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

9084/23 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: irrelevant answer.

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 section – reference to the possibility of an offence having been committed **[1–5]**

and/or

- Reference to s.139(4) Criminal Justice Act 1988 and Evans v Hughes with little or no development. **[1–5]**

Band 4: Some development of the correct sections. **[6–7]**

Band 5: Candidate must refer to and provide full development of all sources. Bert has committed an offence as he has with him a knife which exceeds 3 inches. He may try to argue that he has good defence under s.139(4) because he is a cab driver and he is fearful of attack but this is unlikely to be successful. The judgment in Evans v Hughes should be discussed and applied; credit given where candidates accurately state that a taxi is a public place. Clear conclusion. **[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 – reference to the fact that this may be an offensive weapon **[1–5]**

and/or

- Reference to s.139 (1) and (2) and fact that this may be an offensive weapon with little or no development of the source material. **[1–5]**

Band 4: Some development of all the correct section. Credit for comment that Rambo may have a defence under s.139(1) Criminal Justice Act 1988; also knife found in Rambo's bedroom which is not a public place. Need definition of what is public place. **[6–7]**

Band 5: Candidate must refer to and provide full development of the correct subsections. Clear conclusion that Rambo has not committed an offence. **[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 – reference to the possibility of an offence having being committed **[1–5]**

and/or

- Reference to s.139(5)(a) with little or no development. **[1–5]**

Band 4: Some development of all the correct sections and some application. **[6–7]**

Band 5: Candidate must refer to and provide full development of all subsections. If the knife in Lamb's pocket exceeds 3 inches then this will be regarded as an offensive weapon. He may however have a defence under s.139(5)(a) as the knife is for use at work. Candidates who discuss the fact that Lamb has taken his butcher's knife home from work because it is valuable should be credited; Clear conclusion. Lamb could be guilty or not guilty. Candidates must support conclusion reached. **[8–10]**

(d) Band 1: Irrelevant answer [0]

Band 2: Discusses in very general terms either jury trial or trial at the magistrates' court. **[1-6]**

Band 3: Good discussion of reasons to opt for one type of trial and either discusses trial by jury **or** trial at the magistrates' court **or** limited discussion of both **[7–13]**

Band 4/5: Very good discussion of reasons why a defendant would opt for trial by jury or trial at the magistrates' court and detailed discussion of one type of trial but some mention of the other option for trial.

Must refer to both methods of trial in order to reach this band. Should include some comparison. **[14–20]**

Discussion may include the following: the advantages of jury trial. Trial by peers. Lack of bias. Better to have twelve men/women than three. Magistrates are likely to be biased. Case-hardened. Juries take common sense non-legalistic view of the case. Disadvantage of jury trial often have no experience of the facts of the offence/ naiveté of jury members. Some discussion of the fact that jury trial can be unpredictable. Case law not necessary for top band.

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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 – reference to the fact that the parties are under age **[1–2]**

and/or
- Reference to s.11(b) MCA and the Marriage Act 1949 with little or no development of the section. **[1–2]**

Band 4: Some development of the correct section and Application. **[3–4]**

Band 5: Candidate must refer to and provide full development of all subsections. The parties would not be validly married unless they both had parental consent as they are both under 18 but over 16. Clear conclusion. **[5]**

(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 – reference to the age of the the parties **[1–2]**

and/or
- Reference to s.11(b) MCA 1973 and Marriage Act 1949 with little or no development. **[1–2]**

Band 4: Some development of all the correct sections and application to the facts. **[3–4]**

Band 5: Candidate must refer to and provide full development of all subsections. The parties would not be validly married as although they had their parents' consent, one of the parties is under 16; Clear conclusion. **[5]**

(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 – reference to the fact that one of the parties is already married **[1–5]**

and/or
- Reference to s.11(c) with little or no development. **[1–5]**

Band 4: Some development of the correct section. Discussion of lack of capacity even though Cher has not seen her husband for twenty years. **[6–7]**

Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion. The parties would not be validly married as one of the parties is already married and the marriage would be void. **[8–10]**

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(d) 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 – reference to the need for consent to marriage **[1–5]**

and/or

- Reference to s.12(c) MCA 1973 with little or no development and reference to Hirani v Hirani. **[1–5]**

Band 4: Some development of all the correct sections and Hirani v Hirani and some application to the facts. **[6–7]**

Band 5: Candidate must refer to and provide full development of both sources. Clear conclusion. Maryam could argue that the marriage was void as she did not give her consent and she could also argue that the case of Hirani v Hirani would apply. The fact that she wants to go to university may suggest that she has more strength of character than the girl in Hirani but the fact she has no money or friends would vitiate consent here.

(e) Band 1: Irrelevant answer [0]

Band 2: Discusses in very general terms the various methods of solving disputes over financial affairs either in the courts or under ADR. **[1–6]**

Band 3: Good discussion of **one** of the options open to the parties e.g. a solution through the courts or ADR **or** limited discussion of both. **[7–13]**

Band 4/5: Very good discussion of either ADR or the court process as a way of solving disputes over financial affairs but must mention the alternative method in some detail in order to reach the top band. **[14–20]**

NB. Answers could include the following: the options available such as mediation, conciliation and negotiation. The parties would opt for mediation to avoid costs of going to court and the agreement would be more amicable. Perhaps other types of ADR would be relevant such as conciliation. Discussion of the court process would involve the high costs of the court process, the delays and likelihood that the parties will be polarised. An advantage would be the certainty of the court decision and the fact that the decision would be binding on the parties.

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