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Cambridge International Advanced Subsidiary and Advanced Level

MARK SCHEME for the October/November 2015 series

9084 LAW

9084/22 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]**

Band 2/3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – reference to the fact that Alistair has not committed the offence of 'making off without payment'.
  and/or
- Reference to s.3(1) Theft Act 1978 and/or R v Vincent and/or R v Ghosh with little or no development. **[1–5]**

Band 4: Some development of s3(1) and/or R v Vincent and/or R v Ghosh with some application. **[6–7]**

Band 5: Candidate must refer to and provide full development of relevant subsections and case law in support of their argument. Clear conclusion that Alistair is not guilty; he has not 'made off on the spot' because the manager has accepted the cheque and Alistair leaves the restaurant with his consent. The manager has shown that he no longer expects payment on the spot. **[8–10]**

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

Band 2–3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – reference to the fact that Bimal has not committed the offence of 'making off without payment'.
  and/or
- Reference to s3(1) and/or (2) Theft Act 1978 and/or R v Ghosh and/or R v Allen with little or no development. **[1–5]**

Band 4: Some development of s3(1) and/or (2) and/or to R v Ghosh and/or R v Allen with some application. **[6–7]**

Band 5: Candidate must refer to and provide full development of relevant subsections and case law in support of their argument. Clear conclusion that Bimal is not guilty of the offence because he believed himself to be acting reasonably and honestly and thought that ordinary reasonable people would agree with his actions because he had complained a lot about the food and service. R v Allen is required to reach the top of Band 5. **[8–10]**

Credit an alternative argument that Bimal's continual complaining is a deception to gain a free meal.
Credit an alternative argument based on s3(3) that Bimal is not guilty as the meal has not improved despite his continual complaining.

(c) Band 1: Irrelevant answer. **[0]**

Band 2/3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – reference to the fact that Chantelle has committed the offence of 'making off with payment'.
  and/or
- Reference to s3(1) and/or (2) Theft Act 1978 and/or R v Brookes and Brookes and/or R v Allen and/or R v Ghosh with little or no development. **[1–5]**

Band 4: Some development of s3(1) and/or (2) and R v Brookes and Brookes and/or R v Allen and/or R v Ghosh with some application. **[6–7]**

Band 5: Candidate must refer to and provide full development of relevant subsections and case law in support of their argument. Clear conclusion that Chantelle has committed the offence as although she has not left the department store she has clearly left the premises of the restaurant. **[8–10]**

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

Band 2: Discusses criminal appeals in very general terms. **[1–6]**

Band 3: Good discussion of one route of appeal from the Magistrates' Court and/or reference to both routes of appeal and the procedures to be used with some critical analysis. **[7–13]**

Band 4/5: Very good discussion of all aspects of appeals from the Magistrates' Court to higher courts. Chantelle has a right of appeal either by way of case stated in the Divisional Court on a point of law or to the Crown Court on conviction if she pleaded not guilty or on sentence whatever her plea. The Divisional Court considers the application on written submissions by the defence and the prosecution and is done by one to three High Court Judges. The Crown Court hearing is a re-hearing of the whole case by a Circuit Judge and usually two magistrates. An answer should include a discussion of the appeal procedures and whether they could be improved. Particular credit is to be given for candidates who consider the facts of the scenario and apply the scenario to the issues of the question. Credit discussion of the possibility of a further appeal to the Court of Appeal (Criminal Division) and the Supreme Court, noting that both require leave and that an appeal to the Supreme Court must involve a point of law of general public importance. Credit relevant discussion of the role of the Criminal Cases Review Commission. **[14–20]**

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2 (a) Band 1: Irrelevant answer. **[0]**

Band 2/3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – reference to the fact that Ben, Costas and Don have committed affray.
  and/or
- Reference to s3(1) and/or (2) and/or (5) Public Order Act 1986 with little or no development. **[1–5]**

Band 4: Some development of s3(1) and/or (2) and/or (5) with some application. **[6–7]**

Band 5: Candidate must refer to and provide full development of relevant subsections in support of their argument. Clear conclusion that the throwing of bottles and chairs by Ben, Costas and Don in the confined space of a private flat would have put people present (if of reasonable firmness) in fear for their personal safety and so the offence of affray is committed. **[8–10]**

Credit reference to s3(3) if used to support an argument that Ben, Costas and Don have gone beyond the use of words alone.

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

Band 2/3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – general reference to the fact that Ahmed has not committed affray.
  and/or
- Reference to s3(1) and/or (3) and/or (5) Public Order Act 1986 with little or no development. **[1–5]**

Band 4: Some development of s3(1) and/or (3) and/or (5) with some application. **[6–7]**

Band 5: Candidate must refer to and provide full development of relevant subsections in support of their argument. Clear conclusion that, on the facts of the scenario, Ahmed has not committed the offence of affray because he has only used words. **[8–10]**

Credit reference to s3(2) if used to support application that two or more people are involved in the action which could constitute affray because Ghulam throws the bottle.

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(c) Band 1: Irrelevant answer. **[0]**

Band 2/3: A candidate needs to be selective in choosing the correct part of the source material.

- Principle without section – general reference to the fact that Ghulam has committed affray.
  and/or
- Reference to s3(1) and/or (3) and/or (5) Public Order Act 1986 with little or no development. **[1–5]**

Band 4: Some development of s3(1), (3) and (5) with some application. **[6–7]**

Band 5: Candidate must refer to and provide full development of relevant subsections in support of their argument. Clear conclusion that the throwing of the bottle into the street by Ghulam is an affray. **[8–10]**

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

Band 2: General discussion of the types and principles of sentencing in very general terms. **[1–6]**

Band 3: Good discussion of either the principles of sentencing or the types of sentences available in the Magistrates' Court or the Crown Court **or** limited discussion of both the different types of sentences and the principles of sentencing. Some reference to the fact that Ben and Costas have no previous convictions and Don is aged 25 and has previous convictions and the impact that these facts will on each sentence. **[7–13]**

Band 4/5: Good discussion of both principles of sentencing and the different types of sentence available to the courts. Detailed discussion of the matters that may influence the court and how a court will approach the issue of sentencing. Some reference to the fact that the powers of the magistrates' court are more limited than those of the Crown Court should be credited. **[14–20]**

NB. Some credit can be given for reference to s3(7) Public Order Act 1986 but marks should be restricted to a maximum of 13 unless a wider range of sentences are discussed.

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