

# **Mark Scheme for June 2013**

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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.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

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## Annotations

Annotation	Meaning
	Correct point or answer given.
	Response is incorrect, no credit can be given.
	Benefit of doubt - credit given
	Benefit of doubt - credit <b>not</b> given
	'Repeat' Response repeats the same marking point.
	Not relevant or the response given is 'Unclear' to the marker. / to indicate all or part blank answer pages have been seen by the marker.
	Omission mark
	Level 1
	Level 2
	Level 3
	Expansion of a point
	Development of point
	Vague – credit cannot be given
	Not answered the question

Question		Answer	Marks	Guidance						
1	(a)	<p>Candidates will give any <b>three</b> of the following:</p> <ul style="list-style-type: none"> <li>To find out the suspect’s name or address (where the police can’t find this out or reasonably suspects it to be false);</li> <li>To prevent the person causing physical injury to themselves, causing injury to another or to prevent the suspect receiving injury from another, or causing loss of or damage to property;</li> <li>To protect a child or vulnerable person;</li> <li>To allow a prompt and effective investigation of the offence;</li> <li>To prevent the suspect from disappearing while the offence is investigated.</li> <li>To prevent an offence against public decency</li> <li>To prevent the suspect causing an unlawful obstruction of the highway</li> <li>Suspect is about to/is committing/has committed a crime/broken the law or reasonable grounds to suspect.</li> </ul> <p>Credit any other relevant response.</p>	3	<p><b>ASSESSMENT OBJECTIVE 2</b> 1 mark for each reason given (maximum 3 marks)</p> <p>Allow ‘carrying a weapon’ for bullet point 2.</p> <p>Max one mark for ‘is about to/is/has broken the law’.</p> <p>Do <b>not</b> credit acting suspiciously.</p>						
	(b)	<p>Candidates will successfully match any or all of the following:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>1</td> <td>D – 24 hours</td> </tr> <tr> <td>2</td> <td>C – 36 hours</td> </tr> <tr> <td>3</td> <td>E – 6 hours</td> </tr> </table>	1	D – 24 hours	2	C – 36 hours	3	E – 6 hours	3	<p><b>ASSESSMENT OBJECTIVE 3</b> 1 mark for each letter correctly selected – allow the correct hours if letters have not been provided. (maximum 3 marks)</p>
1	D – 24 hours									
2	C – 36 hours									
3	E – 6 hours									

Question		Answer	Marks	Guidance
2	(a)	Candidates will identify any <b>three</b> of the following: <ul style="list-style-type: none"><li>• Public/government bill</li><li>• Private Members' bill</li><li>• Private bill</li><li>• Hybrid bill.</li></ul>	3	<b>ASSESSMENT OBJECTIVE 1</b> 1 mark for each correct identification. (maximum 3 marks)

Question		Answer	Marks	Guidance
	(b) (i)	<p>Candidates will insert the three terms <b>in the following order</b>:</p> <ul style="list-style-type: none"> <li>• Ratio decidendi</li> <li>• Obiter dicta</li> <li>• Hierarchy.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b> 1 mark for each correct word inserted. (maximum 3 marks)</p>
	(ii)	<p>Candidates will identify any or all from the following three types:</p> <ul style="list-style-type: none"> <li>• Original precedent</li> <li>• Binding precedent</li> <li>• Persuasive precedent.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b> 1 mark for each correct type identified. (maximum 3 marks)</p> <p>Landmark precedent will be accepted as an alternative to original precedent.</p>

Question	Answer	Marks	Guidance
	<p>(iii) Candidates will explain any <b>two</b> of the following:</p> <ul style="list-style-type: none"> <li>• The huge volume of case law: this can make it difficult to find prior precedent; especially if significantly historic.</li> <li>• The law is developed only when a new case comes to court: judges can only rule on the law as it comes before them; therefore restricting the development of precedent.</li> <li>• Continued application of bad law: if a higher court creates a bad precedent the lower courts are bound; unless the case is appealed to the higher courts.</li> <li>• Unconstitutional: precedent allows unelected judges to change the law; rather than Parliament.</li> <li>• Rigidity: this may encourage 'idleness' in judges; who may refuse to take responsibility in changing the law.</li> <li>• Length of time: a case could take many years to be resolved; and to reach an absolute conclusion the case would need to be heard in the appeal courts eg the Supreme Court.</li> <li>• Expense: pursuing a case through the courts can be extremely costly to find an absolute conclusion; especially in the appeal courts.</li> </ul> <p>Credit any other relevant response.</p>	6	<p><b>ASSESSMENT OBJECTIVE 2</b> For <b>each</b> problem explained:</p> <p>3 marks – develops a explanation on one relevant issue 2 marks – explains one relevant issue with some elaboration 1 mark – explains a relevant issue or makes any valid point 0 marks – no response or nothing worthy of credit</p> <p>Maximum 3 marks for each problem explained (maximum for question: 6 marks)</p> <p>Using relevant examples attracts some credit.</p>

