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LAW **9084/11**

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MARK SCHEME

Maximum Mark: 75

Published

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General Marking Guidance

This mark scheme includes a summary of appropriate content for answering each question. It should be emphasised, however, that this material is for illustrative purposes and is not intended to provide a definitive guide to acceptable answers. It is quite possible that among the scripts there will be some candidate answers that are not covered directly by the content of this mark scheme. In such cases, professional judgement should be exercised in assessing the merits of the answer and the senior examiners should be consulted if further guidance is required.

The mark bands and descriptors applicable to all questions on the paper are as follows.

Band 1 [0 marks]

The answer contains no relevant material.

Band 2 [1–6 marks]

The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.

Band 3 [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 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 [13–19 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.

Band 5 [20–25 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 imbalance, a coherent explanation emerges.

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1 Describe the approaches and tools available to judges for statutory interpretation. Discuss whether these give judges too much power. [25]

Band 1 [0] Irrelevant answer.

Band 2 [1–6] Candidate gives a very basic explanation of the main approaches to interpretation, but goes no further. There is likely to be little or no illustration by way of case law. There is unlikely to be any developed evaluation.

Band 3 [7–12] Candidate gives a brief but generally accurate explanation of some/all of the main approaches. There may be brief mention of other tools of interpretation, but these may be superficial and poorly explained. There is unlikely to be any discussion of detail and very little, if any, reference to the analytical issues within the question. There may be some isolated case examples, but these are likely to be factual accounts only.

Band 4 [13–19] Candidate gives a reasonable explanation of main approaches to interpretation, and/or rules of language and/or other aids to interpretation, but may not have wide ranging case or example illustration at the lower end of the band. Better candidates may begin to address the analytical issues of the power of the judiciary within the question, but at the lower end of the mark band this may be limited and unfocussed on the question.

Band 5 [20–25] Candidate gives a clear and very detailed explanation of the approaches, rules of language and aids to interpretation with detailed and wide ranging illustrations. Candidate evaluates the issues of judicial power within the question well, covering the differing effects of the various approaches in particular.

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2 Explain the historical development of Equity. Using cases and examples discuss how relevant it is today. [25]

Band 1 [0] Irrelevant answer.

Band 2 [1–6] Candidate gives a very basic explanation of the concept and origins of Equity. Candidates are unlikely to offer any illustration or reference to the analytical issues within the question.

Band 3 [7–12] Candidate gives a basic and generally accurate explanation of the historical development of equity but this is unlikely to have any case/concept illustration and little reference to the analytical aspects of the question. Candidates will be unlikely to achieve more than 12 marks with a purely historical account.

Band 4 [13–19] Candidate gives a reasonable explanation of the concept of Equity and a concise and relevant historical account. There will be reference to and definition of maxims and/or remedies and/or concepts with some case illustration. There may be some reference to modern application and case examples (i.e. search and freezing orders, Mareva, Anton Pillar), deserted wives equity, estoppel, mortgages, trusts) but at the lower end of the mark band these may not be extensive or detailed. Better candidates will attempt to link to the analytical component of the question by emphasising the modern use of such concepts.

Band 5 [20–25] Candidate gives a clear and very detailed explanation of the concept of Equity and includes a concise and relevant historical account. Defines and illustrates maxims and remedies with appropriate case illustration throughout. Candidate makes good reference to modern application (as in Band 4) with clear and informed links to the analytical aspect of the question.

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3 Explain the role of tribunals in resolving disputes. Consider whether the reforms put in place by the Tribunals Courts and Enforcement Act 2007 have made the system more efficient. [25]

Band 1 [0] Irrelevant answer.

Band 2 [1–6] Candidate gives a very basic explanation of tribunals but is unlikely to be aware of any reforms. Candidates are unlikely to offer any illustration or reference to the analytical issues within the question.

Band 3 [7–12] Candidate gives a basic and generally accurate explanation of the role of the tribunal but this is unlikely to have any illustration, detail or awareness of the reforms and little reference to the analytical aspects of the question. General references to ADR cannot be rewarded as this is not the focus of this question.

