough working space to carry out all tasks hygienically. 1
 - Protect against the build-up of dirt, contact with toxic materials, shedding of particles into food and forming of condensation or mould on surfaces. 2
 - Allow good food hygiene practices, including protection against contamination and, in particular, pest control. 2
 - Provide where necessary suitable conditions for handling and storing food while keeping it at appropriate temperatures, designed to allow those temperatures to be monitored and where necessary, recorded. 2
- Handwashing facilities and toilets
 - Business must have an adequate number of toilets connected to an effective drainage system. 2
 - Toilets must not open directly into rooms where food is handled. 1
 - Adequate number of washbasins, with hot and cold running water, with any materials available suitably located and used only for cleaning hands. 2
 - Where necessary, a separate sink for washing food. 1

- Ventilation

Sufficient ventilation e.g. window, extractor fan and access for cleaning. 1

- Other requirements

Adequate lighting. 1

Adequate drainage. 1

Adequate facilities for staff to change their cloths, if necessary. 1

Cleaning chemicals and disinfectants not to be stored where food is handled. 1