

## CMD LAW EXAMINATION 2012

### MARKING GUIDE

#### Question 1

- 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) 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) 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
- d) Information to 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

**(20 marks if all 18 points are covered)**

#### Question 2

- a) Terms and conditions of employment.
- identify all parties 1
  - date of 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) 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 = ½ x gross weekly wage 1
    - Age 22 to 40 = 1 x gross weekly wage 1
    - Age 41 to dismissal = 1 ½ x gross weekly wage. 1
  - maximum amount of a week's pay for the purpose of calculation is £400 1
  - maximum payment under the scheme is £12,000. 1

(20 marks if all 19 points are covered)

### 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) Periods of notice are:

4 weeks - 2 years service	= 1 week	
2 years - 12 years service	= 1 week for each complete year of service	
12 years +	= 12 weeks	4

#### Question 4

a) **Improvement Notice**

If an officer believes that a club does not comply with the Food Safety Act 1990 or Hygiene regulations he may issue an Improvement Notice requiring the club to put Matters right, it being an offence to fail to do so. If the club is dissatisfied with the Notice, it can appeal to the Magistrates' Court. 2

#### **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 believes that a club gives an imminent risk to health, he/she may close it by using an Emergency Prohibition Notice and s/he then puts the breaches before the court. 2

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

(20 marks if all 19 points are covered)

### 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) 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 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
- **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 6

### a) Member discipline.

- 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
- the committee member who witnesses the event should not take part in the proceedings unless the committee has asked him 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 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 suspension 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 7

### 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) The powers and duties of a club secretary are:

- to deal with 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 Societies Act or the Industrial and Provident Societies 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
- 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

**(20 marks if all 19 points are covered)**

**Question 8**

a) Agenda of a committee meeting.

- apologies for absence 1
- minutes of previous meetings and matters arising 1
- finance committee report 1
- accounts to be paid 1
- stock committee report 1
- election of new members 1
- motions 1
- correspondence 1
- matters arising from intervening AGM 1

b) Conduct at elections.

Canvassing.

- unless prohibited by the rules, canvassing is not improper 1
- no canvassing should be carried out in the vicinity of the ballot box 1
- stewards, doorkeepers, servants should not interfere in elections. 1

Who may vote?

- consult the club rules, but normally every member. 2

Duties of scrutineers.

- scrutineers take charge of the ballot and count votes 1
- scrutineers should not recommend candidates 1
- scrutineers record votes cast for each candidate and indicate which have been elected. 1

Who should not be a scrutineer?

- officers, members of the committee and candidates should not act as scrutineers. 2

**(20 marks if all 19 points are covered)**