Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/21**

Paper 2 **May/June 2023**

MARK SCHEME

Maximum Mark: 60

Published

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.

Cambridge International will not enter into discussions about these mark schemes.

Cambridge International is publishing the mark schemes for the May/June 2023 series for most Cambridge IGCSE, Cambridge International A and AS Level and Cambridge Pre-U components, and some Cambridge O Level components.

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[Turn over

Generic Marking Principles

These general marking principles must be applied by all examiners when marking candidate answers. They should be applied alongside the specific content of the mark scheme or generic level descriptors for a question. Each question paper and mark scheme will also comply with these marking principles.

GENERIC MARKING PRINCIPLE 1:

Marks must be awarded in line with:

- the specific content of the mark scheme or the generic level descriptors for the question
- the specific skills defined in the mark scheme or in the generic level descriptors for the question
- the standard of response required by a candidate as exemplified by the standardisation scripts.

GENERIC MARKING PRINCIPLE 2:

Marks awarded are always **whole marks** (not half marks, or other fractions).

GENERIC MARKING PRINCIPLE 3:

Marks must be awarded **positively**:

- marks are awarded for correct/valid answers, as defined in the mark scheme. However, credit is given for valid answers which go beyond the scope of the syllabus and mark scheme, referring to your Team Leader as appropriate
- marks are awarded when candidates clearly demonstrate what they know and can do
- marks are not deducted for errors
- marks are not deducted for omissions
- answers should only be judged on the quality of spelling, punctuation and grammar when these features are specifically assessed by the question as indicated by the mark scheme. The meaning, however, should be unambiguous.

GENERIC MARKING PRINCIPLE 4:

Rules must be applied consistently, e.g. in situations where candidates have not followed instructions or in the application of generic level descriptors.

GENERIC MARKING PRINCIPLE 5:

Marks should be awarded using the full range of marks defined in the mark scheme for the question (however; the use of the full mark range may be limited according to the quality of the candidate responses seen).

GENERIC MARKING PRINCIPLE 6:

Marks awarded are based solely on the requirements as defined in the mark scheme. Marks should not be awarded with grade thresholds or grade descriptors in mind.

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Social Science-Specific Marking Principles (for point-based marking)

1 Components using point-based marking:

- Point marking is often used to reward knowledge, understanding and application of skills. We give credit where the candidate's answer shows relevant knowledge, understanding and application of skills in answering the question. We do not give credit where the answer shows confusion.

From this it follows that we:

a DO credit answers which are worded differently from the mark scheme if they clearly convey the same meaning (unless the mark scheme requires a specific term)

b DO credit alternative answers / examples which are not written in the mark scheme if they are correct

c DO credit answers where candidates give more than one correct answer in one prompt / numbered / scaffolded space where extended writing is required rather than list-type answers. For example, questions that require *n* reasons (e.g. State two reasons).

d DO NOT credit answers simply for using a 'key term' unless that is all that is required. (Check for evidence it is understood and not used wrongly.)

e DO NOT credit answers which are obviously self-contradicting or trying to cover all possibilities

f DO NOT give further credit for what is effectively repetition of a correct point already credited unless the language itself is being tested. This applies equally to 'mirror statements' (i.e. polluted / not polluted).

g DO NOT require spellings to be correct, unless this is part of the test. However, spellings of syllabus terms must allow for clear and unambiguous separation from other syllabus terms with which they may be confused (e.g. Corrasion / Corrosion)

2 Presentation of mark scheme:

- Slashes (/) or the word 'or' separate alternative ways of making the same point.
- Semi colons (;) bullet points (•) or figures in brackets (1) separate different points.
- Content in the answer column in brackets is for examiner information / context to clarify the marking but is not required to earn the mark (except Accounting syllabuses where they indicate negative numbers).

3 Annotation:

- For point marking, ticks can be used to indicate correct answers and crosses can be used to indicate wrong answers. There is no direct relationship between ticks and marks. Ticks have no defined meaning for levels of response marking.
- For levels of response marking, the level awarded should be annotated on the script.
- Other annotations will be used by examiners as agreed during standardisation, and the meaning will be understood by all examiners who marked that paper.

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Guidance on using levels-based mark schemes

Marking of work should be positive, rewarding achievement where possible, but clearly differentiating across the whole range of marks, where appropriate.

The marker should look at the work and then make a judgement about which level statement is the best fit. In practice, work does not always match one level statement precisely so a judgement may need to be made between two or more level statements.

