Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/23**

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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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 Jonathan.** 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** • S2 is the likely offence. • Reference to s34 Theft Act 1968. **AO2 Analysis and application** Analysis: • Jonathan has the *actus reus* as he knows the representation he is making about the horse is untrue and the *mens rea* as he is dishonest. • Jonathan intends to make a gain and Liz to suffer a loss under s34. Application: • Under s2(2)(a) the representations Jonathan has made in the advert and to Liz in person are false. • Jonathan meets s2(2)(b) as he knows the representation about the horse's health is false as the vet has told him about the heart problem. • He makes several representations of fact under s2(3) which are express under s2(4). • Jonathan is dishonest under s2(1)() as he knows the truth about the horse. • He meets s2(1)(b)(i) as he intends to gain £2000 and (ii) as Liz will lose the same amount as defined by s34. • He meets s2(3)(b) as Jonathan misrepresents what Bob as another person has said about the health of the horse. • It seems likely Jonathan will be convicted of an offence under s2. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(b)	**Explain how the source material will apply to Teresa.** 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** • S3 is the likely offence. • Reference to s34 Theft Act 1968. • Reference to *R v Blight and Ingram* (2019*).* **AO2 Analysis and application** Analysis: • Teresa has the *actus reus* of the offence as she has failed to disclose her ban. • She has the *mens rea* of the offence as she does this dishonestly. • She meets s34 as she gains two months' salary to which she is not entitled, and the school loses this money. Application: • Under s3(a) Teresa does not disclose the information legally required as in *Blight and Ingram* in relation to her ban from teaching when she steers the interview to talk about something else. • She does this dishonestly under s3(a) as she knows she will not get the job if she tells the truth. • Teresa intended to make a gain for herself under s3(b) by getting a job she is not legally entitled to because of her ban. • This will allow her to make a gain under s3(b)(i) as she will get money she did not have before and under (ii) the school will lose money and the expertise of a science teacher. • It seems likely that Teresa will be convicted of an offence under s3. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(c)	**Explain how the source material will apply to Wilhelm.** 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** • S2 is the likely offence. • Reference to s34 Theft Act 1968. **AO2 Analysis and application** Analysis: • Wilhelm has the *actus reus* and *mens rea* of an offence under s2 when people donate money to his homemade collecting tin as it looks like a real charity tin. • Wilhelm also has the *actus reus* and *mens rea* of an offence under s2 when he uses the charity credit card to buy flowers for his girlfriend. • In both cases there is gain and loss as in s34 Theft Act 1968. Application: • Wilhelm makes a false representation under s2(2)(a) as he knows the collecting tin he has made is not a genuine tin. • He also knows under (2)(b) that might mislead people. • His representation is one of fact under s2(3) relating to the tin. • Hs representation is implied under s2(4) as he is suggesting he is entitled to collect the money. • He is dishonest under s2(1)(a) as the tin is almost identical to a real one. • Under (b)(i) there is gain to Wilhelm as defined in s34 and under (b)(ii) loss to the charity as people believe the collecting tin to be real. • There is also a representation under s2(5) when Wilhelm uses the charity credit card to buy flowers for his girlfriend. • It seems likely Wilhelm will be convicted of two offences under s2. 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 omissions in *actus reus*.** **AO1 Knowledge and understanding** • Normally an *actus reus* is found in a positive and voluntary act. • An omission creates liability due to a failure to act in: • An Act of Parliament • A contractual duty to act • A relationship between the victim and the accused • A duty towards the victim has been taken on voluntarily • A duty due to an official position • A duty to act because a chain of events is set in motion. Each point made is worth 1 mark up to a maximum of 5.	**5**

Question	Answer	Marks
2(b)	**Evaluate the law on appropriation in theft.** 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** • Appropriation is found in s3(1) Theft Act 1968. • It is one of the elements that must be proved to prove an offence of theft under s1. • It is part of the *actus reus*; a simple definition is that 'any assumption by a person of the rights of an owner amounts to appropriation'. • Appropriation can be the act of taking something, destroying property, switching price labels on items or giving worthless cheques in payment for goods. • Any or all of the owner's rights must be assumed for an appropriation – *R v Vinall* (2011)*, R v Pitham and Hehl* (1977), *R v Morris* (1983) • There can be an appropriation even when the owner has given their consent – *Lawrence v Commissioner MPC* (1972), *R v Gomez* (1993) • There can be an appropriation in relation to a gift even if there is no deception – *R v Hinks* (2000) • An appropriation occurs at the first point when an owner's rights are interfered with; if the other elements of theft are present the offence is complete at this point – *R v Atakpu and Abrahams* (1994) • Under s3(1) there is also appropriation if the defendant acquires property without stealing it but decides to keep or deal with the property as an owner – perhaps by keeping property which has been hired but is not returned. **AO2 Analysis and application** Analysis: • Appropriation is a key element as it is a physical act which can be seen and so helps with allocation of blame and sentencing. • The development of the law on appropriation is complex as statutory and common law definitions are not the same which can cause problems. • Appropriation is only one of the elements needed to prove a complete offence of theft and some of the others are difficult too. • There can be some inconsistency with other offences, such as robbery, which does not lead to fair labelling. • Issues relating to consent and gifts have caused particular difficulty. • Theft is an offence with a serious stigma, so juries need to understand appropriation if they are to be able to convict in the correct cases.	**25**

