

# **Mark Scheme for June 2012**

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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



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## Annotations

Annotation	Meaning
	Benefit of the doubt
	Incorrect point
	Expansion of a point
	Level one
	Level two
	Level three
	Not answered question
	No benefit of doubt given
	Not relevant
	Repeat
	Correct point
	Development of point
	Vague
	Omission mark

Question		CBT	Answer	Marks	Guidance
1			1	1	<b>Assessment Objective 2</b>
2			4	1	<b>Assessment Objective 2</b>
3			4	1	<b>Assessment Objective 2</b>
4			<p>Candidates <b>may</b> discuss <b>any</b> of the following typical points:</p> <p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>• Quicker – Compared to the civil courts, tribunals are quicker in terms of both allocation and the trial itself</li> <li>• Cheaper – No lawyers (usually) means no legal costs as parties normally represent themselves</li> <li>• Expertise – One of the key features of tribunals is the subject specific knowledge and expertise the lay members bring</li> <li>• Relieves Pressure – Without tribunals the civil courts would be overwhelmed with cases</li> <li>• Privacy – Tribunal proceedings tend to enjoy more freedom from press intrusion than the civil courts</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>• Inconsistent – Without a system of precedent or publication of reasons for all decisions, it can make decisions unpredictable</li> <li>• Access to Justice – With no legal aid available, some parties are either put off using the system altogether or represent themselves poorly both of which deny parties proper access to justice</li> <li>• Complexity – The complicated rules, procedures and language of some proceedings also disadvantage some parties</li> <li>• Inequality – A private individual up against a big well resourced company, local authority or government department is clearly at a disadvantage</li> <li>• Privacy – Hearing that take place 'behind closed doors' deny parties the scrutiny of open proceedings where the press and public are present</li> </ul>	6	<p><b>Assessment Objective 3</b></p> <p><b>Level 1:</b> limited discussion (1–2)  <b>Level 2:</b> adequate discussion (3–4)  <b>Level 3:</b> good discussion (5–6)</p> <p><b>0 marks =</b> no response or nothing worthy of credit</p> <p><b>Level 1 = 1-2 marks</b>  Limited discussion covering advantages <u>and/or</u> disadvantages. One point for bottom L1 two or more limited points for top L1</p> <p><b>Bare list</b> of points lacks development for L2 and will be capped at 2 marks. Key words only then bottom L1</p> <p><b>Level 2 = 3-4 marks</b>  Adequate discussion covering advantages <u>and/or</u> disadvantages. At least one developed point to reach L2.</p> <p><b>Level 3 = 5-6 marks</b>  Good discussion covering both advantages <u>and</u> disadvantages. At least one developed point for bottom L3, two or more developed points for top L3. If well developed point then bottom L3.</p>

Question	CBT	Answer	Marks	Guidance
5		High Court = B Magistrates' Court = C Supreme Court = A	3	<b>Assessment Objective 2</b>
6		County Court	1	<b>Assessment Objective 2</b>
7		Queen's Bench Division	1	<b>Assessment Objective 2</b> Accept QBD or Queens Bench Do <u>not</u> accept High Court
8		County Court	1	<b>Assessment Objective 2</b>
9		i	1	<b>Assessment Objective 1</b>
10		ii	1	<b>Assessment Objective 1</b>
11		iii	1	<b>Assessment Objective 1</b>

Question	CBT	Answer	Marks	Guidance
12		<p>Candidates <b>may</b> discuss <b>any</b> of the following points:</p> <p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Gives some claimants access to justice where their case would not be funded by the state</li> <li>• Time-wasters are 'filtered out' of the system as they will not find a lawyer prepared to take the case on</li> <li>• Clients do not have the worry of facing a huge bill and know their lawyer is focused on winning</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Cases that only have a slim chance of winning may still be worth pursuing which denies some claimants access to justice</li> <li>• Creates a two-tier system where best cases are taken by the best lawyers leaving less valuable claims with less capable lawyers</li> <li>• Those who cannot afford the ATE are left without access to justice</li> </ul>	6	<p><b>Assessment Objective 3</b></p> <p><b>Level 1:</b> limited discussion (1–2)  <b>Level 2:</b> adequate discussion (3–4)  <b>Level 3:</b> good discussion (5–6)</p> <p><b>0 marks =</b> no response or nothing worthy of credit</p> <p><b>Level 1 = 1-2 marks</b>  Limited discussion covering advantages <u>and/or</u> disadvantages. One point for bottom L1 two or more limited points for top L1</p> <p><b>Bare list</b> of points lacks development for L2 and will be capped at 2 marks. Key words only then bottom L1</p> <p><b>Level 2 = 3-4 marks</b>  Adequate discussion covering advantages <u>and/or</u> disadvantages. At least one developed point to reach L2.</p> <p><b>Level 3 = 5-6 marks</b>  Good discussion covering both advantages <u>and</u> disadvantages. At least one developed point for bottom L3, two or more developed points for top L3. If well developed point then bottom L3.</p>

