UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the May/June 2012 question paper

for the guidance of teachers

9084 LAW

9084/21 Paper 2, 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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This mark scheme includes a summary of appropriate content for answering each question. It should be emphasised, however, that this material is for illustrative purposes and is not intended to provide a definitive guide to acceptable answers. It is quite possible that among the scripts there will be some candidate answers that are not covered directly by the content of this mark scheme. In such cases, professional judgement should be exercised in assessing the merits of the answer and the senior examiners should be consulted if further guidance is required.

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 overleaf.

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.

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1 (a) Band 1: Irrelevant answer. [0]
A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without reference to case law: Fred is over 21 and has already been convicted of previous burglaries. [1–5]

and/or

- Reference to either R v Saw [2009] or the statute PCC (Sentencing) Act s.111(1)(a) 2000 with little or no development. [1–5]

Band 4: Some development of the relevant issues arising out of the case.

Must consider the facts of the case e.g. aggravating factors such as the fact that the victim was at home and there were small children in the house at the time of the burglary. Some reference to fact that he is a drug addict but is on a course of rehabilitation.

Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion. Fred comes within the section but there are mitigating factors such as the fact that the items stolen were of low value and the fact that Fred is on a drugs rehabilitation course which would allow the court to impose a non-custodial sentence. [8–10]

(b) Band 1: Irrelevant answer. [0]
A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section –: Lee is under 18 and so is outside the statute. Sentencing will be limited to those sentences available for a minor. [1–5]

and/or

- Reference to s.79 and s.111 (1)(b) PCC (Sentencing) Act 2000 with little or no development. Lee is aged 17 and therefore under 18 and the section does not apply to him.

[1–5]

Band 4: Some development of the correct section and reference to the case of R v Saw and the fact that burglary is regarded as a serious offence. Some discussion of the issues relevant in a serious burglary and also some application of the facts of the problem but some mention of the important fact that Lee was forced into taking part in the burglary. [6–7]

Band 5: Candidate must refer to and provide full development of all relevant sections. Clear conclusion. Lee has some mitigating factors such as the fact that he does not have previous convictions but such factors can be offset by the fact that Lee has taken part in threats to Susan and did not attempt to stop Fred. [8–10]

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(c) Band 1: Irrelevant answer. [0]

Band 2/3: Some limited discussion of the courts in which the case could be heard. The offences are indictable and have been tried in the Crown Court although Lee is most likely to be tried in the Youth Court. Some reference to the appeal process from either court. [1–5]

Band 4: Some development of the discussion of the appropriate court and also discussion of the appeal process from both courts or good discussion of the appeal process from one court. [6–7]

Band 5: Candidate must clearly explain the possible court hearing for each defendant and the appeal process for each of them. If the two are sentenced and both wish to appeal the procedure will differ according to which court they are sentenced in. If they are tried together in the Crown Court then they must first get written leave to appeal from a single judge before their appeal is heard in the Court of Appeal. If Lee is sentenced in the Youth Court (which is most likely) then his appeal will be heard in the Crown Court. Clear conclusion to answer. [8–10]

(d) Band 1: Irrelevant answer. [0]

Band 2: Discusses in general terms the main aims/principles of sentencing to include: retribution, denunciation, incapacitation, deterrence, rehabilitation and reparation **and/or** discusses the backgrounds of each of the defendants in general terms to include age, mitigating factors, aggravating factors, nature of the offence … [1–6]

Band 3: Good discussion of main principles of sentencing/backgrounds of the defendants and how it will affect the sentencing decisions of the court **or** limited discussion of both principles and the background and relevant factors in the sentencing of each of the defendants. [7–13]

Band 4/5: Very good discussion of both the principles of sentencing and the background of each defendant and a clear link to the appropriate sentence for each. Where candidates link this to the specific facts of the case this should be rewarded well. [14–20]

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2 (a) Band 1: Irrelevant answer. [0]
A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section that an offence may be committed when someone carries a weapon but a water pistol is not usually regarded as a weapon. [1–5]

and/or

- Reference to s.5(1)(b) Firearms Act 1968 with little or no development. [1–5]

Band 4: Some development of the correct section and discussion of how an offence could have been committed. Some reference to whether the filling of the water pistol with acid could be seen as 'adaption' under s.5(1) Firearms Act 1968. [6–7]

Band 5: Candidate must refer to and provide full development of the subsection. Clear conclusion: discussion of the fact that this is not usually regarded as a firearm and unless it has been adapted for use as a firearm it is not within the Act. Any sensible discussion of how it may have been adapted should be fully credited. [8–10]

(b) Band 1: Irrelevant answer. [0]
A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section discussion of whether this could be considered a firearm. [1–5]

and/or

- Reference to s.1(b) Firearms Act 1968 with little or no development [1–5]

Band 4: Some development of the correct section by using any relevant analogy and some application to the facts. Discussion that this may also be an offence under s.(1)(b) as electricity may be regarded as 'any other thing' under the section; brief reference to the possible mitigating circumstances that Miss Scarlet may plead. [6–7]

Band 5: Candidate must refer to and provide full development of the relevant subsection. Good discussion of the possible mitigating circumstances that Miss Scarlet may plead. Clear conclusion. [8–10]

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(c) Band 1: Irrelevant answer. [0]
A candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- Principle without section discussion of whether this might be regarded as a weapon. [1–5]

and/or

- Reference to s.5(1)(aba) with little or no development and some reference to s.51(A) Firearms Act. [1–5]

Band 4: Some development of all the correct section s.5(1)(aba) Firearms Act. Some discussion of s.51(A) and why a custodial sentence might be imposed. [6–7]

Band 5: Candidate must refer to and provide full development of the subsection. Clear conclusion that Colonel Mustard may have committed an offence under s.(1)(aba). The Firearms Act s.51 imposes an automatic custodial sentence of at least five years unless there are exceptional circumstances relating to the offence. Some discussion of the fact that this is found in Colonel Mustard's loft and may be kept by him for sentimental reasons may be seen as exceptional and he could use this as a defence. [8–10]

(d) Band 1: Irrelevant answer. [0]

Band 2: Discusses what is meant by statutory interpretation in very general terms **and/or** discusses the three main rules of interpretation in very general terms not in any detail. [1–6]

Band 3: Good discussion of either the three rules of statutory interpretation **or** limited discussion of a wider range of rules of interpretation to include language rules. For this band there should be good use of a range of supporting case law. [7–13]

Band 4/5: Very good discussion of a range of the rules of statutory interpretation. For this band there should be very good use of a range of supporting case law. [14–20]

NB: This part of the answer gives candidates an opportunity to discuss the various rules of statutory interpretation and to evaluate their use. Credit should be given to candidates who are able to explain the purpose of statutory interpretation and relate this to the rules rather than simply to state a list without any explanation. A very good answer should be comprehensive and should include the three rules, the purposive rule, the rules of language and the intrinsic and extrinsic aids to interpretation.

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