

**MARK SCHEME for the October/November 2009 question paper
for the guidance of teachers**

9084 LAW

9084/21

Paper 21, 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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Page 2	Mark Scheme: Teachers' version	Syllabus	Paper
	GCE A/AS LEVEL – October/November 2009	9084	21

- 1 This question focuses on the interpretation of the Occupiers Liability Acts 1957 and 1984 and the application to a problem scenario.
- (a) The owners of the house owe a duty of care to Asif and his family. When Asif tries to put on the light he is expected to have a higher standard than other visitors because he has a special calling and ability as an electrician and he may not be able to rely on the 1957 Act s.2(3)(b).
- (b) The 1984 Act will apply to the children and even if they are trespassers then a duty of care is owed to them and under the 1957 Act a higher standard of care is owed to children under s.2(3). Binda is six and candidates may draw an analogy with the child in the case of Taylor. 0–5 no statute; 0–8 no mention of the case.
- (c) The candidates should discuss the various sources of law such a statute, case law, Law Commission reports and various sources in particular, the problems where a statute is unclear and the way the courts may resolve it. Discussion of the use of Hansard will be particularly relevant here in the resolution of disputes. Credit for discussion of precedent.
- (d) Candidates are expected to discuss bringing a civil action to court. They should discuss the difference between the High Court and the County Court and each court's jurisdiction. They should also explain the procedure for bringing a case and the personnel they may encounter in the two courts. Particular credit should be awarded of candidates proceed to discuss further appeals.
- 2 This question considers the role of the magistrate and in particular the role of the court clerk.
- (a) The court clerk should not retire with the magistrates. In this case he appears to have done so but he does not take part in the decision making. There may be grounds for an appeal but it is unlikely to succeed. 0–5 procedure only; 0–8 procedure and discussion of court clerk's role. Max. 10 must include the source.
- (b) The procedure used to appeal against a magistrate's decision where it is based on law involves using the case stated. The appeal is heard by the Queen's Bench Divisional Court. Both the prosecution and the defence can use this but in this case it will be the defence. It is for the magistrates to state the case here. The divisional court can confirm, vary or reverse the decision or remit the case to the magistrates court for the magistrates to implement the decision on the law. Discussion of Crown Court appeal 0–7. Max. 10 must discuss High Court appeals and the procedure by way of case stated.
- (c) In this scenario the clerk does not retire but he does appear to take part in the decision making so under Farrell there is a good case for an appeal against conviction. Max. 10 must include the source.
- (d) The role of magistrates in criminal cases includes the following: hearing summary cases; trying triable either way cases and also acting as examining magistrates in committal proceedings for any triable either way or indictable offences; issuing warrants for arrest and deciding bail applications; finally trying cases in the Youth Court where the defendants are 10–17. Some discussion of the extent of the role and its importance in the sheer number of cases disposed of in the court will be given credit, as well as any comparison with the Crown Court role of the jury.