CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the October/November 2013 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.

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 – reference to principle of 'finders keepers' [1–5]

and/or
- Reference to *Armory v Delamirie* and/or *Parker v British Airways* with little or no development [1–5]

Band 4: Some development of principles from *Armory v Delamirie* and *Parker v British Airways* and explanation of what is meant by 'finders keepers' and a basic attempt to explain what is meant by exerting control over land. [6–7]

Band 5: Candidate must refer to and provide full development of the principles from *Armory v Delamirie* and *Parker v British Airways*. Clear conclusion: Hari must report the find of the watch to the hotel and an attempt must be made to try to find the true owner. If not Hari can claim the watch unless the hotel can prove it had control of the grounds which would allow it to claim the watch. [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 – reference to the principle that some objects cannot be kept if they are objects of treasure [1–5]

and/or
- Reference to s.1 Treasure Act 1996 with little or no development [1–5]

Band 4: Some development of all the correct sections [s.1,3,4]. Explanation that the gold coins will be treasure as they come within s.1(1)(a)(ii) or (iii). Discussion of whether the bronze necklace could be treasure and conclusion that bronze items are not treasure as not within s.1(1)(a)(i) and s3(3) should be credited. [6–7]

Band 5: Candidate must refer to and provide full development of all subsections concerning whether treasure or not. Explanation that the bronze necklace will only be treasure if it is part of the same find using s.1(1)(d)(i). Clear conclusion that these objects cannot be kept by the finder if they are all found to be treasure and belong to the Crown under s.4. [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:

- Principle without section – reference to the fact that Caspar and/or Raymond may be entitled to a reward if they find objects of treasure or own land where treasure is found [1–5]

and/or

- Reference to s.10 Treasure Act 1996 with little or no development [1–5]

Band 4: Some development of s.10(2), (4) and (5) Treasure Act 1996 about payment of a reward and some discussion that both Caspar as finder and Raymond as occupier may be entitled to a reward. [6–7]

Band 5: Candidate must refer to and provide full development of s.10 Treasure Act and clear understanding that both Caspar, using s.10(5)(a), and Raymond, using s.10(5)(a) or (b) or (c), may be entitled to a reward. Good application of s.10 to the effect that under s.10(2) the Secretary of State will determine whether a reward is to be paid and total reward must not exceed the treasure's market value due to s.10(4). Clear conclusion that they cannot keep the objects but may claim their value. [8–10]

(d) Band 1: Irrelevant answer [0]

Band 2: Discussion of any rules of interpretation in very basic terms. [1–6]

Band 3: Good discussion of rules of interpretation **or** limited discussion of several rules of interpretation such as the three rules, the purposive rule, rules of language and intrinsic and extrinsic aids. Expectation of some supporting case law in order to reach this band. [7–13]

Band 4/5: Very good discussion of a very good range of rules of interpretation and good use of supporting case law.
Particular credit to be given to any candidate who links the discussion in the answer to the Treasure Act 1996 and its interpretation and the most appropriate rule. [14–20]

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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 – general reference to entitlement to bail [1–5]

and/or
- Reference to the Bail Act 1976, Schedule 1, paragraph 2(1) with little or no development [1–5]

Band 4: Some development of the correct section and/or reference to R(F) v Southampton Crown Court. [6–7]

Band 5: Candidate must refer to and provide full development of all sources. Under the Bail Act 1976 there is nothing to prevent Carl from being released on bail, unless the court felt his previous convictions for burglary presented substantial grounds for believing he would commit further offences. Candidates need to apply and discuss Schedule 1, paragraph 2(1) (a–c). Clear conclusion that Carl can be granted bail as the offence he is charged with is not linked to his previous convictions, he has fulfilled the terms of his previous sentences and although he is unemployed he lives with his family. [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 – general reference to entitlement to bail [1–5]

and/or
- Reference to the Bail Act 1976, Schedule 1, paragraph 2(1) and 2A with little or no development [1–5]

Band 4: Some development of the correct section. [6–7]

Band 5: Candidate must refer to and provide full development of all sources. Clear conclusion that David could be refused bail under Schedule 1, paragraph 2A as he was on bail for another offence when these offences were committed but this is unlikely due to the nature of the theft. [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:

- Principle without section – general reference to entitlement to bail [1–5]

and/or

- Reference to the Bail Act 1976, Schedule 1, paragraph 2(1) and/or *R(F) v Southampton Crown Court* with little or no development [1–5]

Band 4: Some development of the Bail Act 1976, Schedule 1, paragraph 2(1) and/or *R(F) v Southampton Crown Court*. [6–7]

Band 5: Candidate must refer to and provide full development of all sources. Discussion of whether Elijah's complaint to the police that David has returned to the nightclub and threatened him would effect David's chance of being awarded bail. Clear conclusion that there may be an adverse effect on David's right to bail as the use of a threat could constitute an offence of assault which would come within Schedule 1 Para 2(1)(b). The complaint by Elijah also gives rise to substantial grounds for believing the defendant would interfere with witnesses or obstruct the course of justice which would come within Schedule 1 Para 2(1)(c). [8–10]

(d) Band 1: Irrelevant answer [0]

Band 2: Discussion in very general terms of either trial in the Crown Court or trial in the Magistrates' Court. [1–6]

Band 3: Good discussion of either trial in the Crown Court or trial in the Magistrates' Court but some mention of the alternative method or limited discussion of both types of trial. [7–13]

Band 4/5: Very good discussion of both types of trial. Must refer to relevant aspects of both types of trial, such as types of offences, seriousness of offences, sentencing powers, personnel in the courts, the advantages of jury trial, and advantages of Magistrates' Court trials, speed of hearing. Perhaps some reference to the use of lay persons in the trial of criminal offences.
Clear conclusion on advantages and disadvantages of both forms of trial. [14–20]

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