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Cambridge International Advanced Subsidiary and Advanced Level

MARK SCHEME for the October/November 2014 series

9084 LAW

9084/23 Paper 2, maximum raw mark 50

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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.

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 the fact that an offence was not committed

and/or
- Reference to s3(1) and/or (2) Theft Act 1978 and/or R v MacDavitt 1981 and/or R v Brookes and Brookes 1983 with little or no development [1–5]

Band 4: Some development of s3(1) and (2) and/or R v MacDavitt 1981 and/or R v Brookes and Brookes 1983 with some application [6–7]

Band 5: Candidate must refer to and provide full development of all relevant subsections and case law. Discussion that Darius had not left the restaurant although he intended to do so and he has not committed an offence. His friends would not be guilty of committing an offence if they honestly believed Darius was going to pay. [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 fact that an offence would have been committed

and/or
- Reference to s3(1) and/or (2) Theft Act 1978 and/or R v MacDavitt 1981 with little or no development [1–5]

Band 4: Some development of s3(1) and (2) and/or R v MacDavitt 1981 with some application [6–7]

Band 5: Candidate must refer to and provide full development and discussion of all the relevant sections and case law. Clear conclusion that Darius would commit an offence if he left the restaurant before the police arrived. [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 Alan committed an offence when he ran off from the taxi

and/or

- Reference to s3(1) and/or (2) Theft Act 1978 and/or R v Aziz 1993 with little or no development [1–5]

Band 4: Some development of s3(1) and (2) and R v Aziz 1993 with some application [6–7]

Band 5: Candidate must refer to and provide full development and discussion of all the relevant sections and case law. Clear conclusion that Alan is likely to have committed an offence when he ran off from the taxi. [8–10]

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

Band 2: Discusses how either the prosecution or defence might appeal a Crown Court trial in very general terms. [1–6]

Band 3: Good discussion of one type of appeal **or** limited discussion of both types of appeal. [7–13]

Band 4/5: Good discussion of both routes of appeal and good analysis of the effects of each. Clear conclusion on the effectiveness of both routes. [14–20]

Typical content may include:

a. **Appeals by the defendant**

A defendant may appeal against conviction and/or sentence to the Court of Appeal (Criminal Division) and a notice of appeal filed within 28 days of conviction. The CAA 1995 states the defendant must get leave to appeal from the Court of Appeal, or a certificate that the case is fit for appeal from the trial judge. The CAA 1995 simplified appeal grounds. An appeal is allowed if the conviction is 'unsafe' – a wide test. The Court of Appeal can dismiss the appeal; they can also quash or vary the conviction. They can only decrease the sentence if the defendant appeals. The Court of Appeal can order a re-trial in front of a new jury – this happens 50–70 times per year.

b. **Appeals by the prosecution**

The CJA 2003 allows an appeal if the trial judge rules on a point of law which effectively stops the case against the defendant. There can be an appeal against acquittal by a jury but only if there has been 'nobbling' or there is new and compelling evidence of guilt which means a re-trial is in the public interest. The CJA 2003 allows 'double jeopardy' exceptions for around 30 serious offences. The DPP has to consent and if evidence is found the prosecution applies to the Court of Appeal for the original acquittal to be quashed. S36 CJA 1972 – the Attorney-General can refer a point of law to the Court of Appeal to get a clear ruling which creates a precedent for future case on the same legal point. S36 CJA 1988 – the Attorney-General can apply for leave to refer an unduly lenient sentence to the Court of Appeal for re-sentencing. This applies to indictable cases and triable either way offences heard at Crown Court – in many examples the sentence is increased.

Either side may appeal from the Court of Appeal to the Supreme Court but the case must involve a point of law of general public importance and there must be permission to appeal from the Supreme Court or from the Court of Appeal – there are only 10 – 20 cases per year.

c. **Effectiveness of appeal procedures**

- Allows the defence the chance to contest both verdict and sentence
- This should give greater justice
- It also provides credibility for the system
- In sentencing there is the chance to do justice and to reflect societal concern
- Means the prosecution has a protest voice
- Allows issues to be debated fully as these can be important legal points

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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 – reference to fact that a will written on a table napkin can be valid.

and/or
- Reference to s9 Wills Act 1837 and/or Hodson v Barnes 1926 with little or no development. [1–5]

Band 4: Some development of s9 and Hodson v Barnes 1926 with some application. [6–7]

Band 5: Candidate must refer to and provide full development of s9 and Hodson v 1926. Clear conclusion that a will written on a table napkin can be valid as both Adam and Tom see James sign it. [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 fact that the will has been properly witnessed by Tom.

and/or
- Reference to s9 Wills Act 1837 with little or no development. [1–5]

Band 4: Some development of s9 with some application. [6–7]

Band 5: Candidate must refer to and provide full development of the correct subsection. Clear conclusion that the will has been properly witnessed by Tom and that he and Adam need not be present at the same time to sign it. [8–10]

(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 – Adam is a witness and therefore unable to inherit anything under James' will.

and/or
- Reference to s15 Wills Act 1837 with little or no development. [1–5]

Band 4: Some development of s15 with some application. [6–7]

Band 5: Candidate must refer to and provide full development of s15. Clear conclusion that as Adam is a witness to James' will he is unable to inherit anything under it even though the will remains valid. [8–10]

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

Band 2: Brief description of the court hierarchy in general terms. [1–6]

Band 3: Good discussion of either the court hierarchy, ratio decidendi and obiter **or** the ways of avoiding precedent **or** limited discussion of both. [7–13]

Band 4/5: Good discussion of the court hierarchy, ratio decidendi, obiter dicta and law reports provision and/or description of binding and persuasive precedent and good discussion of the variety of options available to a judge: distinguishing, overruling and disapproving precedents, reversing, Practice Statement, Young v British Aeroplane exceptions. [14–20]

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