Question			Answer	Marks	Guidance
		(iv)	<p>Candidates will discuss any of the following (credit should be given to both breadth and depth):</p> <ul style="list-style-type: none"> <li>• Distinguishing draws a distinction between the current case a judge is hearing and that of an earlier case;</li> <li>• This means that the former case's decision does not have to be followed;</li> <li>• The facts of the case must show a material difference not simply slight or trivial differences;</li> <li>• If there are good reasons why a judge wishes to not follow the precedent, then this is the usual way to do that, as a means to avoiding precedent;</li> <li>• Judges use distinguishing so that the law can develop.</li> </ul> <p>Credit any other relevant response.</p>	3	<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p>3 marks – develops a discussion on one relevant issue  2 marks – discusses one relevant issue with some elaboration  1 mark – discusses a relevant issue or makes any valid point  0 marks – no response or nothing worthy of credit</p> <p>Using relevant examples attracts some credit.</p> <p>(maximum 3 marks)</p>
3	(a)	(i)	<p>Candidates will identify any <b>three</b> of the following:</p> <ul style="list-style-type: none"> <li>• Custodial/prison/jail;</li> <li>• Community;</li> <li>• Fine;</li> <li>• Discharges.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark for each <u>type</u> identified.  (maximum 3 marks)</p> <p>Candidates will <b>not</b> be credited for using examples.</p> <p>Credit any candidate who uses the phrase 'miscellaneous' sentencing.</p>

Question	Answer	Marks	Guidance
	<p>(ii) Candidates will discuss any <b>two</b> of the following (credit should be given for both breadth and depth):</p> <p><u>Custodial:</u></p> <ul style="list-style-type: none"> <li>• These sentences are usually reserved for the most serious offences;</li> <li>• A custodial sentence involves removing a person's liberty by sending them to prison;</li> <li>• Its aim is to punish the offender;</li> <li>• There are restrictions imposed by statute law on the use of this sentence, in particular neither a community nor a fine would be appropriate;</li> <li>• This is the judge's or magistrates' ultimate sanction in a criminal court;</li> <li>• The sentence depends upon the crime committed. Many offences carry a discretionary sentence, set by the judge depending upon the actual way the crime was committed. This discretionary sentence is guided by statute and the Sentencing Council's guidelines;</li> <li>• A suspended sentence is also possible where the offender is not sent to prison unless they commit another offence during the suspended sentence's duration;</li> <li>• An intermittent sentence is also possible whereby the offender spends time in prison, eg at weekends to allow them to carry out their job during the week.</li> </ul> <p>Credit any other relevant comment.</p>	6	<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p>For <b>each</b> sentence discussed:</p> <p>3 marks – develops a discussion on one relevant issue  2 marks – discusses one relevant issue with some elaboration  1 mark – discusses a relevant issue or makes any valid point  0 marks – no response or nothing worthy of credit</p> <p>Maximum 3 marks for each type discussed  (maximum for question: 6 marks)</p> <p>Using relevant examples attracts some credit.</p> <p><b>Under custodial sentences only credit prison if not credited in 3 (a) (i). Remember to look back at the answers given in 3ai to check.</b></p>

