

## CMD LAW EXAMINATION 2016

### MARKING GUIDE

#### Question 1

a) Typical member discipline procedure is:

- 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 he/she 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
- any committee member who witnesses the event should not take part in the proceedings unless the committee has asked him/her to appear as a witness on behalf of the club 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 member's previous record, if any, must only be referred to if and when a guilty verdict is declared 1
- maximum 12 month suspension 1
- call member back and give him/her the decision 1
- the committee's decision should also be confirmed in writing to the member 1
- if suspended or expelled he/she must hand over his/her membership and associate cards 1
- tell the member he/she has the right to appeal against any decision. 1

(20 marks if all 19 points are covered)

#### Question 2

a) TENS limitations are:

- no more than 499 people (including staff and organizers) attending at any one time 1
- an individual is limited to giving 5 TEN's in a calendar year, unless they are a personal license holder for the sale of alcohol, in which case they can give 50. 1
- In respect of Late TENS, these are limited to 2 and 10 respectively and are counted towards the limits of 5 for individuals and 50 for personal licence holders. 1
- a limit of 12 (15 from 1 January 2016) TENS may be given in respect of any particular premises in a calendar year 1
- an event may last for no more than 168 hours 1
- the maximum aggregate duration of the periods covered by TENS on any individual premises is 21 days 1
- at least 24 hours between two TENS 1

- b) Information to 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
- (c) The descriptions of entertainment in the Act are:
- 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

### Question 3

- a) Staff discipline.
- consult the employee's contract of employment and the club's disciplinary procedure. If there is no written disciplinary procedure the committee should follow the ACAS Code of Practice on Disciplinary and Grievance Procedures and the ACAS Guide on Discipline and Grievances at Work. 2
  - disciplinary action should not be taken by the club until the case has been fully investigated 1
  - the club secretary must put the reasons why the club is considering disciplinary action or dismissal in writing and summon the employee to appear before the management committee giving reasonable notice 2
  - an employee has the right to be represented by a Trade Union representative or by a colleague at any stage of the procedure 1
  - the employee must be given all the relevant information in advance of the meeting 1
  - the meeting must allow both the employer and the employee to explain and present their cases and either party may bring witnesses 2
  - before a penalty is imposed the reasons for such an imposition should be explained to the employee 1
  - usual steps are: oral warning, written warning, final written warning indicating that repetition would result in dismissal. (ACAS guidance now pushes us towards settling matters informally so first written warning should now be the first step, but club rules should be followed) 2
  - depending on the seriousness, stages could be jumped - this includes previous warning 1
  - warnings must be time bound i.e. will only stay on record for so many months 1

- if dismissal, statutory/contract periods of notice must be complied with 1
- the employee should be given a right of appeal in respect of any disciplinary matter. 1

(b) The following are examples of gross misconduct:

- returning of waste liquor into beer barrels.
- adulteration of beers.
- putting the club's Club Premises Certificate at risk, e.g. allowing the consumption of liquor outside of the permitted hours.
- putting the health of members in jeopardy.
- other severe breaches of duty.

(Any three of the above = three marks)

(20 marks if all 19 points are covered)

#### Question 4

a) Private Society Lottery.

- can only be promoted by one of its members 1
- sale of tickets to members only and other persons on the premises used for the administration of the society 1
- may only be promoted for a purpose for which the society is conducted 1
- advertising on club premises only 1
- tickets are sold or supplied only by or on behalf of the promoters 1
- tickets must state the name and address of the promoter and the persons to whom the promoter can sell or supply the ticket 1
- tickets are not transferable 1
- the price of each ticket must be the same and be shown on the ticket and must be paid to the promoter before any person is given a ticket. 1

(b) Bingo 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 18's 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

Bingo 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 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

(20 marks if all 19 points are covered)

### Question 5

- a) 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. 2
- b) Under age gambling on gaming machines.
- permit holders should put into effect procedures intended to prevent under age gambling 1
  - only members and their guests may play the machines; under 18s 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 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 oral warnings, reporting the offence to the Gambling Commission and the police, and making available information on problem gambling 2

### Question 6

- a) Debating procedure
- motion is put by proposer 1
  - motion must have a seconder who may speak, but only when seconding the motion 1
  - if no seconder, the motion is lost 1
  - the first amendment may be put which qualifies the motion and does not negate it 1
  - the amendment must be seconded 1
  - the second amendment may now be put which, again, qualifies the motion or first amendment, must not negate either 1

- the Chairman should deal with the amendments in turn in reverse order in which they were put 1
  - should either amendment succeed it becomes the substantive motion. In this event the original motion is lost 1
  - the procedure continues until a motion is before the floor with no amendments outstanding 1
  - a vote is taken on the motion in its final form. 1
- b) 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 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

### Question 7

- a) 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
- b) 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

c) **Prohibition Order**

If a club fails to comply with an Improvement Notice, the local authority can take proceedings for breach of the legislation. If a court decides that the business puts health at risk, it must issue a Prohibition Order, which closes all or part of the club.

2

**Emergency Prohibition Notice**

If the local authority officer believes that a club gives an imminent risk to health, s/he may close it by using an Emergency Prohibition Notice and s/he then puts the breaches before the court.

2

**Question 8**

1. False
2. False
3. False
4. False
5. True
6. True
7. False
8. False
9. False
10. False
11. True
12. False
13. True
14. False
15. False
16. False
17. False
18. False
19. False
20. True