CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the October/November 2013 series

9084 LAW

9084/22 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.

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) A candidate needs to be selective in choosing the correct part of the source material.

(i) Band 1: Irrelevant answer. [0]

Band 2/3:
- Principle without Articles – general discussion concerning the violation of Stan's rights. [1–5]

and/or
- Reference to Article 8(1) and (2), s.6(3)(b) HRA 1998 with little or no development. [1–5]

Band 4: Some development of Article 8(1) and (2), s.6(3)(b) HRA 1998 and *Perry v UK (2003)* and some application to the facts. [6–7]

Band 5: Candidate must refer to and provide full development of the relevant Articles and *Perry v UK*. Detailed discussion and good application to the facts. Clear conclusion that Stan's rights would be violated because police regarded as 'public authority'. [8–10]

(ii) Band 1: Irrelevant answer. [0]

Band 2/3:
- Principle without Articles – Nina's rights unlikely to be infringed. [1–5]

and/or
- Reference to Article 8 (2), s.6(3)(b) HRA 1998 with little or no development. [1–5]

Band 4: Some development of Article 8 (2), s.6(3)(b) HRA 1998 and some application to the facts. [6–7]

Band 5: Candidate must refer to and provide full development of the relevant Articles. Detailed discussion and good application to the facts. Clear conclusion that Nina's rights unlikely to be infringed as she works for a private company. [8–10]

(iii) Band 1: Irrelevant answer. [0]

Band 2/3:
- Principle without Article – Possibly no violation of Asa's rights. [1–5]

and/or
- Reference to Article 4(2) and 4(3)(d) with little or no development. [1–5]

Band 4: Some development of Article 4(2) and 4(3)(d) and some application to the facts. [6–7]

Band 5: Candidate must refer to and provide full development of the relevant Article. Detailed discussion whether this work could be classified as a 'normal civic duty' and good application to the facts. Clear conclusion that if this is so, then no violation and the government would not be in breach. [8–10]

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(b) Band 1: Irrelevant answer. [0]

Band 2: Describes in basic terms the Human Rights Act 1998 and the general principles. [1–6]

Band 3: Good description of the HRA. Alternatively there can be adequate description of the HRA and some discussion of its role in UK law. [7–13]

Band 4/5: Very good description of the HRA and discussion of its role in UK law. [14–20]

Whilst the ECHR has been incorporated into HRA 1998 it still does not constitute a Bill of Rights for the UK which might be more effective in protecting the rights of citizens.

Advantages of the HRA 1998 may include:
- Keeps a check on the executive
- Promotes general judicial attitude and practice
- Only requires the courts to interpret legislation in a way which is compatible with Convention rights as far as it is possible to do so if a judge decides that the Act breaches a Convention right, the Act prevails
- It compensates for the failure of existing common law safeguards
- Leads to better public awareness
- Brings the UK into line with other western countries

Disadvantages of the HRA 1998 may include:
- It can lead to increased power for the judiciary who are likely to interpret too narrowly, influenced by their class-based view of rights
- Encourages a lot of litigation
- Can lead to inflexibility and/or too much flexibility [14–20]

2 **(a)** A candidate needs to be <u>selective</u> in choosing the correct part of the source material.

(i) Band 1: Irrelevant answer. [0]

Band 2/3:
- Principle without sections – Jamila not dishonest. [1–5]

and/or
- Reference to section (2)(1)(a) and (b) with little or no development. [1–5]

Band 4: Some development of section (2)(1)(a) and (b) and some application to the facts. [6–7]

Band 5: Candidate must refer to and provide full development of the relevant sections. Detailed discussion and good application to the facts. Clear conclusion that Jamila would not be regarded as dishonest if she believes the owner would consent to her taking the money for the reason she did.

Credit reference to *R v Holden* but not essential for full marks. [8–10]

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(ii) Band 1: Irrelevant answer. [0]

Band 2/3:

- Principle without sections – Nikita's behaviour seems to be dishonest. [1–5]

and/or

- Reference to section (2)(1)(c) with little or no development. [1–5]

Band 4: Some development of section (2)(1)(c) and some application to the facts. [6–7]

Band 5: Candidate must refer to and provide full development of the relevant sections. Detailed discussion and good application to the facts. Clear conclusion that Nikita's behavior likely to be regarded as dishonest. Although there was no identification in the purse, the owner likely to go to the police station to see if it had been handed in as £100 is a lot of money and the owner would be able to describe the purse. Mention that if the purse was found in a more remote place outcome might have been different: credit.

Credit reference to s.2(1)(a) but not essential for full marks. [8–10]

(iii) Band 1: Irrelevant answer. [0]

Band 2/3:

- Principle without sections – Mandip's behaviour seems not to be dishonest. [1–5]

and/or

- Reference to section (2)(1)(b) and/or *R v Holden* with little or no development. [1–5]

Band 4: Some reference to section (2)(1)(b) and *R v Holden* with some development and application to the facts. [6–7]

Band 5: Candidate must refer to and provide full development of the relevant sections and *R v Holden*. Detailed discussion and good application to the facts. Clear conclusion that's Mandip's behaviour not likely to be regarded as dishonest. [8–10]

(b) Band 1: Irrelevant answer. [0]

Band 2: Describes in basic terms the pre-trial process in the Magistrates' Court. [1–6]

Band 3: Good description of the pre-trial process in the Magistrates' Court. [7–13]

Band 4/5: Very good description of the pre-trial process in the Magistrates' Court. Plea before venue. Mode of trial. Outline of facts; inquisitorial proceedings. Inquiry if case is suitable for summary trial. Committal proceedings – note that these have already been abolished for indictable offences and are now being abolished for triable either way offences beginning in 2012 and completed in 2013. A triable either way offence is now sent to Crown Court as soon as it is clear the matter is serious enough. Bail considerations.

No credit to be given for material relating to police powers or the CPS and their decisions as to prosecution. [14–20]

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