

MARK SCHEME for the May/June 2009 question paper
for the guidance of teachers

9084 LAW

9084/01

Paper 1, 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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MARKBANDS

- 0 marks** The answer contains no relevant material.
- 1–6 marks** The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
- OR** The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.
- 7–12 marks** The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.
- OR** The candidate adapts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules/principles.
- OR** The candidate attempts to introduce material across the range of potential content but it is weak or confused so that no real explanation/conclusion emerges.
- 13–18 marks** Where there is more than one issue the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.
- OR** The candidate presents a more limited explanation of all parts of the answer but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.
- 19–25 marks** The candidate presents a detailed explanation and discussion of all areas of relevant law and while there may be some minor inaccuracies and/or some imbalance a coherent explanation emerges.

- 1** Candidates need to consider at least a reasonable range of the principal rights protected by the HRA 1998. The question gives them scope to consider at least freedom of thought, conscience and religion. Any of the protected rights is a valid point of discussion.

They should then consider what an aggrieved citizen can do if s/he considers that a right has been infringed, both through application to the domestic courts and by way of reference to the ECHR. Some mention of the difficulties involved would be welcome.

Those candidates who move on to offer any form of critical assessment of the Playfoot case (and others) and the general importance of the provisions should be rewarded.

Max 18 just addressing the first part of the question.

Max 10 for general answer with no mention of specific articles of the convention.

- 2** Inevitably, an historical account is necessary here, to explain how and why equity arose as a concept and a set of remedies. Mention should be made of trusts, mortgages, the deserted wife's equity and the remedies available in the law of contract. Illustration from decided cases is expected. Max 15 for purely historical account.

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3 Candidates should, at the very least, consider the following:

- (a) Identify that appeal lies from the Crown Court.
- (b) The right of the prosecution to refer the case to the Attorney General as an “unduly lenient” sentence. The matter will then be considered by the Criminal Division of the Court of Appeal. There is a considerable reluctance to overturn the verdict of a jury properly directed.
- (c) Can Michael appeal against his conviction? To which courts?
- (d) The possibility of leave to appeal to the House of Lords on a point of law of general public importance. Remote possibility of a European element.
- (e) Slowness, expense, re-hearing of evidence, possibility of a re-trial etc. should be discussed.
- (f) Credit for discussion of the role of the CCRC and examples from case law leading to its creation.

4 The question only mentions tribunals!

Candidates should consider the range, constitution, function and powers of a variety of tribunals; the possibilities of appeal; their advantages and weaknesses; and the control of these bodies by way of judicial review. Material on arbitration, conciliation etc. is not required unless it is used in direct comparison to the use of tribunals. Particular credit for the reform of the system such as an understanding of the role of the new administrative justice and Tribunals Council which replaced the Council on Tribunals in 2007.

5 This is intended, at its basic level, to be a question on law reform, in which candidates can happily consider the various agencies of reform e.g. the Law Commission, Royal commissions, public inquiries etc. Obviously, some mention of public dissatisfaction and the formation of parliamentary and other pressure groups is of relevance, as is public resistance to unpopular laws. Some credit for discussing legislative procedure max 10.

Even better candidates might move on to discuss the role of the judiciary in reversing or overruling poor decisions and the constitutionality of this; the use of the 1966 Practice Statement in leading cases such as R v SHIVPURI; persuasive obiter dicta; and examples of particular laws which have been modified or implemented or even abolished as a result.

Max 12 for an answer which concentrates only on statutory interpretation and judicial precedent. Some credit can be awarded for answers concentrating on statutory interpretation if used sensibly.

6 Straightforward – candidates should consider the Lord Chancellor’s role in selection of JPs through local committees; their qualifications and representativeness or otherwise; and the work that they do in both the civil and criminal spheres.

Licensing has gone. Although credit should be given where candidates identify the role of the magistrates in appeals on licensing.

Courts are mentioned in the plural, so reward anyone who mentions that JPs can sit on appeals with the judge in the Crown Court. Otherwise, a solid account of Section 51 sendings, committals, plea before venue, pleas, trials and sentencing, together with minor family work, TV licensing, private prosecutions gives plenty of scope.

Max 21 if no discussion of civil jurisdiction.