Question	CBT	Answer	Marks	Guidance
13		Consumer Law	1	Assessment Objective 2
14		Small Claims Track	1	Assessment Objective 2
15		County Court	1	Assessment Objective 2
16		Negligence	1	Assessment Objective 2
17		Fast Track	1	Assessment Objective 2
18		County Court	1	Assessment Objective 2
19		Defamation	1	Assessment Objective 2
20		Multi-track	1	Assessment Objective 2
21		High Court – Queen’s Bench Division	1	Assessment Objective 2
22		Pupillage	1	Assessment Objective 1
23		Training Contract <u>or</u> Legal Apprenticeship	1	Assessment Objective 1
24		A = 3 B = 1 C = 2 D = 5 E = 6 F = 4	6	Assessment Objective 1
25		ECHR = Regional UDHR = International HRA = National A Bill of Rights = National	4	Assessment Objective 1  1 mark for each correct match.

Question		CBT	Answer	Marks	Guidance
26			Case 1 = Article 11 Case 2 = Article 8 Case 3 = Article 5	3	<b>Assessment Objective 1</b> <b>0 marks</b> = more than one 'tick' for each answer
27			i = qualified rights ii = limited rights iii = absolute rights	3	<b>Assessment Objective 1</b>



Question	CBT	Answer	Marks	Guidance
28		<p><b>Arguments against changing the law on abortion</b></p> <ul style="list-style-type: none"> <li>• Since life begins at conception, abortion is akin to murder as it is the act of taking human life. Abortion is in direct defiance of the commonly accepted idea of the sanctity of human life.</li> <li>• No civilized society permits one human to intentionally harm or take the life of another human without punishment, and abortion is no different.</li> <li>• Adoption is a viable alternative to abortion and accomplishes the same result. And with thousands of families wanting to adopt a child, there is no such thing as an unwanted child.</li> <li>• An abortion can result in medical complications later in life; the risk of ectopic pregnancies doubles, and the chance of a miscarriage and pelvic inflammatory disease also increases.</li> <li>• In the instance of rape and incest, proper medical care can ensure that a woman will not get pregnant. Abortion punishes the unborn child who committed no crime; instead, it is the perpetrator who should be punished.</li> <li>• Abortion should not be used as another form of contraception.</li> <li>• For women who demand complete control of their body, control should include preventing the risk of unwanted pregnancy through the responsible use of contraception or, if that is not possible, through abstinence.</li> <li>• Many taxpayers are opposed to abortion, therefore it's morally wrong to use tax revenue to fund abortion via the NHS.</li> <li>• Those who choose abortions are often minors or young women with insufficient life experience to understand fully what they are doing. Many have lifelong regrets afterwards.</li> <li>• Abortion frequently causes intense psychological pain and stress.</li> </ul>	9	<p><b>Assessment Objective 3</b></p> <p><b>Level 1:</b> limited discussion (1–3)  <b>Level 2:</b> adequate discussion (4–6)  <b>Level 3:</b> good discussion (7–9)</p> <p><b>0 marks =</b> no response or nothing worthy of credit</p> <p><b>Level 1 = 1-3 marks</b>  Limited discussion covering arguments for <u>or</u> against. One point for bottom L1 two or more limited points for top L1.</p> <p><b>Bare list</b> of points lacks development for L2 and will be capped at 3 marks.</p> <p><b>Level 2 = 4-6 marks</b>  Adequate discussion covering arguments for <u>or</u> against. At least one developed point to reach L2. Two or more developed points for top L2. One well developed point for bottom L2.</p> <p><b>Level 3 = 7-9 marks</b>  Reference to HRA required for L3. Good discussion covering both arguments for <u>and</u> against. One well developed point for bottom L3, two or more well developed points for top L3 or a range of developed points for mid L3.</p>

