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**Cambridge International Advanced Subsidiary and Advanced Level**

# MARK SCHEME for the October/November 2015 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]

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 Annie's parents will be able to sue Big Top Circus.

**and/or**

- Reference to s2 and/or s6 Animals Act 1971 and/or Wallace v Newton (1982) with little or no development. [1–5]

Band 4: Some development of s2 and/or s6 Animals Act 1971 and/or Wallace v Newton 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 Annie's parents can sue, even though the horse is not a dangerous species as defined by s6, under s2 as the horse has kicked its keeper more than once and this behaviour is known to Big Top Circus under Wallace v Newton. [8–10]

**(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 Bertie's parents are unlikely to be able to sue Big Top Circus.

**and/or**

- Reference to s2 and/or s5 and/or s6 Animals Act 1971 with little or no development. [1–5]

Band 4: Some development of s2 and/or s5 and/or s6 Animals Act 1971 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 Bertie's parents may not be able to sue although the camel is a dangerous animal under s6(2). This is because Bertie's injuries are not of a type covered by s2 as he is not hurt by the camel but as a result of his running away which means he comes under s5(1). [8–10]

**(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 Big Top Circus is unlikely to have a defence to a claim in relation to Annie but that they may have a defence with regard to Bertie.

**and/or**

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- Reference to s5 and/or s6 Animals Act 1971 with little or no development. [1–5]

Band 4: Some development of s5 and/or s6 Animals Act 1971 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 it is unlikely that the circus has a defence to the claim for Annie because her injuries arise due to the nature of the animal under s6 but there may, however, be a possible defence to any claim by Bertie as he shouts at the camel and so comes under s5. Credit discussion that there may not be liability for either Annie or Bertie as they come under s5 but this can be balanced with the fact that they are too young to come under this section at the age of 12 and their parents should have taken responsibility for them. [8–10]

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

Band 2: Discusses the civil courts in very general terms. [1–6]

Band 3: Good discussion of either the County Court or the small claims court or the High Court **or** limited discussion of all the different courts. Understanding shown of procedure and the impact of the Woolf reforms and some critical analysis of the problems of bringing civil cases to court. [7–13]

Band 4/5: Good discussion of all the methods of bringing an action to the civil courts and a very good critical analysis of the problems of bringing civil cases to the courts. Credit for some discussion of alternatives in particular ADR but maximum marks can be achieved without reference to ADR. [14–20]

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

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

- Principle without section – reference to the fact that reference to fact that the agreement to sell the property is valid because it has been written down on paper.

**and/or**

- Reference to s2(1) and/or (2) and/or (3) Law of Property (Miscellaneous Provisions) Act 1989 with little or no development. [1–5]

Band 4: Some development of s2(1) and/or (2) and/or (3) Law of Property (Miscellaneous Provisions) Act 1989 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 agreement conforms to the requirements of the statute as there is a written agreement on paper under s2(1) and (2) which is signed by all parties and so is valid under s2(3). Consequently Edith and Dinesh are bound to buy the property from Cedric as he cannot withdraw from the sale and accept the higher offer. Credit recognition that the agreement must include all the terms that the parties have agreed and a discussion that this is not clear and so there may not be a valid agreement. [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 Cedric can take the carpets and curtains.

**and/or**

- Reference to s2 Law of Property (Miscellaneous Provisions) Act 1989 and/or Botham v TSB (1996) with little or no development. [1–5]

Band 4: Some development of s2 Law of Property (Miscellaneous Provisions) Act 1989 and/or Botham v TSB (1996) 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 Cedric can take the curtains and carpets as although there is a written agreement under s2 carpets and curtains are chattels and so can be taken by the seller. Alternatively credit a candidate who recognises that the carpets and curtains should be left if that was agreed as part of the sale. Credit reference to Botham on what constitutes a chattel. [8–10]

**(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 Cedric may or may not be entitled to take all the ornamental pots around the house.

**and/or**

- Reference to s2 Law of Property (Miscellaneous Provisions) Act 1989 and/or Berkley v Poulett (1976) with little or no development. [1–5]

Band 4: Some development of s2 Law of Property (Miscellaneous Provisions) Act 1989 and/or Berkley v Poulett (1976) 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 despite a written agreement under s2 Cedric is entitled to remove the ornamental pots outside the property if the pots did not form part of the general design of the property. Credit alternative conclusion that Cedric is not entitled to remove the pots if they were not there for the better enjoyment of the object. Credit reference to Botham on what constitutes a chattel. [8–10]

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

Band 2: General discussion of the rules of statutory interpretation. [1–6]

Band 3: Explanation of **either** the three rules in detail with citation **or** explanation of the three rules as well as the rules of language in less detail but some citation or good explanation of the three rules. [7–13]

Band 4/5: Very good discussion of the three rules. The literal rule should be criticised for its narrow literalis approach, the golden rule has its advantages but it can only be used where there are two alternative meaning whilst the mischief rule allows the court wider powers of interpretation. Some discussion of the purposive approach and explanation that it is the widest rule of all because it allows the court discretion in interpretation but there is the concern that it allows for judicial law making. Answers should include some reference to the rules of language but discussion of intrinsic and extrinsic aids, presumptions and other aids to interpretation would not be expected. [14–20]

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