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LAW **9084/22**

Paper 2 **May/June 2016**

MARK SCHEME

Maximum Mark: 50

Published

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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 Saratu will sentenced because she pleaded guilty.

and/or

- Reference to the sentencing guidelines with little or no development. [1–5]

Band 4: Reference to some the sentencing guidelines with little development and application. [6–7]

Band 5: Full development of the relevant sections. Conclusion: Saratu has stolen the phone so according to the sentencing guidelines this is a type 1 robbery. There are aggravating factors as she intends (substantial) gain, the offence was pre-planned and she targets tourists. There may be a mitigating factor as she cooperates with the police and her sentence is likely to be between 12 months and 3 years. [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 Yasmin has been convicted of Robbery.

and/or

- Reference to sentencing guidelines with little or no development. [1–5]

Band 4: Reference to some sentencing guidelines with little development and application. [6–7]

Band 5: Full development of the relevant sections. Conclusion: Yasmin will be sentenced for a type 2 robbery. Her sentence will be aggravated by use of the mask, planning, use of the hockey stick and offending at night. The starting point is 4 years and there are aggravating factors to make the sentence higher. [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 Gary will probably receive a custodial sentences.

and/or

- Reference to sentencing guidelines with little or no development. [1–5]

Band 4: Reference to some of sentencing guidelines with little development and application. [6–7]

Band 5: Full development of the relevant Guidelines. Conclusion: This is a type 2 robbery. Gary is 17 and a first time offender. There are mitigating factors as the offence was unplanned, he did not take part in getting the money and he shows remorse. The starting point is 3 years but may be reduced. Credit alternative sentence based on a clear argument that Gary does not know about the knife. [8–10]

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

Band 2: Discusses adult sentencing in very general terms. [1–6]

Band 3: Some more detailed references to adult sentences but with a largely factual basis. Some general discussion of the theories of sentencing. [7–13]

Band 4/5: Very good detail on adult sentences with relevant examples and good discussion of the theories behind the sentences. To reach higher marks both aspects of the question need to be dealt with in some detail with a clear focus on adults and 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 Yuri will not be able to use duress as a defence.

and/or

- Reference to *R v Hasan* and/or *R v Graham* and/or *R v Cole* with little or no development. [1–5]

Band 4: Reference to *R v Hasan* and/or *R v Graham* and/or *R v Cole* with little development. [6–7]

Band 5: Full development of the relevant cases. Conclusion: Yuri will not have access to the defence. Although he may come within some of the elements of the defence as defined in R v Hasan there is no crime specified so as in R v Cole there is no connection and there is nothing to suggest that he would come within the Graham test as a reasonable man would not steal from his neighbour. [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 Qi may be successful with the defence of duress.

and/or

- Reference to *R v Hasan* and/or *R v Graham* and/or *R v Hudson and Taylor* with little or no development [1–5]

Band 4: Reference to *R v Hasan* and/or *R v Graham* and/or *R v Hudson and Taylor* with little development. [6–7]

Band 5: Full development of the relevant cases. Conclusion: Qi may have access to a defence. Some of the elements of *R v Hasan* apply and Qi is 21 but he may be more frightened because the threat is linked to his new born child according to the Graham test. The threat is not immediate as in *R v Hudson and Taylor* but the pressure is such that a defence may be available as a reasonable man might have acted in a similar way. [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 Carol will not have access to the defence.

and/or

- Reference to *R v Hasan* and/or *R v Graham* and/or *R v Howe and Bannister* with little or no development. [1–5]

Band 4: Reference to *R v Hasan* and/or *R v Graham* and/or *R v Howe and Bannister* with little development. [6–7]

Band 5: Full development of the relevant cases. Conclusion: Carol will have no defence. She comes within the *R v Hasan* definition and may be covered by the *R v Graham* test because of her age and situation but the *obiter dicta* in *R v Howe* means the defence is not available. [8–10]

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

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

Band 3: Some more detailed references to different elements of precedent such as hierarchy, law reporting , judgments, *ratio decidendi* and obiter dicta and the tools to avoid precedent such as the Practice Statement, *Young*, distinguishing and overruling and some general mention of their effectiveness but lacking in detail or range [7–13]

Band 4/5: Very good discussion of the tools judges can use to avoid precedent. Good detail on the elements of precedent and the tools judges can use. To reach higher marks all aspects of the question need to be dealt with in some detail with good critical awareness [14–20]

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