CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the May/June 2013 series

9084 LAW

9084/22 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 should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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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.

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 – understanding that this concerns the duty of the highways authority to maintain the road:
  and/or
- Reference to s.41 Highways Act 1980 and/or Gorringe v Calderdale MBC with little or no development. **[1–5]**

Band 4: Some development of the correct section and case. **[6–7]**

Band 5: Candidate must refer to and provide full development of section and Gorringe. Clear conclusion. It is unlikely that the court will uphold a claim by Pippa against the Highways Authority because dicta from Gorringe holds that there is no breach of its duty under the Highways Act 1980 s.41. **[8–10]**

The fact that it is an icy day is not necessarily relevant here and should not be credited unless it is expressly linked to the increased risk from driving around the sharp bend on an icy day.

(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 – the highways authority have a duty to clear the road of snow so far as it is reasonably practicable
  and/or
- Reference to s.41(1)(1A) Highways Act with little or no development. **[1–5]**

Band 4: Some development of the correct sections and some discussion of the duty of the Highways Authority as to what is considered to be reasonably practicable. **[6–7]**

Band 5: Candidate must refer to and provide full development of the correct section. Clear conclusion: the highways authority may have a valid defence to a claim that it has breached its duty under the Highways Act 1980 if it can argue that it was not reasonably practicable to ensure safe passage along the highway for Pippa. It will depend on such matters as the amount of ice on the road at the time and also the nature of the road and the general weather conditions. Credit for sensible discussion of these and any other relevant matters. **[8–10]**

Where candidates discuss the losses sustained by Pippa credit will be given if there is a link to the claim and the possible liability of the Highways Authority if it were found to be in breach of its duty.

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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 fact that a highways authority may have a defence against Freda **and/or**
- Reference to s.41(1) and s.58 Highways Act 1980 and/or reference to Littler v Liverpool Corporation with little or no development. **[1–5]**

Band 4: Some development of the correct section and comment from the case of Littler. The correct answer here is that they may be able to prove that they had taken such care as in all the circumstances was reasonably required to secure that part of the road. **[6–7]**

Band 5: Candidate must refer to and provide full development of all subsections/Littler. Good application to the facts of the problem. Clear conclusion. Highways Authority unlikely to be liable here and can rely on a defence under s.58 Highways Act 1980. **[8–10]**
Special credit for any candidate who notes the date of Littler and queries whether it remains binding today.

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

Band 2: Discusses statutory interpretation in very general terms. Some general discussion of the problem inherent in interpretation that faces the courts. **[1–6]**

Band 3: Good discussion of the main rules of statutory interpretation and good detail on the three rules, rules of language and reference to extrinsic and intrinsic aids; good use of case law. Can reach no more than 10 marks if fail to refer to intrinsic and extrinsic aids at all even if obliquely. **[7–13]**

Band 4/5: Very good discussion of difficulties encountered by the court when interpreting statutes with very good use of case law and discussion of the use of intrinsic and extrinsic aids in interpreting statutes. Must refer to intrinsic and extrinsic aids in order to get into top band. There must be some critical analysis and general discussion of the difficulties of interpreting statutes encountered by the courts in order to reach this band. **[14–20]**
Can get into top band with no reference to case law if very good critical analysis but MAX 14.

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 s.111(1)(a)(b) will not apply to Andy as is not 18 until 2012
  and/or
- Reference to s.111(a)(b) PCC and S Act 2000 with little or no development. **[1–5]**

Band 4: Some development of the correct section s.111 understanding that in this case the issues depend on the age of the defendants. **[6–7]**

Band 5: Candidate must refer to and provide full development of the subsection. Clear conclusion that no offence has been committed here by Andy but potentially can apply to Ceri. Any student who suggests that this section could possibly be applied to Ceri but not Andy based on age should be credited generously. **[8–10]**

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(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 a criminal offence has been committed here but not robbery.
  and/or
- Reference to s.111 (1) with little or no development. **[1–5]**

Band 4: Some development of s.111 and good link to the facts of the question. **[6–7]**

Band 5: Candidate must refer to and provide full development of the relevant subsection. Clear conclusion that based on the timing of the burglaries Ceri and Andy could both be guilty of an offence but read cumulatively the section could not apply to Andy. **[8–10]**
The key point in this part of the question is a discussion of the timing of the first two burglaries.

(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 fact that none of the properties may be dwelling houses
  and/or
- Reference to s.111(5) with little or no development. **[1–5]**

Band 4: Some development of the correct section and also reference to the problem of what constitutes a dwelling. Credit for some discussion. **[6–7]**

Band 5: Candidate must refer to and provide full development of the correct subsection. Clear conclusion that the mobile home could be seen as a dwelling although it is not a building. In this case it will be a question of fact and credit should be given for any sensible discussion of this. The garage is unlikely to be a dwelling. Credit for sensible use of various rules here such as a comparison between the literal rule and the purposive or mischief rule. **[8–10]**

MAX 7 for no application to the facts of the question.

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(d) Band 1: Irrelevant answer [0]

Band 2: Discusses type of offence and the relevant section and the variety of issues that may influence the court in very general terms only. **[1–6]**

Band 3: Good discussion of sentencing principles such as reform and rehabilitation deterrence and just deserts. Discussion of the matters which may influence the court such as the age of the offender and their circumstances. Candidates should discuss both the offence and the two offenders in relation to eventual disposal and the information that the court will wish to have before it, particularly a pre-sentence report from the Probation Service. **[7–13]**

Band 4/5: Very good discussion of sentencing options available when sentencing both adults and young offenders. Answer should include a good factual link with the facts of this case and so generous credit should be given for any reference to s.111(2) PCCS Act 2000.
Credit for those answers which display good application to the facts of the case rather than presenting a detailed generic list of various sentencing options. **[14–20]**
MAX 18 for no ref to s.111(2) PCCS Act. No expectation of detailed discussion of aims but credit should be given where there is a sensible discussion which is linked to both the defendants, e.g. the emphasis on rehabilitation for Andy.

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