CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the May/June 2014 series

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 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) Dobbs is a police officer who is authorised to access the police computer in order to investigate crime. He suspects his wife of having a relationship with another man. He accesses the computer causing it to print out police information on the man. Discuss whether Dobbs has committed an offence under the Computer Misuse Act 1990. [10]

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

Band 2 / 3 (1–5)
- Principle without section – reference to the principle that the misuse of material on computers can constitute a criminal offence: … **and / or**
- Reference to s1 Computer Misuse Act 1990 with little or no development.

Band 4 (6–7) Some development of the correct sections – s1 and s2 Computer Misuse Act 1990 with a link to the fact that PC Dobbs is using his access to the police computer in an unauthorised way. Candidates may use one or more of s1(1)(1), s1(1)(2) Computer Misuse Act 1990 and R v Bow Street Stipendiary Magistrate ex p. Government of the USA.

Band 5 (8–10) Candidate must refer to and provide full development of the relevant sections and case. Clear conclusion that PC Dobbs has committed an offence under s1 Computer Misuse Act 1990.

(b) Evans is also a police officer. He enters the Police Operations room and sees confidential data on the screen of a computer relating to a suspect in a serious criminal case. He takes a note of the details and supplies them to a national newspaper. Discuss whether Evans has committed an offence under the Computer Misuse Act 1990. [10]

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

Band 2 / 3 (1–5)
- Principle without section – reference to the fact that a criminal offence can be committed by taking information from a compute, but PC Evans has simply taken material already displayed: … **and / or**
- Reference to s1 Computer Misuse Act 1990 with little or no development.

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Band 4 (6–7) Some development of the correct section s1 Computer Misuse Act 1990 and an understanding of how this can be an offence. However, PC Evans does not commit an offence because although he has unauthorised access to what is on the computer screen he does not do anything to the computer. Credit reference to R v Bow Street Metropolitan Stipendiary Magistrate ex p Government of the US.

Band 5 (8–10) Candidate must refer to and provide full development of the correct section and case. Good application to the facts. Clear conclusion that PC Evans has not committed an offence.

(c) Fergus is a student. He is bored one weekend and he decides to send thousands of emails to the police computer system which causes it to breakdown temporarily. Discuss whether Fergus has committed an offence under the Computer Misuse Act 1990. [10]

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

Band 2 / 3 (6–7)
- Principle without section – reference to fact that although sending e-mails can be innocent in this context it could be a criminal offence … **and / or**
- Reference to s3 Computer Misuse Act 1990 with little or no development.

Band 4 (6–7) Some development of the correct section of s3 Computer Misuse Act 1990, especially s3(1), s3(2), s3(3) and s3(4), and an understanding is shown of how this could be an offence. However, the decision whether an offence has been committed regularly will relate to whether Fergus had intention or demonstrated recklessness. There should be application of DPP v Lennon.

Band 5 (8–10) Candidate must refer to and provide full development of the correct sections and DPP versus Lennon. Good application of the section to the facts. Clear conclusion that this will be seen as an offence by Fergus.

(d) It was said in the *Att-Gen's Reference (No 1 of 1991) [1993]* that the words in s1 Computer Misuse Act 1990 should be given their 'plain and ordinary meaning'. What did the court mean by this? Compare other ways that a court may interpret words in a statute using case law to support your answer. [20]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Discusses three rules of interpretation in general terms.

Band 3 (7–13) Good discussion of either three of the rules of interpretation, including the purposive rule **or** a limited discussion of a range of rules of statutory interpretation. There must be an understanding of the literal rule, seen in the context of this quote.

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Band 4 / 5 (14–20) Very good discussion of the main rules of statutory interpretation, with a good focus on the literal rule but with some mention of the other methods **OR** a very wide ranging answer which includes such matters as the purposive rule, the rules of language and intrinsic and extrinsic aids.