Band 4 [13–19] Candidate gives a reasonable explanation of the role of the tribunal and (at the bottom end of the band) some awareness of the reforms. Better candidates will be able to explain the new structure of tribunals and offer examples and illustrations. Candidates will attempt to link to the analytical component of the question and may make valid comparisons between the civil courts and Tribunals, recognising the reason for the creation of Tribunals. General references to ADR cannot be rewarded as this is not the focus of this question.

Band 5 [20–25] Candidate gives a clear and very detailed explanation of the new tribunal structure and recognises the effect of the 2007 Act. Candidates will offer a wide range of examples and illustration and address the analytical aspect of the question focussing clearly on the reason for the creation of Tribunals and comment on the efficacy of the new system.

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4 Jeremy has been charged with murder (an indictable offence).

Describe the process through which Jeremy's case will pass from his first appearance in court to the verdict in his trial. Consider the ease with which he might appeal if found guilty. [25]

Band 1 [0] Irrelevant answer.

Band 2 [1–6] Candidate gives a very basic explanation of the issues of trial and appeal, but with no real detail or accuracy. Candidates are unlikely to offer any detail on the type of crime, but may make some confused references to criminal courts.

Band 3 [7–12] Candidate gives a brief but generally accurate explanation of the courts involved. These are, however, likely to be superficial and poorly explained. There is unlikely to be any discussion of detail and very little reference to the situation set out within the question. There may be some mention of appeal but this may be lacking in commentary and provide only a limited factual description.

Band 4 [13–19] Candidate gives a reasonable explanation of the courts involved and identifies the courts and processes involved (Magistrates' Court, early administrative hearing, transfer for trial, Crown Court, disclosure, plea and case management hearing, trial) with some useful detail. Better candidates may begin to address the analytical issues within the question, with a consideration of the difficulties of appeal. Candidates who make no reference to the scenario will gain no more than 13 marks.

Band 5 [20–25] Candidate gives a clear and very detailed explanation of the process (as described in band 4) with good levels of illustration and explanation. Candidate considers the issues of appeal within the question well, addressing the problems facing a convicted defendant in mounting an appeal, perhaps from prison, and draws well informed conclusions, making good reference to the scenario.

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5 How are juries selected for criminal trials? Discuss any proposals for reform of the jury system. [25]

Band 1 [0] Irrelevant answer.

Band 2 [1–6] Candidate gives a very basic explanation of the selection of jurors but with no real detail or accuracy. Candidates may offer some very limited analytical comment but no discussion is expected.

Band 3 [7–12] Candidate gives a brief account of the selection process of jurors. This is, however, likely to be superficial and poorly explained. There is unlikely to be any detailed analytical content or reference to statute.

Band 4 [13–19] Candidate gives a reasonable explanation of the selection, of jurors (qualification, electoral roll, random selection, disqualification, excusal, challenge), with some useful detail, example, and where appropriate, statutory authority. Better candidates will attempt to include some analytical content but this may be vague and lacking focus on the question of reform.

Band 5 [20–25] Candidate gives a clear and very detailed explanation of the selection of jurors (detail as in band 4) and with good levels of illustration and explanation. Candidate will address the analytical component well, covering clear analysis, presenting clear arguments for alternatives to the jury as a decision maker and drawing logical and well informed conclusions.

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6 Describe the training and role of both barristers and solicitors. To what extent do both professions now carry out the same role? [25]

Band 1 [0] Irrelevant answer.

Band 2 [1–6] Candidate gives a very basic explanation of the role and/or training of barristers and/or solicitors but is unlikely to include any detail or any reference to training or the analytical issues within the question.

Band 3 [7–12] Candidate gives a basic explanation of the training and/or role of barristers and/or solicitors. There is unlikely to be any detail or comparison of the professions. The analytical aspect of the question is unlikely to be considered in any depth.

Band 4 [13–19] Candidate gives a reasonable explanation of both the training and role of barristers and solicitors and draws points of comparison and difference. Candidate makes attempts to address the analytical component of the question.

Band 5 [20–25] Candidate gives a clear explanation of the training and role of barristers and solicitors and draws clear and well explained points of comparison and difference over both training and role. Candidate clearly explains and addresses the analytical component of the question by recognising changes to the roles of the profession. Candidate clearly addresses the analytical component of the question and draws reasoned conclusions.

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