Once a best-fit level statement has been identified, use the following guidance to decide on a specific mark:
- If the candidate's work **convincingly** meets the level statement, award the highest mark.
- If the candidate's work **adequately** meets the level statement, award the most appropriate mark in the middle of the range (where middle marks are available).
- If the candidate's work **just** meets the level statement, award the lowest mark.

Assessment objectives

AO1 Knowledge and understanding
- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

AO2 Analysis and application
- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

AO3 Evaluation
- Evaluate legal concepts, principles and rules.
- Communicate legal argument coherently on the basis of evidence.

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Section A

Table A

Use this table to give marks for each candidate response for **Question 1(a)**, **(b)** and **(c)**.

Level	AO1 Knowledge and understanding 2 marks	AO2 Analysis and application 8 marks
	Description	**Description**
3		**6–8 marks** • Analysis leading to a developed and logical conclusion. • Application which is fully developed.
2	**2 marks** • Identification and accurate citation of most of the relevant law.	**3–5 marks** • Analysis leading to a conclusion which may or may not be entirely appropriate. • Application which is partially developed.
1	**1 mark** • Identification and citation of some relevant law.	**1–2 marks** • Analysis leading to a basic conclusion without reasoning or no conclusion. • Application which is basic.
0	**0 marks** • No creditable content.	**0 marks** • No creditable content.

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Question	Answer	Marks
1(a)	**Explain how the source material will apply to Andrew.** Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • S1(2) and s1(3) are the likely offences. **AO2 Analysis and application** Analysis: • Andrew has completed a s1(2) offence as he intentionally destroyed the factory and was reckless as to where the security guard would be. • He commits a s1(3) offence as fire destroys the factory. • Andrew's maximum penalty for these offences is life imprisonment. Application: • S1(2) is the appropriate offence because Andrew destroys his own property. • He meets (a) as he intends to at least damage part of the factory to get the insurance money. • He meets (b) as he is reckless as to where the security guard might be when the fire starts. • Andrew meets s1(3) as fire destroys the factory. • Andrew meets s3(b) as he has petrol which he has bought to start the fire. • Andrew will be sentenced under s4(1) as he has committed arson and he meets both requirements of s1(2). Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(b)	**Explain how the source material will apply to Fraser.** Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • S1(1) and s2 are the likely offences. • Reference to *Hardman v Chief Constable of Avon and Somerset* (1986). **AO2 Analysis and application** Analysis: • Fraser has committed a s1(1) offence as he has painted words on Pascal's van. • He may have committed an offence under s2(a) as he says something will happen to Pascal's van. • The maximum penalty for this offence is 10 years. Application: • S1(1) – Fraser intentionally damages Pascal's van by painting words on it. • S2(a) – when Fraser says to Pascal that something will happen to his van if he parks it in the same place, this could be a threat. • There is evidence Pascal is frightened, but it is not clear that Fraser intended Pascal to be frightened so this offence will be hard to prove. • *Hardman v Chief Constable of Avon and Somerset* (1986) suggests that as the paint washes away without Pascal having to spend time and money to remove it this will not be classed as damage. • As a consequence, a s1(1) offence will fail in relation to Fraser. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(c)	**Explain how the source material will apply to Mandeep.** Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • S1(1) and s2(a) are the likely offences. • There may also be an offence under s3(a). **AO2 Analysis and application** Analysis: • Mandeep has committed a s1(1) offence as he intentionally damages the windows at Rana's cafe. • He commits a s2(a) offence as he threatens Rana with a hockey stick, and he commits a s3(a) offence as the hockey stick is found in his shop. • The maximum penalty for this offence is 10 years. Application: • S1(1) – Mandeep deliberately breaks the cafe windows and is seen doing so on CCTV so he commits an offence. • S2(a) – Mandeep intentionally threatens Rana as he uses intimidating words, bangs the hockey stick on a table and points it at her. • S3(a) – Mandeep uses the hockey stick he keeps in his shop to threaten Rana. The CCTV footage shows that he uses the same stick to cause the damage and he has no reasonable excuse for doing so. • Mandeep will be convicted under s4(2) as he has not committed arson or an offence under s1(2) so the maximum penalty will be 10 years. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Section B

Table B

Use this table to give marks for each candidate response for **Questions 2(b)** and **3(b)**.

