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LAW **9084/22**

Paper 2 Criminal Law **October/November 2024**

MARK SCHEME

Maximum Mark: 60

Published

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.

Cambridge International will not enter into discussions about these mark schemes.

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Generic Marking Principles

These general marking principles must be applied by all examiners when marking candidate answers. They should be applied alongside the specific content of the mark scheme or generic level descriptions for a question. Each question paper and mark scheme will also comply with these marking principles.

GENERIC MARKING PRINCIPLE 1:

Marks must be awarded in line with:

- the specific content of the mark scheme or the generic level descriptors for the question
- the specific skills defined in the mark scheme or in the generic level descriptors for the question
- the standard of response required by a candidate as exemplified by the standardisation scripts.

GENERIC MARKING PRINCIPLE 2:

Marks awarded are always **whole marks** (not half marks, or other fractions).

GENERIC MARKING PRINCIPLE 3:

Marks must be awarded **positively**:

- marks are awarded for correct/valid answers, as defined in the mark scheme. However, credit is given for valid answers which go beyond the scope of the syllabus and mark scheme, referring to your Team Leader as appropriate
- marks are awarded when candidates clearly demonstrate what they know and can do
- marks are not deducted for errors
- marks are not deducted for omissions
- answers should only be judged on the quality of spelling, punctuation and grammar when these features are specifically assessed by the question as indicated by the mark scheme. The meaning, however, should be unambiguous.

GENERIC MARKING PRINCIPLE 4:

Rules must be applied consistently, e.g. in situations where candidates have not followed instructions or in the application of generic level descriptors.

GENERIC MARKING PRINCIPLE 5:

Marks should be awarded using the full range of marks defined in the mark scheme for the question (however; the use of the full mark range may be limited according to the quality of the candidate responses seen).

GENERIC MARKING PRINCIPLE 6:

Marks awarded are based solely on the requirements as defined in the mark scheme. Marks should not be awarded with grade thresholds or grade descriptors in mind.

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Social Science-Specific Marking Principles (for point-based marking)

1 Components using point-based marking:

- Point marking is often used to reward knowledge, understanding and application of skills. We give credit where the candidate's answer shows relevant knowledge, understanding and application of skills in answering the question. We do not give credit where the answer shows confusion.

From this it follows that we:

a DO credit answers which are worded differently from the mark scheme if they clearly convey the same meaning (unless the mark scheme requires a specific term)

b DO credit alternative answers/examples which are not written in the mark scheme if they are correct

c DO credit answers where candidates give more than one correct answer in one prompt/numbered/scaffolded space where extended writing is required rather than list-type answers. For example, questions that require *n* reasons (e.g. State two reasons …).

d DO NOT credit answers simply for using a 'key term' unless that is all that is required. (Check for evidence it is understood and not used wrongly.)

e DO NOT credit answers which are obviously self-contradicting or trying to cover all possibilities

f DO NOT give further credit for what is effectively repetition of a correct point already credited unless the language itself is being tested. This applies equally to 'mirror statements' (i.e. polluted/not polluted).

g DO NOT require spellings to be correct, unless this is part of the test. However, spellings of syllabus terms must allow for clear and unambiguous separation from other syllabus terms with which they may be confused (e.g. Corrasion/Corrosion)

2 Presentation of mark scheme:

- Slashes (/) or the word 'or' separate alternative ways of making the same point.
- Semi colons (;) bullet points (•) or figures in brackets (1) separate different points.
- Content in the answer column in brackets is for examiner information/context to clarify the marking but is not required to earn the mark (except Accounting syllabuses where they indicate negative numbers).

3 Calculation questions:

- The mark scheme will show the steps in the most likely correct method(s), the mark for each step, the correct answer(s) and the mark for each answer
- If working/explanation is considered essential for full credit, this will be indicated in the question paper and in the mark scheme. In all other instances, the correct answer to a calculation should be given full credit, even if no supporting working is shown.
- Where the candidate uses a valid method which is not covered by the mark scheme, award equivalent marks for reaching equivalent stages.
- Where an answer makes use of a candidate's own incorrect figure from previous working, the 'own figure rule' applies: full marks will be given if a correct and complete method is used. Further guidance will be included in the mark scheme where necessary and any exceptions to this general principle will be noted.

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4 Annotation:

- For point marking, ticks can be used to indicate correct answers and crosses can be used to indicate wrong answers. There is no direct relationship between ticks and marks. Ticks have no defined meaning for levels of response marking.
- For levels of response marking, the level awarded should be annotated on the script.
- Other annotations will be used by examiners as agreed during standardisation, and the meaning will be understood by all examiners who marked that paper.