2 (a) The Holiday Fishing Company (HFC) operates trips for people who like to go fishing as a leisure activity. Kevin and a number of friends go on a fishing trip with the company on a boat which is 15 metres long. Kevin and his friends catch a number of fish on the trip which they take home to eat. HFC has now received notice that it is to be prosecuted under the Sea Fisheries (Byelaws) Regulations 1985.

Discuss whether a prosecution under these regulations will be successful? [10]

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

Band 2/3 (1–5)
- Principle without section – reference to fact that this cannot be an offence under the regulation … **and / or**
- Reference to Southern Inshore Fisheries case with little or no development.

Band 4 (6–7) Some development of the regulation and the fact that it will not apply here, as although the boat is in excess of 12 metres, it is not used for commercial purposes. Some reference to Southern Inshore Fisheries case.

Band 5 (8–10) Candidate must refer to and provide a full development of the regulation and reference to the Southern Inshore Fisheries case. Candidate must reach a clear conclusion that no offence has been committed.

(b) Jack is a commercial fisherman and he sometimes fishes with two friends off the east coast of England. They own a 30 metre boat. The fish caught are sold at Great Yarmouth fish market.

He also goes fishing alone in his own boat which is 10 metres long. He sells this fish to a local restaurant.

Discuss whether a prosecution under these regulations against Jack will be successful. [10]

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

Band 2/3 (1–5)
- Principle without section understanding, that Jack is a commercial fisherman when fishing with his friends, but not when fishing alone …. **and / or**
- Reference to the Southern Inshore Fisheries case, with little or no development.

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Band 4 (6–7) Some development of the Southern Inshore Fisheries case and a link to the Sea Fisheries Regulations. Some application to either or both scenarios.

Band 5 (8–10 Candidate must refer to and provide full development of the correct regulation and the relevant case. Clear conclusion that because Jack is a commercial fisherman when he is fishing with his friends in the 30 metre boat he is covered by the regulation, especially as the fish is sold at the fish market. However, when Jack is fishing alone, he may still be a commercial fisherman as he sells to the local restaurant but his boat is below the 12 metre limit so a prosecution is unlikely to be successful. Credit an alternative reasoning that Jack does breach the regulation when fishing alone as he is a commercial fisherman selling his catch.

(c) Felix and Geoff enjoy hang gliding as a hobby. This involves jumping from hills and flying through the air attached to a glider weighing about five kilogrammes. They have recently received a letter from the police telling them that they are to be prosecuted under a local byelaw which prohibits hang gliding in the local area. The bye law allows the use of model aircraft but not hang gliders.

Advise Felix and Geoff. [10]

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

Band 2/3 (1–5)
a. Principle without section – reference to fact that a local by-law exists prohibiting the use of hang gliders but not model aircraft … **and / or**
b. Reference to Staden versus Tarjanyi, with little or no development.

Band 4 (6–7) Some development of the relevance of the case Staden versus Tarjanyi and an application to the facts.

Band 5 (8–10) Candidate must refer to and provide full development of the relevance of Staden versus Tarjanyi with a good connection of the facts of the case. Clear conclusion that it is unlikely that Felix and George have committed an offence under the byelaw because it is not sufficiently clear.

(d) Describe the various types of legislation and critically assess the various ways that it is controlled in order to prevent its abuse. [20]

Band 1 (0) Irrelevant answer.

Band 2 (1–6) Discusses at least two types of delegated legislation and explain in general terms what delegated legislation is and how it compares with primary legislation.

Band 3 (7–13) Good discussion of at least two types of delegated legislation **OR** more limited discussion of all types of delegated legislation.

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Band 4 / 5 (14–20) Very good discussion of all types of delegated legislation byelaws, orders in council and statutory instruments. Good discussion of how the courts and also parliament control the abuse of this type of legislation. Expect some discussion of why it might pose a potential problem by considering the fact that it undermines democracy, as it is not enacted by democratically elected members of parliament.

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