Question	Answer	Marks	Guidance
	<p><u>Community:</u></p> <ul style="list-style-type: none"> <li>• These sentences are usually reserved for less serious offences;</li> <li>• Its purpose is to reform the offender and to enforce some sort of reparation to the community or in some cases to the victim themselves;</li> <li>• They are tailor-made to the offender and the crime committed;</li> <li>• Examples include – unpaid work for between 40 and 300 hours on a specified project or a drug treatment and testing order.</li> </ul> <p>Credit any other relevant comment</p> <p><u>Fines:</u></p> <ul style="list-style-type: none"> <li>• This is a very common way of financially punishing an offender;</li> <li>• They are used predominantly in the Magistrates' Court, but occasionally used in the Crown Court;</li> <li>• The offender pays an amount of money to the court relevant to the crime committed;</li> <li>• Examples include a maximum of £5000 in the Magistrates' Court for those aged 18 years and older</li> <li>• Potentially unlimited fines in the Crown Court.</li> </ul> <p>Credit any other relevant comment</p>		

Question	Answer	Marks	Guidance
	<p><u>Discharge:</u></p> <ul style="list-style-type: none"><li>• This type of 'sentence' can be given where the crime is very low level;</li><li>• There are two types of discharge available:</li><li>• Conditional discharge – where the offender is released on condition that they carry out no further offences for a set period of up to three years;</li><li>• Absolute discharge – where the offender is discharged from any offence where no sentence is appropriate.</li></ul> <p>Credit any other relevant comment</p>		

Question		Answer	Marks	Guidance								
	(b) (i)	<table border="1"> <thead> <tr> <th>Definition</th> <th>Most appropriate classification</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>Indictable</td> </tr> <tr> <td>B</td> <td>triable either way</td> </tr> <tr> <td>C</td> <td>Summary</td> </tr> </tbody> </table>	Definition	Most appropriate classification	A	Indictable	B	triable either way	C	Summary	3	<b>ASSESSMENT OBJECTIVE 1</b> 1 mark for each correct classification identified (maximum 3 marks)
Definition	Most appropriate classification											
A	Indictable											
B	triable either way											
C	Summary											

Question	Answer	Marks	Guidance
	<p>(ii) Candidates will explain any of the following:</p> <p><u>An appeal from the Magistrates' Court:</u></p> <ul style="list-style-type: none"> <li>• This is an appeal route from the Magistrates' Court direct to the Crown Court</li> <li>• Here the defendant appeals against either the verdict where they are found guilty, or against the sentence laid down by the magistrates</li> <li>• This appeal route is only open to the defendant on either of these two grounds</li> <li>• This means there will be a full retrial in front of a circuit judge and two magistrates in the crown court but without a jury</li> <li>• At the end of the appeal the verdict can be reversed or the sentence reduced or even increased</li> <li>• The appeal court can send the case back to the magistrates for a retrial to reconsider</li> <li>• If in the crown court the judges decide that the real issue is a question of law, then they can send the case to the Queen's Bench Division for clarification (case stated appeal). Further appeal to the Supreme Court is possible.</li> </ul> <p><u>An appeal from the Crown Court:</u></p> <ul style="list-style-type: none"> <li>• This appeal is made from the Crown Court to the Court of Appeal (Criminal Division)</li> <li>• The appeal is either against the verdict or the sentence</li> <li>• Normally only the defendant can appeal in using this method</li> <li>• The usual appeal is based on a point of law, here the trial judge mis-explained the law</li> </ul>	6	<p><b>ASSESSMENT OBJECTIVE 2</b> For <b>each</b> appeal route explained:</p> <p>3 marks – develops an explanation of the appeal route 2 marks – explains one relevant issue with some elaboration 1 mark – explains a relevant issue or makes any valid point 0 marks – no response or nothing worthy of credit</p> <p>Maximum 3 marks for each appeal route explained (maximum for question: 6 marks)</p>

Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"><li>• The Criminal Cases Review Committee was set up in 1995 to investigate miscarriages of justice and refer any unsafe convictions to the Court of Appeal</li><li>• If the appeal is against the sentence then the trial judge or the Court of Appeal must give permission for an appeal</li><li>• The final route of appeal is to the Supreme Court if the Court of Appeal feels the point of law is of general importance and requires absolute clarification.</li></ul>		

