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LAW **9084/12**

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MARK SCHEME

Maximum Mark: 75

Published

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1 The Law Commission was created to simplify and modernise the law.

Explain how the Law Commission works and consider whether public opinion might also be able to provide an influence for changes to the law. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of the role of the Law Commission and may offer fragments of information concerning media/public pressure, but with no real detail or explanation. There is unlikely to be any analytical content.

Band 3 (7–12) Candidate gives a basic explanation of role of the Law Commission and may make some reference to other pressures for law reform, but this is likely to be weak and poorly explained. There is unlikely to be any discussion of detail and very little reference to the analytical issues within the question.

Band 4 (13–19) Candidate gives a reasonable explanation of the role and composition of the Law Commission but may not have wide ranging illustration. Better candidates may begin to offer some examples of successful LC reforms and address the analytical issues within the question. Candidates who address only the issue of the Law Commission may not gain more than 19 marks.

Band 5 (20–25) Candidate gives a clear and very detailed account of the work of the Law Commission and other pressures for law making with good levels of illustration and explanation. Candidate evaluates the issues within the question well and may even discuss the role of the judiciary and the jury in prompting law reform.

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2 Describe the training of both barristers and solicitors. Discuss whether they fulfil different roles in the English legal system. [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. Candidates are unlikely to offer any illustration or reference to the analytical issues within the question.

Band 3 (7–12) Candidate gives a basic explanation of the difference in role and/or training of barristers and/or solicitors, but this is unlikely to have much illustration and little or no reference to the question.

Band 4 (13–19) Candidate gives an adequate explanation of the role and training of the two professions, but this may not be balanced. Candidates who look at only one profession will not be able to achieve Band 4. There will be reference to training pathways and detail on the role of each profession. There may be some reference to statutory authority. There will be some attempts to link to the analytical components of the question, considering the length and expense of training as well as the concepts of fusion and the closeness of the role of the two professions.

Band 5 (20–25) Candidate gives a clear and very detailed explanation of the training and role of barristers and solicitors with good levels of detail and statutory authority where relevant. Candidates will address the analytical components of the question (as in Band 4) in some detail, discussing the reforms of the 1990s.

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3 Judicial precedent needs to be both certain and flexible.

Explain how precedent works and discuss how far the system can achieve both of these aims. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of precedent, but with no real detail or accuracy. Candidates may make brief reference to flexibility and certainty, but fail to present a reasoned argument.

Band 3 (7–12) Candidate gives a brief but generally accurate explanation of the workings of precedent. These are, however, likely to be superficial and poorly explained and bear little relevance to the question. There is unlikely to be any detailed discussion or examples to illustrate the answer and little reference to the analytical aspect of the question.

Band 4 (13–19) Candidate gives a reasonable explanation of the concepts of precedent with some useful detail and example. Candidates may consider ratio, obiter and the position of the various courts with reference to the ability to develop law. Better candidates will go on to illustrate this with a range of case law, but this may be limited towards the bottom of the mark band. Candidates may address some of the analytical issues concerning the abilities of the courts to vary precedent, and relate this to the question.

Band 5 (20–25) Candidate gives a clear and very detailed explanation of the concepts of precedent (as in Band 4) with good levels of illustration and explanation. Candidate clearly links the powers of variance in the different courts to the question and presents a logical and reasoned argument.

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4 Explain the procedure and composition of tribunals. Discuss whether they provide better justice than the courts. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of tribunals. 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 tribunals 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 tribunals 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. Candidates will attempt to link to the analytical component of the question and make valid comparisons between the civil courts and tribunals, and recognise 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 address the analytical aspect of the question, focussing clearly on the reason for the creation of tribunals.

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5 Anjali has been found guilty of the theft of a painting was sentenced to two months' imprisonment by the Magistrates' Court. She claims that she is not guilty and a witness has now come forward to give her an alibi.

Explain the possible appeals available to Anjali from the Magistrates' Court and advise her of any difficulties she may encounter. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of appeal but are unlikely to offer any detail and little or no reference to the analytical issues within the question.

Band 3 (7–12) Candidate gives a basic but generally accurate explanation of appeal but this is unlikely to have any citation or detail and little reference to the analytical aspects of the question.

Band 4 (13–19) Candidate gives a reasonable explanation of appeal. Better candidates will be able to explain the various routes of appeal and explain the potential grounds; sentence, conviction or case stated appeals. Candidates will attempt to link to the analytical component of the question and give valid commentary on the difficulty of appeal.

Band 5 (20–25) Candidate gives a clear and detailed explanation of the appeals process. Candidates will address the analytical aspect of the question focussing clearly on the issues facing someone who may wish to appeal.

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6 The jury has often been described as the cornerstone of the English legal system.

Explain the role of the jury in both civil and criminal cases and discuss the advantages and disadvantages of this system. [25]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Candidate gives a very basic explanation of the role of jurors but with no real detail or accuracy. Candidates are unlikely to consider both the civil and criminal function. Analytical content is unlikely at this level.

Band 3 (7–12) Candidate gives a brief account of the role of jurors. This is, however, likely to be superficial and poorly explained. There is unlikely to be any detailed analytical content. Candidates who do not discuss both the civil and criminal role of the jury are limited to a maximum of 12 marks.

Band 4 (13–19) Candidate gives a reasonable explanation of the role of jurors in both civil and criminal cases with some useful detail, example, and where appropriate, statutory authority. Better candidates will attempt to include some analytical content but at the lower and of the band this may be vague and lacking in detail or reasoned argument. Candidates who fail to include a balanced argument in the analytical aspect of the question (addressing either advantages or disadvantages) may not receive more than 15 marks

Band 5 (20–25) Candidate gives a clear and very detailed explanation of the role of jurors in both civil and criminal cases with good levels of illustration and explanation. Candidate will address the analytical component well, covering clear analysis, presenting clear and balanced arguments and drawing logical and well informed conclusions. Better candidates may consider alternatives to the jury system.

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