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LAW **9084/22**

Paper 2 **May/June 2024**

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.

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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 descriptions 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 Calculation questions:

- The mark scheme will show the steps in the most likely correct method(s), the mark for each step, the correct answer(s) and the mark for each answer
- If working/explanation is considered essential for full credit, this will be indicated in the question paper and in the mark scheme. In all other instances, the correct answer to a calculation should be given full credit, even if no supporting working is shown.
- Where the candidate uses a valid method which is not covered by the mark scheme, award equivalent marks for reaching equivalent stages.
- Where an answer makes use of a candidate's own incorrect figure from previous working, the 'own figure rule' applies: full marks will be given if a correct and complete method is used. Further guidance will be included in the mark scheme where necessary and any exceptions to this general principle will be noted.

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4 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.

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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Annotations and their Use

Annotation	Use
✓	Used to credit AO1 in any of **Q1**, **Q2** and **Q3**.
NAQ	Used when the answer or parts of the answer do not answer the question asked.
BOD	Used when the benefit of the doubt is given in order to reward a response.
A	Used to indicate AO2 Analysis and application in **Q1** and AO2 Analysis in **Q2(b)** and **Q3(b)**.
C	Used to indicate a conclusion in any of **Q1**, **Q2(b)** and **Q3(b)**.
EVAL	Used to indicate AO3 Evaluation in **Q2(b)** and **Q3(b)**.
REP	Indicates where content has been repeated.
SEEN	Indicates that content has been recognised but not rewarded.
?	Indicates material which is not sufficiently clear to be rewarded.
	Indicates material which is not relevant as a response to the question asked.

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 Anthony.** 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** • Anthony shows greater harm. • He also shows higher culpability. **AO2 Analysis and application** Analysis: • Anthony has been convicted of aggravated burglary of £50 000 and he has used a weapon to cause significant physical injury. • He has caused greater harm, and he has high culpability as well as several aggravating factors. • There are no mitigating factors and so he is likely to be high on the sentencing scale. Application: • Anthony has caused greater harm as a large sum of money has been stolen which has economic value. • Peter is at home and Anthony causes him significant physical harm with a weapon by breaking his leg with the iron bar. • Anthony is highly culpable as he is part of a gang who have planned the offence and he has gone equipped to burgle as he has an iron bar to help open the safe. • There are aggravating factors as Anthony has previous convictions, although for a lesser offence, and the offence is committed at night. • Anthony's sentence will be in Category 1; he is likely to be above the starting point of 10 years' custody. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(b)	**Explain how the source material will apply to Soraya.** 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** • Soraya shows lesser harm. • She also shows lower culpability. **AO2 Analysis and application** Analysis: • Soraya has been convicted of aggravated burglary of a picture worth £10. • She does go equipped for burglary as she has a hammer, but she has lower culpability as she has been exploited by her brother, Adnan. • There are several mitigating factors and so she is likely to be low on the sentencing scale. • Application: • Soraya has taken a picture which is of very low economic value as it is only worth £10. • The victim is, unknown to Soraya, at home but she does not cause harm and does not show or use the hammer which could be a weapon. • Soraya has lower culpability as she has been exploited by her brother. • There are no aggravating factors but there are mitigating factors as the picture is of little value, Soraya has no previous convictions, and she has expressed remorse for her actions. • Soraya's sentence will be in Category 3 and is likely to be below the starting point of 2 years' custody. • Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(c)	**Explain how the source material will apply to Caleb.** 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** • Caleb shows greater harm. • He also shows lower culpability. **AO2 Analysis and application** Analysis: • Caleb has been convicted of aggravated burglary as he has destroyed a vase of great sentimental value and there has been vandalism of property. • Although a weapon is present on entry as he has a gun, he has lower culpability as he has a learning disability. • There are both aggravating and mitigating factors, so he is likely to be in the middle of the sentencing scale. Application: • Caleb has destroyed a vase of sentimental value to Anna. • Although Caleb intends to frighten Anna, she is out so he cannot do so. • He does go equipped for burglary but has lower culpability due to his learning disability. • There are aggravating factors as Caleb is on bail at the time of the offence and is in a position of trust with his friend but there are mitigating factors too due to his learning disability and his age. • Caleb's sentence will be in Category 2 and is likely to be below the starting point of 6 years' custody. 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.

