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Cambridge International Advanced Subsidiary and Advanced Level

MARK SCHEME for the May/June 2015 series

9084 LAW

9084/22 Paper 2, maximum raw mark 50

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General Marking Guidance

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]

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Hassan may or may not have a defence

and/or

- Reference to Defamation Act 1996 and/or 2013 s1 with little or no development [1–5]

Band 4: Reference to s1(1) and/or 1(2) 1996 Act and/or s1(1) 2013 Act with some development of correct sections and application [6–7]

Band 5: Full development of the relevant sections. Conclusion: Hassan may have a defence under s1(1)(a) and (c) of the 1996 Act and under s1(2); he was not the author of the statement as he was simply telling his friend what he had heard and he did not know it was going to be published. Alternatively Hassan may not have a defence under s1(1) 1996 Act as he has supplied information to Maggie in the past and so he may not be covered by s1(1)(c). The statement was defamatory under s1(1) of the 2013 Act as it caused serious harm to Fernando Grant's reputation. [8–10]

(b) Band 1: Irrelevant answer [0]

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Maggie will not have a defence

and/or

- Reference to Defamation Act 1996 and/or 2013 s1 with little or no development [1–5]

Band 4: Reference to s1(1) and/or s1(2) 1996 Act and/or s1(1) 2013 Act with some development of correct section and application. [6–7]

Band 5: Full development of the relevant sections. Conclusion: Maggie is unlikely to have a defence. She was the author under s1(1)(a) and she has not taken reasonable care according to s1(1)(b) of the 1996 Act as she simply believed what Hassan told her. As a professional journalist she would know the impact of her words under s1(1)(c). According to s1(2) of the 1996 Act she is both the author and the editor of the statement. What she has written is untrue and constitutes serious harm to Fernando Grant's reputation under s1(1) of the 2013 Act. [8–10]

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

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Blackbird Press are unlikely to have a defence

and/or

- Reference to Defamation Act 1996 and/or 2013 s1 with little or no development [1–5]

Band 4: Reference to s1(1) and/or s1(2) 1996 Act and/or s1(1) 2013 Act with some development of correct sections and application [6–7]

Band 5: Full development of the relevant sections. Conclusion: Blackbird Press is unlikely to have a defence. There is no defence under s1(1)(a) as they are the publisher. According to s1(2) of the 1996 Act they are a commercial publisher carrying on the business of issuing material to the public. The statement does cause serious harm under s1(1) of the 2013 Act as it is not true and Fernando Grant loses money. GMA lose a lot of money and are likely to be covered by s1(2) of the 2013 Act. Credit an argument that 20% of profits are not enough to be a serious loss for a company such as GMA. [8–10]

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

Band 2: Discusses law reform in very general terms. [1–6]

Band 3: Some more detailed references to reasons for reform and the bodies responsible for reform but with a largely factual basis. Some general mention of effectiveness but lacking in detail or range [7–13]

Band 4/5: Very good discussion of the reasons why laws need to be reformed alongside full coverage of the range of bodies who undertake reform. Good detail on reform bodies, perhaps with a focus on the Law Commission. To reach higher marks all aspects of the question need to be dealt with in some detail with good critical awareness. [14–20]

2 **(a)** **Band 1:** Irrelevant answer [0]

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Carla cannot use self-defence

and/or

- Reference to s76 Criminal Justice and Immigration Act 2008 with little or no development [1–5]

Band 4: Reference to s76(3) and/or (4) and/or (7) with some development of correct sections and application [6–7]

Band 5: Full development of the relevant sections. Conclusion: Carla cannot use self-defence. Carla may claim that her mistake was honest under s76(3) and reasonable under s74(4)(a) and (b) given the pressure of the race. However, the amount of force used is likely to be seen as disproportionate under s76(6) and hitting Fred several times in the head is not instinctive under s76(&)(a) and (b). Credit that the 2013 Act cannot be used as the incident occurred outside. [8–10]

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(b) Band 1: Irrelevant answer [0]

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Annabelle cannot use self-defence

and/or

- Reference to s76 Criminal Justice and Immigration Act 2008 and/or Crime and Courts Act 2013 s43 with little or no development [1–5]

Band 4: Reference to s76(3) and/or (4) and/or (5) 2008 Act and/or s43 2013 Act with some development of correct sections and application [6–7]

Band 5: Full development of the relevant sections. Conclusion: Annabelle will not be able to rely on self-defence. Leroy was in her house under s43 of the 2013 Act and she may have made a mistake under s76(3) and (4) of the 2008 Act but any defence will be negatived by s76(5) of the 2008 Act as Annabelle was voluntarily intoxicated. [8–10]

(c) Band 1: Irrelevant answer [0]

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – understanding that Boris may be able to use self-defence

and/or

- Reference to s76 Criminal Justice and Immigration Act 2008 (and/or 2013 Act) with little or no development [1–5]

Band 4: Reference to s76(3) and/or (4) and/or (6) and/or (7) of the 2008 Act (and/or 2013 Act) with some development of correct sections and application [6–7]

Band 5: Full development of the relevant sections. Conclusion: Boris may be able to use self-defence. Credit discounting of 2013 Act as the incident took place at his office. He is honest in his belief that someone taking documents out of a safe by torchlight should not be doing so under s76(3) and it is reasonable under s76(4) given the way Sergei behaves. The force used is not disproportionate so s76(6) does not apply and it is likely to be seen as honest and instinctive under s76(7) for the legitimate purpose of restraining a thief. [8–10]

(d) Band 1: Irrelevant answer [0]

Band 2: Discusses court process and appeals in very general terms. [1–6]

Band 3: More detailed references to court processes, with some indication of reasons to choose one court over another. General coverage of appeal methods dealing with both criminal trial courts. Some evaluation of processes and/or appeals. [7–13]

Band 4/5: Very good discussion of court processes and appeals. Need to look at both Magistrates' and Crown court with full range of appeals. To reach higher marks need to engage with effectiveness of both courts and their attendant appeals showing good critical awareness of issues such as cost, publicity and sentencing. [14–20]

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