

**MARK SCHEME for the May/June 2011 question paper
for the guidance of teachers**

9084 LAW

9084/12

Paper 1, maximum raw mark 75

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.

- Cambridge will not enter into discussions or correspondence in connection with these mark schemes.

Cambridge is publishing the mark schemes for the May/June 2011 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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Mark Bands

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

Indicative content for each of the questions follows.

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 Candidates may wish to begin with examples of the inappropriate behaviour of juries in the past – Ouija boards, Sudoku, MP3 players and rogue verdicts. They should consider whether twelve ‘good men and true’ and the way in which they are recruited, assembled and treated are likely to meet the needs of justice in all but the shortest and simplest Crown Court trials. Lengthy murder, fraud, drugs and conspiracy cases, as well as those involving allegations of terrorism, may be too much for the average juror.

The principle, however, of trial by one’s peers is an important area of discussion and its history and merits should be considered before a clear answer is reached.

- 2 Candidates need to consider such theoretical approaches as retribution and rehabilitation and reform. Specific relation to Doris is worthy of reward. In relation to the actual sentence, particular attention should be paid to:
- her age
 - lack of antecedents
 - her plea of guilty — discount to be given
 - the seriousness, nonetheless, of the offence. If a prevalent one, a deterrent sentence may be called for.

Candidates should then consider the range of penalties available. A fine or conditional discharge would be outrageous, but the judge may well consider a Confiscation Order. We should be in the realms, at least, of a high community penalty, should she require supervision. Unpaid work at Doris’s time of life might pose challenges for the Probation Officer.

Realistically, the judge will be looking at a prison sentence, possibly suspended in tandem with supervision, or the last resort of a period of imprisonment. Mention of pre-sentence report should be credited.

Although not specifically mentioned in the question, credit will be given to candidates who make reference to the issues of potential drug addiction and rehabilitation.

Candidates who make no reference to the scenario will only achieve a maximum of 18 marks.

- 3 Discussion here is needed of the process of selection, together with any critical observations on its effectiveness and the qualifications a magistrate needs. Better candidates will note Barry’s age and occupation and discuss the additional hurdles he may, realistically, have to clear in view of his relative youth and social class. There should follow some detailed discussion of the jurisdiction and daily work, both civil and criminal, of magistrates.

Candidates who do not consider the jurisdiction of the Magistrates’ Court will be unable to access band 5.

Candidates who do not relate their answer to the scenario will only achieve a maximum of 18 marks.

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- 4 Here, the position of the Supreme Court in the hierarchy of courts must be considered, along with the peculiar nature of its powers. Candidates should analyse its relationship with the lower courts, particularly the Court of Appeal, and assess the importance of the Supreme Court in determining final appeals and in overruling previous decisions (examples should be given) since 1966.

Answers which then go on to look at the 'abolition' question, considering perhaps the need to mark a clearer division between the judiciary and the legislature, the desirability of better, up-to-date buildings and facilities, and the move towards the example of other jurisdictions, deserve considerable credit.

- 5 In this question the higher bands should only be attained where the critical approach asked for is maintained. Candidates must identify the three types of DL; why and how it arises; its usefulness to the needs of society; and the injustices which will inevitably arise through obscurity and through the exercise of powers *ultra vires*. The controls exercised by the courts and by parliamentary process should again be rewarded where considered.

- 6 Candidates need to know something about Leaf v International Galleries and the maxim that 'delay defeats equity', so that they can offer some kind of guidance to both Lady Carbury and to the art dealers. They should then, with the assistance of guided cases, go on to consider how and why equity arose and the development of both remedies and maxims in situations where the law had previously failed to give relief. A wide range of relevant discussion will be rewarded by marks in the higher bands. However, answers which deal exclusively with historical development may achieve no more than 13 marks. Band 5 marks may not be awarded without reference to the scenario.