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Question	Answer	Marks
EITHER		
2(a)	**Describe the *actus reus* of the offence of making off without payment.** **AO1 Knowledge and understanding** • S3 Theft Act 1978 • The defendant leaves the place where payment is expected; this is a question of fact. • Goods have been supplied or a service has been done – if this has not happened there is no offence. • Payment is required on the spot – this happens when the goods or services have been provided and it must be proved that payment on the spot was required or expected. • The defendant has not paid as required – this is a question of fact and must be of the amount due. Each point made is worth 1 mark up to a maximum of 5.	**5**

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Question	Answer	Marks
2(b)	**Evaluate the effectiveness of the law in s1 Criminal Damage Act 1971.** 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** • S1(1) is the basic criminal damage offence – the *actus reus* is to destroy or damage property belonging to another without lawful excuse. • Destruction or damage is not defined by the Act; it is a matter of fact and degree based on common sense and can include temporary or permanent physical damage and/or impairment of value or usefulness - *Hardman v Chief Constable of Avon and Somerset (1986), Morphitis v Salmon (1990), R v Fiak (2005).* • Property is defined in s10(1) – it must be tangible and can be real or personal. It includes wild creatures tamed or ordinarily kept in captivity, and other wild creatures or their carcasses only if they have been reduced into possession which has not been lost or abandoned or are in the course of being so reduced. It does not include mushrooms, flowers, fruit or foliage of a plant growing wild on any land. • The property must belong to another – this is similar to s5 Theft Act 1968 but requires custody and control of property not possession or control. • Lawful excuses are set out in s5 and are based on a subjective belief honestly held. • The *mens rea* is intention or recklessness, the latter is defined subjectively – *R v Cunningham (1957), R v G (2004)*. • S1(2) is the aggravated offence – the elements are similar to the basic offence but there must be an intention or recklessness to endanger life and there is no defence of lawful excuse. • S1(3) is Arson – the elements are the same as in the basic offence, but the damage must be caused by fire and the defence of lawful excuse is available – *R v Denton (1982).* • Basic criminal damage (other than by fire) of a value less than £5000 is a summary offence with a maximum penalty fine and/or three months' imprisonment; if the value is over £5000 the offence is triable either way with a maximum penalty of 10 years' imprisonment; arson is triable either way and the maximum summary sentence is six months' and on indictment the maximum sentence is life imprisonment; aggravated criminal damage and aggravated arson are triable on indictment and the maximum sentence is life imprisonment.	**25**

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Question	Answer	Marks
2(b)	**AO2 Analysis and application** Analysis: • Criminal damage is a necessary but varied offence which can make it complex. • A lot depends on choosing the right offence to reflect the facts and the number of elements which have to be satisfied can make it hard for juries to understand and so reach fair verdicts. • Key terms are not always clearly defined which does not necessarily lead to fair labelling. • Some key concepts such as recklessness have changed their meaning. • Sentencing can also be complex and can lead to inconsistency. **AO3 Evaluation** • The Criminal Damage Act 1971 has clarified the law in many ways and has tried to create a useful range of offences but there can be complex overlaps. • Some fundamental key terms lack a clear definition which can lead to inconsistency and difficulties for juries. For example, the meaning of 'destroy' or 'damage' is vague and does not necessarily fit with common sense which can impact on the law's effectiveness. • Where a jury trial is concerned, juries can struggle to decide whether damage was done to protect from immediate danger, and this can lead to perverse verdicts which could make the law ineffective. • The range of offences can make the law very effective as it reflects different ways criminal damage can occur and its increasing seriousness as well as potential danger to the wider public helps with this. • In offences where the *mens rea* includes recklessness based on a subjective test this means the defendant is at fault and should be punished, helping to make the law effective. As a result, a defendant has to take responsibility when they are aware of the risk of a consequence occurring; this is fair and aids the effectiveness of the offences. • However, if can be ineffective if a defendant says they did not see a risk but damage is caused. • Sentencing is graded within the offences which helps with effectiveness if the correct offence is charged and can provide an effective deterrent message for potential offenders. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9

