

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

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| 9084 LAW |
| 9084/22 Paper 22, 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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- 1 This question focuses on the principles of judicial precedent.
- (a) If the hospital appeals the decision of the court at first instance then they are likely to be successful as the court will be bound by the decision of Croke. Max 5 good answer but no sources used. Max 10, must refer to the sources.
- (b) The House of Lords is not bound by decision of lower courts or of itself but will only depart from its own decisions in limited circumstances. There is nothing to suggest here that they would award damages for lost earnings for a child. Max 6 for no application of Practice Direction to the question. Max 8 Asif not mentioned at all but the PD discussed. Full marks can be achieved without references to the sources in this part of the question. Credit should be given for discussion of the process and grant of leave to appeal.
- (c) The decision in *Young v Bristol Aeroplane* allows the Court of Appeal to depart from earlier decision in certain limited circumstances. Where two CA decisions conflict, previous case was decided *per incuriam*, where a HL decision has overruled a previous CA decision. Max 6, good answer using sources but no discussion. Max 10 if have discussion.
- (d) General discussion of the merits of precedent in particular the scope it has to allow the law to develop but few examples have arisen in recent years of really new developments rather fine tuning of previous rules. Case law must be used to illustrate the answer. Should include such matters as court hierarchy; advantages and disadvantages of precedent. Max 10 for purely narrative answer at least two issues of precedent. Max 20 factual base and case law and discussion of role of precedent.
- 2 This question considers delegated legislation and its general application.
- (a) Hari has grounds for an appeal on the basis that the procedure for the passage of the DL has not been followed. See *Aylesbury Mushrooms* case. Max 5 no mention of the source. Max 10, can include mention of statute, must mention reason for consultation.
- (b) The procedure used to appeal against such a decision is to bring an action in the Queens Bench Division for judicial review seeking an order quashing his conviction based on the principle of *ultra vires*. Max 5 for discussion of criminal appeals in general if conclude will be unsuccessful. Mention guilty plea. Credit for appeal against sentence. Credit for sensible mention of QBD.
- (c) *Ultra vires* (not lawful) can be split into two separate types: procedural *ultra vires* and substantive *ultra vires*. Procedural relates to a failure to follow a procedure set down for anyone using that power; substantive *ultra vires* occurs when someone does something that is not actually authorised by enabling legislation. Candidates would be expected to cite *DPP v Hutchinson*; *DPP v Smith* here. Max 10, must include mention of cases.
- (d) General discussion on the role of DL today. Speed, expertise and the importance of attention to finer detail sometimes lost in parliament. Safeguards are important to prevent an abuse of democracy. In discussing the importance of safeguards it will be assumed that such safeguards will be explained. Max 20: range must include all types of DL and brief explanation; range of reasons for use; mention of both judicial and parliamentary control and explanation of both. Marks split equally between the role of DL and the controls over DL.