Level	AO1 Knowledge and understanding 10 marks	AO2 Analysis and application 6 marks	AO3 Evaluation 9 marks
	Description	**Description**	**Description**
4	**9–10 marks** • Accurate and detailed in most relevant areas. • Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.		
3	**6–8 marks** • Mostly accurate but may not be detailed in some relevant areas. • Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**5–6 marks** • Mostly focused and reasoned analysis throughout. • The analysis is supported by effective and well developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.	**7–9 marks** • Mostly focused and reasoned evaluation of most of the relevant issues. • Effectively supported by relevant material. • Coherent argument.
2	**3–5 marks** • Some accuracy but lacks detail in relevant areas. • Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**3–4 marks** • Some reasoned analysis. • The analysis is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**4–6 marks** • Some evaluation, reasoned at times, of some of the relevant issues. • Supported by some relevant material. • Some coherent argument.
1	**1–2 marks** • Limited accuracy. • Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**1–2 marks** • Limited analysis. • The analysis is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**1–3 marks** • Limited evaluation of a relevant issue. • Limited or no use of relevant material. • Limited or no argument.
0	**0 marks** • No creditable content.	**0 marks** • No creditable content.	**0 marks** • No creditable content.

Question	Answer	Marks
EITHER		
2(a)	**Describe dishonesty in the *mens rea* of theft.** **AO1 Knowledge and understanding** • Dishonesty is found in s2 Theft Act 1968. • It is a key element needed to prove a charge of s1 theft. • S2 does not define dishonesty but there are examples of what is not dishonest. • S2(1)(a) – a defendant is not dishonest if they honestly believe they have a legal right to appropriate the property. • S2(1)(b) – a defendant is not dishonest if they honestly believe the owner would have consented to the appropriation. • S2(1)(c) a defendant is not dishonest if they honestly believe the owner cannot be found having taken reasonable steps to do so. • Relevant cases include *R v Robinson* (1977), *R v Holden* (1991) and *R v Small* (1987). • Juries use a common sense definition of dishonesty. • If they need help the test now is to ask, firstly, what was the defendant's actual state of knowledge or belief as to the facts and, secondly, was their conduct dishonest by the standards of ordinary decent people? If the answer to both questions is yes, the defendant is dishonest – *Ivey v Genting Casinos* (2017), *R v Barton and Booth* (2020). Each point made is worth 1 mark up to a maximum of 5.	**5**

Question	Answer	Marks
2(b)	**Evaluate the law of robbery.** Use Table B to mark candidate responses to this question. AO1 out of 10 marks. AO2 out of 6 marks. AO3 out of 9 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • Robbery is defined in s8 Theft Act 1968. • All elements of theft must be present or there can be no conviction for robbery – *R v Zerei* (2012), *R v Waters* (2015*).* • At the moment the theft is complete there can be a robbery – *Corcoran v Anderton* (1980). • There must be a use of force or putting or seeking to put a person in fear of force – the amount of force can be small and the victim does not need to be frightened – *R v Dawson and James* (1976), *R v Clouden* (1985), *P v DPP* (2012), *B and R v DPP* (2007). • The force must be used before or at the time of stealing – this can be as part of an ongoing situation – *R v Hale* (1979), *R v Lockley* (1995). • The force must be in order to steal – if a theft is already complete and then force is applied this will not be robbery. • The defendant must possess the same *mens rea* for theft. • The defendant must also intend to use force in order to steal. • This is an indictable offence with a maximum penalty of life. **AO2 Analysis and application** Analysis: • The use of force is an indicator of blame which helps with sentencing. • The intention to use force leads to a higher sentence and helps to reflect blameworthiness. • Different categories of robbery help to distinguish between types of the offence which is vital for fair labelling and sentencing practicalities – street and less-sophisticated commercial robbery, professionally planned commercial robbery and robbery in a dwelling. • The development of the law shows complexity as the statutory definition has been extended. • This is a serious offence, so juries need to be sure of the elements to be able to convict.	**25**