Question		Answer	Marks	Guidance												
4	(a)	<p>Candidates will tick the boxes as follows to obtain each mark:</p> <table border="1"> <thead> <tr> <th></th> <th>TRUE</th> <th>FALSE</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>✓</td> <td></td> </tr> <tr> <td>B</td> <td>✓</td> <td></td> </tr> <tr> <td>C</td> <td></td> <td>✓</td> </tr> </tbody> </table>		TRUE	FALSE	A	✓		B	✓		C		✓	3	<p><b>ASSESSMENT OBJECTIVE 1</b> 1 mark for each correct tick (maximum 3 marks)</p> <p>A person is permanently disqualified from jury service <i>during the duration of bail</i>. Benefit of doubt has been given to candidates who have interpreted permanently as being permanent even when bail has ended.</p>
	TRUE	FALSE														
A	✓															
B	✓															
C		✓														
	(b)	<p>Candidates will identify any of the following steps:</p> <ul style="list-style-type: none"> <li>• The court clerk will divide jurors into groups of 15.</li> <li>• Each juror will be given a number.</li> <li>• The clerk will draw out 12 of the 15 cards randomly from a box.</li> <li>• The first 12 numbers called will form the jury.</li> <li>• The first number called will act as the foreperson of the jury.</li> <li>• It is possible for the prosecution to challenge the suitability of an individual juror (challenge to the cause).</li> <li>• It is possible for the prosecution to challenge the suitability of an entire jury (challenge to the array).</li> </ul> <p>Credit any other relevant step.</p>	3	<p><b>ASSESSMENT OBJECTIVE 1</b> 1 mark for each step identified (maximum 3 marks)</p> <p>Do <b>not</b> credit pre-trial eg. electoral register, summoning.</p>												

Question		Answer	Marks	Guidance
	(c) (i)	<p>Candidates will explain any three features from the following:</p> <ul style="list-style-type: none"> <li>• Consider the evidence in the trial;</li> <li>• Listen to the facts and evidence presented at the trial;</li> <li>• Listen to the judge's summing up of the case and direction;</li> <li>• Retire to consider the verdict;</li> <li>• Discussions are held in the privacy of the jury room;</li> <li>• Decide whether the defendant is guilty or not guilty;</li> <li>• Keep any discussions private and not to discuss the case or how they reached the verdict with anyone outside of court.</li> </ul> <p>Credit any other valid response.</p>	6	<p><b>ASSESSMENT OBJECTIVE 2</b> for each feature explained: 2 marks for explanation of a relevant point 1 mark for identification of a relevant point maximum 2 marks for each feature and 6 marks for the question</p> <p>Credit the jury make the decision.</p> <p>Consider only responses to the jury's role in court and <b>not</b> their role in society or advantages of juries.</p>

Question	Answer	Marks	Guidance
	<p>(ii) Candidates will discuss any two of the following benefits (credit should be given for both breadth and depth):</p> <p>Benefits of using juries in criminal trials:</p> <ul style="list-style-type: none"> <li>• Public confidence in the system – the idea that ordinary randomly picked citizens are to decide the facts and ultimately the fate of the offender must give great public confidence. This avoids any criticism of a case-hardened unsympathetic judge sitting alone deciding facts.</li> <li>• Independence of the jury (Jury Equity) – juries decide the facts of the case and make a decision as to the defendant’s guilt based on this evidence in the privacy of the jury room. Thus cases are decided on fairness which protects the individual against the state.</li> <li>• Public involvement in the criminal justice system – this allows an openness in the criminal system rather than allowing it to be shrouded in the secrecy of the legal professions.</li> <li>• Less ability for bias – the fact there are 12 members of a criminal jury means there is less chance of bias or undue influence from outside the jury.</li> <li>• Assistance in court – while the jury decides the facts and verdict, they can still seek advice from the judge on matters of law or evidence. The fact that lay people are involved means that the case must be conducted in straightforward language.</li> <li>• Cost implications – juries are relatively ‘cheap’ when compared with other alternatives eg professional juries or three judges sitting without a jury.</li> </ul> <p>Credit any other reasonable response.</p>	6	<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p>5–6 marks – points explained with good reasoning and with effective communication through discussion. The response is well organised and structured, with few errors in spelling, punctuation and grammar. Candidates who only give one reason can only achieve three marks maximum.</p> <p>3–4 marks – points made with some elaboration and adequate communication. The response is adequately organised, structured and with some errors of spelling, punctuation and grammar.</p> <p>1–2 marks – basic points made with basic communication. The response lacks organisation, structure and accuracy of spelling, punctuation and grammar. 0 marks – no response or no response worthy of credit.</p> <p>Quality of written communication is assessed in this question.</p>

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