Question	CBT	Answer	Marks	Guidance
		<p><b>Arguments for changing the law on abortion</b></p> <ul style="list-style-type: none"> <li>• Nearly all abortions take place in the first three months, when a foetus cannot exist independent of the mother. As it is attached by the placenta and umbilical cord, its health is dependent on her health, and cannot be regarded as a separate entity as it cannot exist outside her womb.</li> <li>• The concept of personhood is different from the concept of human life. Human life occurs at conception, but fertilized eggs used for in vitro fertilization are also human lives and those not implanted are routinely thrown away. Is this murder, and if not, then how is abortion murder?</li> <li>• Adoption is not an alternative to abortion, because it remains the woman's choice whether or not to give her child up for adoption. Statistics show that very few women who give birth choose to give up their babies – less than 3% of white unmarried women and less than 2% of black unmarried women.</li> <li>• Abortion is a safe medical procedure. The vast majority of women – 88% – who have an abortion do so in their first trimester. Medical abortions have less than 0.5% risk of serious complications and do not affect a woman's health or future ability to become pregnant or give birth.</li> <li>• In the case of rape or incest, forcing a woman made pregnant by this violent act would cause further psychological harm to the victim. Often a woman is too afraid to speak up or is unaware she is pregnant, thus the morning after pill is ineffective in these situations.</li> <li>• Abortion is not used as a form of contraception. Pregnancy can occur even with responsible contraceptive use. Only 8% of women who have abortions do not use any form of birth control, and that is due more to individual carelessness than to the availability of abortion.</li> <li>• The ability of a woman to have control of her body is critical to civil rights. Take away her reproductive choice and you step onto a slippery slope. If the government can force a woman to continue a pregnancy, what about forcing a woman to use contraception or undergo sterilization?</li> </ul>		

Question	CBT	Answer	Marks	Guidance
		<ul style="list-style-type: none"> <li>• Taxpayer revenue is used to enable poor women to access the same medical services as rich women, and abortion is one of these services. Funding abortion is no different from funding a war in Iraq. For those who are opposed, the place to express outrage is in the voting booth.</li> <li>• Teenagers who become mothers have grim prospects for the future. They are much more likely to leave of school; receive inadequate prenatal care; rely on public assistance to raise a child; develop health problems; or end up divorced.</li> <li>• Like any other difficult situation, abortion creates stress. Yet the British Psychological Institute found that stress was greatest prior to an abortion, and that there was no evidence of post-abortion syndrome.</li> </ul> <p><b>Relevant arguments under the Human Rights Act 1998</b></p> <p>The complaint was around four Articles of the European Convention on Human Rights. These include Article 8 with regard to the right of privacy in all family, home and personal interests, and entitlement to no public interference from any public authority in exercising this right; Article 3 which protects individuals from 'inhuman or degrading treatment'; Article 2 which affords protection of the law to safe-guard the life of an individual and Article 14 which affords rights and freedoms without discrimination on any grounds.</p> <ul style="list-style-type: none"> <li>• Human rights are being violated under <b>Article 8</b> which relate to the right of privacy in all family, home and personal interests, and entitlement to no public interference from any public authority in exercising this right. They also allege a breach of:</li> <li>• <b>Article 3</b>, which protects individuals from inhuman or degrading treatment. The women argue that the criminalisation of abortion harms women by stigmatising them and increasing feelings of guilt, and can result in difficulty in accessing necessary follow up care.</li> <li>• <b>Article 2</b>, which safeguards the life of an individual. The Irish Government has provided no clear guidance as to when abortion may be legally carried out, where termination of pregnancy is necessary to save a woman’s life.</li> </ul>		

Question			CBT	Answer	Marks	Guidance
				<ul style="list-style-type: none"> <li>• <b>Article 14</b>, which affords rights and freedoms without discrimination. The women argue that Irish abortion law discriminates on the basis of sex and financial status. Women are treated differently from men in making decisions concerning their private and family life, and the ban imposes particular burdens on economically disadvantaged women and those who have difficulty travelling because of their age or legal status.</li> <li>• <b>Article 9</b>, right to freedom of thought, conscience and religion. Accept rational arguments based on religious reasons for or against a law on abortion.</li> </ul>		

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