

**MARK SCHEME for the May/June 2010 question paper
for the guidance of teachers**

9084 LAW

9084/12

Paper 12, maximum raw mark 75

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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1 Candidates should discuss both civil and criminal procedure and marks should be awarded appropriately for any failure to do so. The quantum of damages, given the injury to one of the parties, the fact that Kerry is unlikely to be a high-earner, would suggest that the County Court is the appropriate venue, although any discussion of insurance or other settlements out of court should be rewarded. Any material on seeking advice from a solicitor or from the court itself on initiating and settling her claim should similarly be rewarded.

In the criminal courts, the likely scenario is investigation by the police and a summons for Careless Driving or speeding. The Magistrates' Court is the venue. The court will not deal with compensation unless Jason is uninsured. Some explanation of the process of the court, depending on whether Jason pleads Guilty or Not Guilty, should be given credit.

Any material on the different standards of proof between the courts would lift the marks towards or into the top band.

Extra credit for pre-action protocol.
Max 14 for answer concentrating on just civil or criminal procedure.

2 Candidates should consider the main aims and principles in a legal manner, e.g. reform and rehabilitation, deterrence, just desserts. Man on the Clapham omnibus answers, revealing a lack of legal knowledge and a certain desperation in choosing this question, should remain firmly in the lower bands. Examples of sentence appropriate to sentencing aims should be given. Candidates should discuss both the offence and the offender in relation to eventual disposal and the information that the court will wish to have before it, particularly a pre-sentence report from the Probation Service in more serious cases. They should then move on to a more specific analysis of the question of deterrence and its merits or otherwise, as this is what the question asks for.

Max 14 for answer which concentrates solely on aims
Max 14 for answer which concentrates solely on other considerations. Credit should be given to candidates who contrast the different aims of sentencing.

3 No analysis or knowledge of Dickens' irony is expected! Candidates should explain how equity arose and what it is; and how it is developed in relation to changing values and circumstances. The extent and flexibility of its remedies should be considered, as should the maxims, with no more than half-marks awarded to wholly historical and uncritical accounts (Max 13). Illustration from case law is expected throughout. Answers with no reference to case law should not be awarded more than 13 marks.

4 This helpful and comprehensive nugget from Finnemore J. should give any competent candidate a firm structure for a decent answer. Credit should be given for material on:

- the selection of the jury
- the qualifications for service in the Crown Court
- the relationship between the jury and counsel and the trial judge
- its strengths as a means of ensuring public involvement in the judicial process etc.
- its weaknesses and pitfalls (Sudoku puzzles and MP3 players in court may have overtaken the Ouija board outrage).

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5 The question seeks to get candidates to focus on the real significance and powers of the House of Lords and to realise that it deals only with the most significant cases, examples of which should be discussed. Some candidates may not grasp why these celebrated cases are of such significance to society as a whole and to the development of the law, and any glimmers of principle should be rewarded. There needs to be an explanation of the mechanics of the process, the more laboured of which should not reach the higher bands. Candidates should identify the need for leave to appeal, and the better ones will consider the European dimension and attempt to evaluate the strengths and weaknesses of the hierarchical system. Case law is vital here.

An answer which concentrates wholly on precedent should not be awarded more than 11.

- Max 13 for general discussion but with no reference to case law
- Max 14 for simple discussion of hierarchy of the courts and diagram
- Max 18 for good comparison between CA and HL.

6 One hopes here for a reasonably up-to-date answer, given the existence of some 3700 solicitor-advocates at the last count. Candidates should consider the different routes to the Bar and to working as a solicitor, and the difficulty that students have in arriving at a career decision so early in their studies. Increased rights of audience should be discussed, as should the large number of solicitors who have long functioned as advocates in the lower courts.

Any analysis of the differing temperaments and talents of potential lawyers should be rewarded, as should the existence of the employed Bar. A very good answer indeed might make the point that some are suited to advocacy, some to the minutiae of paperwork, others to advising clients face-to-face etc. A considered conclusion should be reached. Any competent critical material on the training of the two professions is obviously relevant along the way. Crude answers of the 'solicitors are GPs, barristers are surgeons' variety should be consigned to the lowest bands. Routes to the judiciary should be discussed.

Max 18: answer based on fusion.