

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

9084 LAW

9084/23

Paper 23, maximum raw mark 50

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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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1:

The answer contains no relevant material.

Band 2:

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.

Band 3:

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 adopts 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.

OR

The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4:

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.

Band 5:

The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

Maximum Mark Allocations:

Question	1	2	3	4	5	6
Band 1	0	0	0	0	0	0
Band 2	6	6	6	6	6	6
Band 3	12	12	12	12	12	12
Band 4	19	19	19	19	19	19
Band 5	25	25	25	25	25	25

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- 1 (a) Ahmed's employers will not be liable because Ahmed is driving outside the course of his employment. Reference to source material expected. MAX 5 for principle only.
- (b) Ahmed's employers will be liable because Ahmed is driving whilst in the course of employment even if he is driving negligently. It is an authorised act carried out in an unauthorised manner. Reference to source material expected. MAX 5 principle only.
- (c) The ratio decidendi is the principle of law from a case which will be binding on future cases. In *Twine v Beans Express* the ratio decidendi will be that an employer will not be liable for the acts of his employees if the acts are not carried out during the course of employment. MAX 5 if only address the ratio or only address the ratio in *Twine*.
- (d) A decision of the House of Lords will be binding on future cases heard in the House of Lords and all courts below the House of Lords. Under the Practice Statement of 1966 the House of Lords does not have to follow previous decisions of the House of Lords. This is used sparingly and only in limited cases. No credit for statutory interpretation. MAX 15 for excellent answers including P.S. but no cases. MAX 8 for general answers with no hierarchy or PS or case law.
- 2 (a) (i) the coins will be treasure under s.1 (iii) because under s.1 (iii) where at least ten coins are found which are over 300 years old they will be treasure irrespective of metal content. MAX 3 no authority.
- (ii) the button could also be treasure because it is over 300 years old but we are not told whether it has a weight of over 10% of silver content. MAX 3 if no discussion of silver content.
- (b) Janice must notify the coroner, for the district in which the object is found, of her find; if she fails to do so she will be guilty of a criminal offence.
- (c) Janice will not automatically be given a reward; it is decided by the Secretary of State. An answer in top band must include detail from s.10 (3).
- (d) Define language rules. The main language rules of statutory interpretation are the *eiusdem generis* (general rules have to be interpreted in line with prior examples), *expresso unius exclusion alterius* (where a statute includes a list covering what is in its provisions then anything that is not expressly in that list is deemed to be specifically excluded) and *noscitur a sociis* (where a list is included of examples of what is covered by legislation then it is presumed that the words used have a related meaning). Explanation of why statute may not be clear. MAX 5 for rules no credit for intrinsic/extrinsic. MAX 8 for 3 rules and discussion of why a statute is unclear. MAX 15 discussion with examples but no case law.