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LAW **9084/23**

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 Pat can rely on the Animals Act 1971.

and/or

- Reference to Animals Act 1971 s2 and/or s6 with little or no development. **[1–5]**

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

Band 5: Full development of the relevant sections. Conclusion: Alan will be liable under s2(2) as the horses are a non-dangerous species. However under 2(2)(a) damage to car is likely as the horses are next to a busy road, under (b) the risk of damage is linked to particular circumstances and under (c) Alan knows the horses are nervous and that the fence needs fixing. Credit reference to s6(3) in relation to establishing Alan as the keeper of the horses. Also credit references to s6(2) in relation to demonstrating that horses are not a dangerous species. **[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 Carol can rely on Animals Act 1971.

and/or

- Reference to Animals Act 1971 s2 and/or s6 with little or no development. **[1–5]**

Band 4: Some development of s2 and/or s5 and/or s6 Animals Act 1971 with some application. **[6–7]**

Band 5: Full development of the relevant sections. Conclusion: Bernard will be liable when the snake bites Carol. The snake is a dangerous species under s2(1) and under s6(2)(a) and (b). Bernard will be the keeper under s2(1) and under s6(3)(b) as Harry is 15. **[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 Derek cannot rely on Animals Act 1971.

and/or

- Reference to Animals Act 1971 s2 and/or 5 and/or 6 and/or *Cummings v Grainger* with little or no development. **[1–5]**

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

Band 5: Full development of the relevant sections and case. Conclusion: Keith may not be liable. The dog comes within s2(2) as a guard dog and Keith is liable under s6(3)(a) as he is in possession when Derek is bitten. However he may have a defence under s5 and *Cummings v Grainger* as despite the sign Derek has always stroked the dog. **[8–10]**

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

Band 2: Describes and/or discusses statutory interpretation in very general terms. **[1–6]**

Band 3: Some more detailed references to statutory interpretation, perhaps focused on factual aspects and some general application to the scenarios. **[7–13]**

Band 4/5: Very good discussion of the application of the rules to the scenarios and detailed reference to the rules of interpretation with relevant examples. To reach higher marks all parts of the question need to be dealt with in detail showing good application skills. **[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 Junaid will not be liable for theft.

and/or

- Reference to Theft Act s2 and/or 3 and/or 4 and/or 6 and/or *Oxford v Moss* with little or no development. **[1–5]**

Band 4: Some development of correct sections and/or case and some application. **[6–7]**

Band 5: Full development of the relevant sections and cases. Conclusion: Junaid is not likely to be liable. He may try to claim he comes within s2(1)(a) although a jury is unlikely to agree. He would say he does not fit s6 as he intends to return the paper the next day. He has appropriated under s3 but the exam paper is covered by the exception in *Oxford v Moss* and so is not property under s4(1). **[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 Craig is likely to be liable for theft.

and/or

- Reference to Theft Act s2 and/or 3 and/or 4 and/or 6 with little or no development. **[1–5]**

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

Band 5: Full development of the relevant sections. Conclusion: Craig is likely to be liable for theft although he may argue he comes within s2(1)(b) and credit an argument based on this. He has not appropriated under s3, the flowers are not covered by the exception in s4(3) and he does not intend to give them back under s6. **[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 Anne is likely to be liable for theft.

and/or

- Reference to Theft Act s2 and/or 3 and/or 4 and/or 6 with little or no development. **[1–5]**

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

Band 5: Full development of the relevant sections. Conclusion: Anne is likely to be liable although she may argue she comes within s2(1)(c) and a discussion based on this can be credited although a jury may not agree. She has appropriated under s3 and meets s6. Carol but will not be liable under s4(4) as the sheep is not a wild animal and has a number 20 on its back to identify it. However Carol is liable under s4(1) as a sheep is property. **[8–10]**

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

Band 2: Describes how legislation is made and the role of Parliament in very general terms. **[1–6]**

Band 3: Some more detailed references to the legislative processes, perhaps with examples and general discussion of its effectiveness. **[7–13]**

Band 4/5: Very good discussion of the role of Parliament in creating legislation as well as a detailed explanation of the lawmaking process using relevant examples. To reach higher marks all aspects of the question need to be dealt with showing good critical awareness. **[14–20]**

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