Question	Answer	Marks
2(b)	**AO3 Evaluation** • Appropriation has been extended since the Theft Act 1968 was passed and there is speculation as to how far the current law fits with Parliament's intention. However, so many things have changed since the Act was passed; perhaps judges are better placed to keep up with those changes. • As appropriation in theft occurs at one point in time there is a conflict with robbery, and it is a potential problem having two offences in the same Act which define the same word differently. However, this does not seem to lead to huge issues in jury decisions. • Appropriation can occur even though the owner has consented to the act; critics argue that that such changes have made other offences in the Theft Act 1968 redundant which was not what Parliament intended. • The criminal and civil law work differently in relation to gifts – in the criminal law a lot relies on what is in the mind of the defendant which can be difficult to prove to a jury even though there has been an appropriation. • Issues around appropriation lead to a greater reliance on other elements to secure a conviction, such as dishonesty, which has its own problems. • In offences based on shopping the criminal law is not the same as the law of contract. Critics argue that it would often be easier to rely on fraud as this is a more straightforward offence than the modern law of theft. • The law has not been redrafted which perhaps suggests it works well enough even though there are clear inconsistencies. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9

Question	Answer	Marks
OR		
3(a)	**Describe the mitigating and aggravating factors to be considered when sentencing an adult offender.** **AO1 Knowledge and understanding** Aggravating factors make an offence more serious: • previous convictions for similar offences or an offence relevant to the one they have just committed • being on bail when the offence was committed • racial or religious hostility in the offence • hostility to disability or sexual orientation in the offence • pleading not guilty • victim of the offence is a vulnerable person • offences relating to sexual violence Mitigating factors can help reduce a sentence: • no previous convictions • genuine remorse • having a minor part in the offence • pleading guilty • mental health or addiction issues. Each point made is worth 1 mark up to a maximum of 5.	**5**

Question	Answer	Marks
3(b)	**Evaluate to what extent preventing re-offending is the <u>most</u> effective aim when sentencing young 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** • S142A Criminal Justice Act 2003 has preventing offending or reoffending as its primary aim for those under 18. • As part of this a sentence also has to take into account the welfare of the offender and the purposes of punishment, reform and rehabilitation, protection of the public and reparation. • Depending on the offence courts may use custodial or community sentences in an effort to prevent reoffending. • A young offender should only be given a custodial sentence as a last resort. • Community sentences can focus on improving education and delivering training to avoid a reliance on criminality. • Community sentences can also help with drug and alcohol issues which can lead to criminality. • Community sentences can be in conjunction with services that help with mental health issues. • Sentences can also involve parents to improve family bonds and provide resilience against criminality. **AO2 Analysis and application** Analysis: • Preventing offending or reoffending sits alongside rehabilitation as it helps to prevent a cycle of criminality by helping with self-worth and showing a young offender that they can be successful without crime. • It looks to the future and aims to help a young offender be valued and a valuable member of society. • A wide range of sentences for young offenders has the potential to lead to fairer and more effective sentencing. • Sentencing can be individualised to achieve greater effectiveness. • There can be a conflict as society may want more of a focus on punishment through a hard lesson to prevent reoffending. • Sometimes public protection means a young offender must be removed from society, but this should only be done for as short a time as necessary, as this can lead to criminality. • Competing aims can make sentencing hard in terms of fair labelling and in striking the correct balance.	**25**

Question	Answer	Marks
3(b)	**AO3 Evaluation** • Preventing offending/reoffending for a young offender relies on fair and proportionate sentencing for the offence committed but also giving hope for the future – this is a difficult balance but can make it the most effective aim. • Custodial sentences may be essential for punishment and public protection, but they offer little in the way of hope. • Those who are older will be moved to an adult prison and the chances of preventing reoffending are very much reduced once that happens. • Education and training are offered but are not always varied enough or focused on what is needed to be able to get a job on release making the aim ineffective. • Custodial sentences can also ingrain institutional behaviour at a young age which makes it hard to manage in the community after release. • Community sentences can be much more focused on the needs of the offender which should make them more effective. • To prevent reoffending a sentence should not be too long so as to avoid stigma, but it needs to be long enough to effect change – especially in relation to education and training or dealing with substance abuse and mental health issues. • Some young offenders live in a community where criminality is the norm and this can be a hard habit to break. • Society often feels that a young offender needs to be punished harshly but evidence suggest this does not necessarily prevent reoffending. • Individualised sentences can lead to inconsistency which is not easy to justify and may impact on effectiveness. • Preventing offending or reoffending also depends on a young offender's capacity or willingness to change; this can be a barrier to effectiveness. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9