**CAMBRIDGE INTERNATIONAL EXAMINATIONS**

**GCE Advanced Subsidiary Level and GCE Advanced Level**

# MARK SCHEME for the October/November 2012 series

## 9084 LAW

**9084/23** Paper 2, maximum raw mark 50

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.

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***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. Maximum mark allocations are indicated in the mark scheme for each question or question part.

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]
A candidate needs to be selective in choosing the correct part of the source material.
Band 2/3:
- Principle without section [1–5]

**and/or**
- Reference to s.111 with little or no development [1–5]

Band 4: Some development of all the correct sections [6–7]
Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion. [8–10]

The Act says that a third burglary offence will attract a custodial sentence. This is Soni's third offence. However the CCAct 2000 gives circumstances when the court does not have to impose a custodial sentence. There must be strong reasons not to do so. Soni has some mitigating factors in his favour: lives with girlfriend and his family who live locally. He did plead guilty and saved the court time and expense and also the victim from giving evidence.

**(b)** Band 1: Irrelevant answer [0]
A candidate needs to be selective in choosing the correct part of the source material.
Band 2/3:
- Principle without section – reference to the background of Jayesh and the fact that he is a young offender [1–5]

**and/or**
- Reference to the correct statute s.100 (2)(a) and/or *R v C* with little or no development [1–5]

Band 4: Some development of all the correct section and discussion of the case of *R v C* and general discussion of the effect of s.100(2) and whether Jayesh would be regarded as a persistent offender in all the circumstances. [6–7]
Band 5: Candidate must refer to and provide full development of all the sources. Clear conclusion that Jayesh may be regarded as a persistent offender. [8–10]

The definition of a persistent offender was given as someone who has committed three or more offences but the *R v C* suggests that the court has discretion and is not confined to finding that an offender is a persistent offender only where he/she has committed three or more offences.

**(c)** Band 1: Irrelevant answer [0]
A candidate needs to be selective in choosing the correct part of the source material.
Band 2/3:
- Reference to the process of appeal from the Crown Court with little or no development [1–5]

Band 4: Some development of the appeal process to the Court of Appeal (Criminal Division) [6–7]
Band 5: Candidate must refer to and provide full development of the appeal process and the outcome including options for the court. Clear conclusion. [8–10]

Routes of appeal for an appeal against sentence. The defendant can appeal to the Court of Appeal (Criminal Division) but must get leave either from a single judge or from three judges of the CA. The court can vary the sentence and decrease it but not increase it.

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**(d)** Band 1: Irrelevant answer [0]
Band 2: Discusses sentencing of offenders in very general terms [1–6]
Band 3: Good discussion of one (i.e. adult offenders) only **or** limited discussion of both adult and young offenders [7–13]
Band 4/5: Excellent discussion of one will allow access to the top band but some mention of the other method **or** very good discussion of both. [14–20]

There are a number of differences between sentencing an adult and a young offender. The emphasis is always on reformation and rehabilitation. The cases are normally dealt with in the Youth Court. There are fewer custodial options. The community sentences are similar to those for adults but some are aimed at young offenders such as the attendance centre order and supervision orders and action plan orders. In all these cases the emphasis is on support. Where adults are sentenced the court is also looking at rehabilitation but other aims of sentencing are also important such as reparation, deterrence and retribution. Custodial sentences are limited to circumstances where only a prison sentence is justified.

**2** **(a)** Band 1: Irrelevant answer [0]
A candidate needs to be selective in choosing the correct part of the source material.
Band 2/3:
- Principle without section [1–5]

**and/or**
- Reference to s.11 LTA 1985 with little or no development [1–5]

Band 4: Some development of all the correct sections [6–7]
Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion that under s.11 Landlord and Tenant Act 1985 the landlord has a duty to keep in repair the structure and exterior of the property, installations for water, gas and electricity and all appliances for sanitation and all appliances for heating and hot water. [8–10]

**(b)** Band 1: Irrelevant answer [0]
A candidate needs to be selective in choosing the correct part of the source material.
Band 2/3:
- Principle without section [1–5]

**and/or**
- Reference to s.11(2) with little or no development [1–5]

Band 4: Some development of all the correct sections [6–7]
Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion that the landlord does not have to keep in repair any works for which the tenant is liable for failure to keep the premises in tenant-like repair, any damage which has occurred through fire or tempest or flood or inevitable accident and also any structure which belongs to the tenant. Jamal would not have to repair the dishwasher. He may not have to repair the lavatory if he could successfully argue that Nivedita did not keep the premises in a tenant-like manner, the same would apply to the smashed internal door. [8–10]

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**(c)** Band 1: Irrelevant answer [0]
A candidate needs to be selective in choosing the correct part of the source material.
Band 2/3: Reference to the court process but with little or no development [1–5]
Band 4: Some development of the process for bringing the action to court. [6–7]
Band 5: Candidate must refer to and provide full development of all subsections. Clear conclusion that Nivedita would have to bring an action in the small claims court unless the value exceeded the maximum claim (£5000). The action would be heard by a district judge and it is rare for there to be legal representation. For full marks there must be some discussion of the different racks in the civil courts and the way they work. [8–10]

**(d)** Band 1: Irrelevant answer [0]
Band 2: Some reference to the process before the courts **and/or** ADR [1–6]
Band 3: Good discussion of one the courts or ADR…**or** limited discussion of both. [7–13]
Band 4/5: Very good discussion of either the conventional route of bringing an action through the civil courts or using the alternative methods through ADR. For an answer to reach the top band there must be discussion of both methods although one may be in more detail than the other. [14–20]

Nivedita would be advised to take her claim through ADR. Candidates should discuss the advantages of ADR and which would be appropriate for her here. Mediation would be suitable in this case. Mediation involves a neutral mediator and does not normally give a view but persuades the parties to come to their own agreement. However it is only suitable where parties can co-operate and here it may not be appropriate if Jamal and Nivedita have been arguing over a period of time.

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