Question	Answer	Marks
2(b)	**AO3 Evaluation** • Robbery requires a theft to be completed but this has been problematic. • In theft an appropriation occurs at one point in time and if the other elements of theft are also present the offence is complete. However, in robbery the appropriation can be a continuing act. • This has helped juries to convict, particularly where there is more than one defendant, and each plays a different role in the full offence; this may be a necessary development to ensure conviction for a serious offence with a high maximum penalty and a significant stigma. • It could be argued that a robbery could be committed without a completed theft as this would be consistent with the law of burglary. • The level of force required for robbery is very low and 'force' is said to be an ordinary word which juries can decide on. • Often there is no problem as the force is clearly significant; however, as the amount of force required is very low, this can lead to inconsistency between juries. • As the force must enable the theft to be committed, accidentally making contact with someone from whom the defendant has just stolen property could be robbery, which might lead to harsh convictions, sentences and stigma. • Uncertainties may have the opposite effect and make juries unwilling to convict as they are not sure robbery is the right offence even though the evidence supports such a conviction. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9

Question	Answer	Marks
OR		
3(a)	**Describe discharges as a type of sentence for an adult offender.** **AO1 Knowledge and understanding** • There are two types of discharge – conditional or absolute. • A court can issue a conditional discharge on the condition that the offender does not commit another offence for a fixed period. • The fixed period can be for a maximum of three years. • If the offender reoffends within the time limit, they can be given another sentence instead of the conditional discharge and a sentence for the new offence. • A conditional discharge is used when the court thinks that punishment is not necessary. • A conditional discharge is often used by Magistrates' for minor offences by first-time offenders. • An absolute discharge means no penalty is imposed. • An absolute discharge is used when the offender is technically guilty but morally blameless. Each point made is worth 1 mark up to a maximum of 5. Award up to 4 marks for one type of discharge only.	**5**

Question	Answer	Marks
3(b)	**Evaluate to what extent punishment is the most effective aim when sentencing adult offenders.** Use Table B to mark candidate responses to this question. AO1 out of 10 marks. AO2 out of 6 marks. AO3 out of 9 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** Sets out aims: • Punishment is one of the aims of sentencing for adult offenders in s142 Criminal Justice Act 2003. • It is often seen as the main aim for adult offenders. • Punishment is linked to the idea of retribution for wrongdoing. • Punishment expresses society's disapproval but should be proportionate to the crime committed; this is done using sentencing tariffs. • Kant says that punishment is simply linked to punishing the offender for what they have done and that a punishment should fit the crime. • Punishment also used to be linked to retribution and the idea of society exacting revenge on an offender – this was part of the thinking behind the death penalty. • Punishment as an aim is now clearer using tariffs – guidelines produced by the Sentencing Council for the most common crimes. These include a starting point and a range for the sentence as well as the factors that make an offence more serious or less serious. • Any sentence has an element of punishment, but it is clearly seen as in custodial sentencing. **AO2 Analysis and application** Analysis: • Adult offenders are more likely to have punishment as an aim in their sentence, especially if they are a repeat offender. • Punishment should be proportionate if a sentence is to have a chance of being effective for the offender. • The use of sentencing guidelines should make sentencing fairer for the offender and in the eyes of society. • It is important for society to know that offenders are punished for crimes they have committed if the criminal justice system is to have credibility. • Sentencing Council guidelines have to strike a difficult balance as to whether this will increase the numbers being sent to prison or using the probation service as government needs to forecast the requirements of the prison and probation services.	**25**

Question	Answer	Marks
3(b)	**AO3 Evaluation** • Punishment is focused on paying a price for wrong behaviour and sometimes taking a dangerous person out of society – to this extent it is the most effective aim. However, it is a very expensive system and can simply build up a culture of criminality which can lead to a cycle of reoffending. • Punishment should also give the opportunity to rehabilitate offenders so that they can function without committing crime which can make it effective; there can be some success but for many offenders their issues relating to addiction, mental health and low levels of education are not resolved due to a lack of support and funding for courses especially in prison making it ineffective. • Many offenders are given shorter sentences which can be a good punishment as they are not out of society for too long, but this gives less chance to deal with issues that led them to commit the crime they are being punished for making it ineffective. • Sentencing Council guidelines do lead to greater consistency, which is good. However, it can make it hard for a court to impose a sentence which also allows for reform and they allow judges very little discretion in sentencing. • Mitigating factors often receive less attention than aggravating factor which can lead to an unjust sentence and the special needs of an offender may not be taken into account fully. • By some measures punishment is the most effective aim but this is not necessarily the case in terms of helping offenders lead better lives when, as is the case for most, they are released. Accept all valid responses. Credit can be given for analysis and evaluation of other aims of sentencing if they are used as a comparison to punishment.	
	AO1	10
	AO2	6
	AO3	9