Question	Answer	Marks
OR		
3(a)	**Describe the law on direct intention in criminal law.** **AO1 Knowledge and understanding** • Intention is the highest level of *mens rea* • It is only required for a very small number of offences. • It is defined in common law, not statute. • Direct intent is defined a decision to bring about, in so far as it lies within the accused's power the prohibited consequence whether they desired the consequence or not. • The leading case is *R v Mohan (1975).* • The defendant's motive or reason for doing the act is irrelevant. • It is the clearest form of intention but is not always evident. • It is not seen very often. • Direct intent is distinguished from indirect/oblique intent. Each point made is worth 1 mark up to a maximum of 5.	**5**
3(b)	**Evaluate the effectiveness of the law of fraud.** 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** • S2 Fraud Act 2006 – fraud by false representation. The *actus reus* is that the defendant must make a representation which is false. A representation can be express or implied and made to a person or a machine. There do not need to be any consequences due to the representation - *R v Hamilton (2008).* For the *mens rea* there must be dishonesty using the test in theft, knowledge or a belief that the representation is untrue or misleading and an intention to make a gain or cause a loss - *R v Barton and Booth (2020), R v Kapitene (2010), s34 Fraud Act 2006.* • S3 Fraud Act 2006 – fraud by failing to disclose information. The *actus reus* is that the defendant must fail to disclose information where a legal duty to do so exists even if they do not know the duty exists and there are no consequences due to failing to disclose information - *R v D (2019).* The *mens rea* is the same dishonesty test as for theft and an intention to make a gain or cause a loss. • S4 Fraud Act 2006 – fraud by abuse of position. The *actus reus* is that the defendant was in a position in which they were expected to safeguard, or not to act against, the financial interests of another person and that they abused that position, often where there is a legal fiduciary duty - *R v Valujevs (2014), R v Marshall (2009), R v Gayle (2008).* The *mens rea* is the same as for a s3 offence.	**25**

Question	Answer	Marks
3(b)	• S11 Fraud Act 2006 – obtaining services dishonestly. The *actus reus* is that there must be an act and the defendant obtains services that are not paid for or not paid for in full. The *mens rea* is the same dishonesty test as for theft as well as knowledge that the services are, or might be, being made available on the basis that payment has been or will be made for them and an intention to make a gain or cause a loss. • All fraud offences are triable either way and have a maximum penalty of 10 years' except S11 the maximum penalty is five years' imprisonment. **AO2 Analysis and application** Analysis: • The Fraud Act 2006 is complex and lengthy, although in effect it only deals with one offence. • The terms in the Act are quite specific but not all are defined which can lead to difficulties of interpretation and therefore consistency. As an example, the meaning of an 'implied false representation by conduct' is not specifically given in the Act although there is an example in the explanatory notes. • Fraud cases often include a charge of theft and there is a clear overlap in the element of dishonesty – as in *R v Barton and Booth (2020).* The dishonesty test has been subject to change in theft, and it is not certain that the current interpretation will stand in the long term. • Some parts of the Act are very general which means that possibly the wrong sort of conduct is being criminalised; however, some moral complexities are overlooked so trivial disputes can end up as crimes. • s2 is capable of very wide use because it is the broadest and so can lead to unforeseen consequences; in 2(5), a representation can arise very early and as long as there is an intention to gain at some point the offence is complete. • In s2(2), a statement is false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading but this can make someone guilty too easily. **AO3 Evaluation** Evaluation: • As the Fraud Act 2006 is complex and lengthy in an attempt to cover lots of different varieties of one offence this can lead to inconsistency and can make charging decisions difficult; this can impact on effectiveness. • The lack of clear definitions of all terms might be deliberate in an effort to allow the law to grow; this can make it effective as it is adaptable but can also increase ineffectiveness if there is a lack of clarity. • The overlap with theft, especially in relation to the key element of dishonesty; this is often the hardest element to prove and recent developments in the law of theft appear to make conviction easier. The current law may not be a clear expression of what parliament intended; this may impact on effectiveness by convicting more people, but they are not 'truly' criminal. The meaning of dishonesty could also change again. • As some definitions are not clear the wrong sort of conduct can be criminalised and trivial disputes can end up as crimes, reducing the effectiveness of the law and its deterrent effect. • The breadth of the law can lead to unforeseen consequences in terms of convictions which are too easy and so reduces its effectiveness.	

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Question	Answer	Marks
3(b)	• However, the range of offences and the looseness of some definitions may well make the law more effective as there are more categories which offenders can come within. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9