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MARK SCHEME for the October/November 2014 series

9084 LAW

9084/22 Paper 2, maximum raw mark 50

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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.

1 (a) Band 1: Irrelevant answer [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:
- Principle without section – reference to the fact that the guinea pigs are not dangerous [1–5]

  and/or
- Reference to s6(2)(a) and/or (b) Animals Act 1971 and/or Behrens v Bertram Mills Circus Ltd 1957 with little or no development [1–5]

Band 4: Some development of s6(2) (a) and s6(2) (b) and some application; credit Behrens v Bertram Mills Ltd 1957 if used but not essential [6–7]

Band 5: Candidate must refer to and provide full development of all relevant sources. Clear conclusion that although the guinea pigs are native to South America they are now domesticated in the British Isles and considered non-dangerous. [8–10]

(b) Band 1: Irrelevant answer [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:
- Principle without section – reference to the fact that Clyde is not domesticated in the British Isles and could be dangerous [1–5]

  and/or
- Reference to s6(2)(a) and/or (b) and/or Behrens v Bertram Mills Circus Ltd 1957 with little or no development [1–5]

Band 4: Some development of s6(2) (a) and s6(2) (b) and some application; credit Behrens v Bertram Mills Ltd 1957 if used but not essential [6–7]

Band 5: Candidate must refer to and provide full development of all relevant sources. Clear conclusion that chimpanzees are generally not domesticated in the British Isles and are likely to cause severe damage when fully grown. [8–10]

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(c) Band 1: Irrelevant answer [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:
- Principle without section – Trudie is 15 years old and Jason could not take action against her [1–5]
  and/or
- Reference to s2(1)and/or s6(3)(a) and/or s6(3) (b) with little or no development [1–5]

Band 4: Some development of s2(1) and s6(3) (b) with some application [6–7]

Band 5: Candidate must refer to and provide full development of all relevant sections. Clear conclusion that s6(3)(b) means that Jason cannot take legal action against Trudie as she is 15 years old and under 16 and therefore no liability falls to her. He would be best advised to take action against her parents for the fact that he is bitten by Clyde. [8–10]

(d) Band 1: Irrelevant answer [0]

Band 2: Discusses the civil court process and/or ADR in general terms [1–6]

Band 3: Good discussion of either the civil court process and/or ADR and its benefits. Typical content will include county court start and process including three-track system and some discussion of either civil court or ADR. Candidates can reach the top of the band with a discussion of only one method as long as there is a clear link to Jason and his decision. [7–13]

Band 4/5: Good discussion of both the civil court process and ADR with sensible comparisons and analysis of the merits of both processes. A good conclusion on both types. Candidates who do not deal with Jason's situation cannot access the higher marks in this band. [14–20]

Typical content may include:

This would be a claim for personal injury and therefore Jason would start court proceedings in the civil courts. Describe and discuss the three tracks:
- small claims track – £10 000 or less (£1000 if PI) – informal procedures, professional representation discouraged
- fast track – £10 000–£25 000 (£1000-£15 000 if PI) and trial not expected to last more than one day
- multi-track – £25 000+ and lower value claims of unusual complexity – judge acts as trial manager to ensure efficient progress

Depending on the amount Jason is claiming, his claim would be assigned to the appropriate track using a Pre-Action Protocol. He was bitten by Clyde the chimpanzee – the facts do not say how badly. If the bite is not a bad one, perhaps attracting damages of less than £1000, the small claims track is most appropriate. If the bite is worse then possibly the fast-track would be appropriate – unlikely to be multi track.

Merits of the various alternative courses of action in ADR. Using the courts as a forum for solving personal injury disputes can be costly and delays arise. ADR can achieve a cheaper and faster hearing. No need to use a lawyer, thereby reducing costs of legal representation. Reference to negotiation, mediation, conciliation and arbitration.
Other discussion points: costs, case management conference and pre-trial review.

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2 (a) Band 1: Irrelevant answer [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:
- Principle without section – reference to fact that in examining the lock Desi's actions are merely preparatory [1–5]
  and/or
- Reference to s1 (1) Criminal Attempts Act 1981 and/or R v Campbell and/or R v Boyle and Boyle with little or no development [1–5]

Band 4: Some development of section s1(1) and R v Campbell and/or R v Boyle and Boyle with some application [6–7]

Band 5: Candidate must refer to and provide full development of s1(1) and cases. Clear conclusion that Desi is unlikely to be charged with a criminal offence. [8–10]

Credit reference to, and dismissal of, s9 Theft Act.

(b) Band 1: Irrelevant answer [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:
- Principle without section – reference to Jack's actions being more than merely preparatory as he has broken the lock or being not more than merely preparatory as he has not broken the lock [1–5]
  and/or
- Reference to s1(1) Criminal Attempts Act 1981 and/or R v Campbell and/or R v Boyle and Boyle with little or no development [1–5]

Band 4: Some development of s1(1) and R v Campbell and/or R v Boyle and Boyle and some application. [6–7]

Band 5: Candidate must refer to and provide full development of s1(1) and cases.
Credit alternative conclusions that Jack may or may not have committed an offence as long as this is based on application of the relevant cases and supported by logical reasoning. [8–10]

Credit reference to, and dismissal of, s9 Theft Act

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(c) Band 1: Irrelevant answer [0]

A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section – Lenny can be charged with a criminal offence [1–5]
  and/or
- Reference to s9(1)(a) and/or (b) Theft Act 1968 and/or s9(2) with little or no development [1–5]

Band 4: Some development of the correct sections and some application [6–7]

Band 5: Candidate must refer to and provide full development of the correct sections and subsections. Clear conclusion that Lenny can be charged with burglary s9(1)(b) because having entered as a trespasser he steals several phones. [8–10]

(d) Band 1: Irrelevant answer [0]

Band 2: Discusses the judge and/or jury in very general terms [1–6]

Band 3: Good discussion of either the judge's role or the jury's role **or** limited discussion of both. [7–13]

Band 4/5: Good discussion of the role of both judges and juries.

Typical content may include:

The role of the judge is to interpret and uphold the law. Judge is the sole arbiter of law. A judge summarises the evidence and explains the law to the jury. Judges sentence and, in the Crown Court, they may be asked to correct a sentence imposed by magistrates. The English court system is adversarial and the judge has a role akin to a referee between the prosecution and the defence.

Juries are finders of fact and their role is clarified in cases such as Bushell. The jury try criminal cases on indictment. Juries are ordinary members of the public randomly selected and they must meet the requirements of the Juries Act 1974. They can ask questions about the law so it can be clarified by the judge. Juries play no part in sentencing in the event of a conviction. Their decisions are rarely interfered with. [14–20]

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