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Guidance on using levels-based mark schemes
Marking of work should be positive, rewarding achievement where possible, but clearly differentiating across the whole range of marks, where appropriate.

The marker should look at the work and then make a judgement about which level statement is the best fit. In practice, work does not always match one level statement precisely so a judgement may need to be made between two or more level statements.

Once a best-fit level statement has been identified, use the following guidance to decide on a specific mark:
- If the candidate's work **convincingly** meets the level statement, award the highest mark.
- If the candidate's work **adequately** meets the level statement, award the most appropriate mark in the middle of the range (where middle marks are available).
- If the candidate's work **just** meets the level statement, award the lowest mark.

Assessment objectives

AO1 Knowledge and understanding
- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

AO2 Analysis and application
- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

AO3 Evaluation
- Evaluate legal concepts, principles and rules.
- Communicate legal argument coherently on the basis of evidence.

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Annotations and their Use

Annotation	Use
□	Used to credit AO1 in any of **Q1**, **Q2** and **Q3**.
NAQ	Used when the answer or parts of the answer do not answer the question asked.
BOD	Used when the benefit of the doubt is given in order to reward a response.
A	Used to indicate AO2 Analysis and application in **Q1** and AO2 Analysis in **Q2(b)** and **Q3(b)**.
C	Used to indicate a conclusion in any of **Q1**, **Q2(b)** and **Q3(b)**.
EVAL	Used to indicate AO3 Evaluation in **Q2(b)** and **Q3(b)**.
REP	Indicates where content has been repeated.
SEEN	Indicates that content has been recognised but not rewarded.
?	Indicates material which is not sufficiently clear to be rewarded.
	Indicates material which is not relevant as a response to the question asked.

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Section A

Table A

Use this table to give marks for each candidate response for **Question 1(a)**, **(b)** and **(c).**

Level	AO1 Knowledge and understanding 2 marks	AO2 Analysis and application 8 marks
	Description	**Description**
3		**6–8 marks** • Analysis leading to a developed and logical conclusion. • Application which is fully developed.
2	**2 marks** • Identification and accurate citation of most of the relevant law.	**3–5 marks** • Analysis leading to a conclusion which may or may not be entirely appropriate. • Application which is partially developed
1	**1 mark** • Identification and citation of some relevant law.	**1–2 marks** • Analysis leading to a basic conclusion without reasoning or no conclusion. • Application which is basic.
0	**0 marks** • No creditable content	**0 marks** • No creditable content.

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Question	Answer	Marks
1(a)	**Explain how the source material will apply to Derek.** Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • S9(1)(a) is the likely offence. • Reference to s9(2), s9(3)(a), s9(4), *R v Brown* (1985) and *Norfolk Constabulary v Seekings and Gould* (1986). **AO2 Analysis and application** Analysis: • Derek has effectively entered as a trespasser and committed theft. • Colin's caravan is a building as it is an inhabited vehicle. • Application: • Derek has entered in an effective way even if his entry is not substantial as he stands outside, reaches in and is able to steal – *R v Brown* (1985). • He is a trespasser as there is no suggestion he has permission to enter. • Under s9(4) an inhabited vehicle such as a caravan can be classed as a building unlike *Norfolk Constabulary v Seekings and Gould* (1986). • It makes no difference that Colin is out at the time when Derek steals. • Derek has committed a s9(1)(a) offence as he intended to steal the mobile phone before he entered. • The sentencing for burglary of a building which is a dwelling has a maximum penalty of 14 years under s9(3)(a) so Derek's sentence is within the set limits. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(b)	**Explain how the source material will apply to Pietro.** Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • S9(1)(a) is the likely offence. • Reference to s9(2), s9(3)(b). **AO2 Analysis and application** Analysis: • Pietro has effectively entered as a trespasser with an intention to steal. • He has entered a building in the form of a shop. Application: • Pietro has made an effective and substantial entry as he has gone into the shop. • The shop is a building although not a domestic dwelling. • He is a trespasser as the shop only consents to valid customers entering and Pietro has exceeded that consent. • Pietro enters with an intention to steal as he has a bag in which he plans to hide the shoes. • The fact that he does not steal the shoes is immaterial as a s9(1)(a) offence is complete on entry if all the elements are satisfied. • Under s9(3)(b) the maximum penalty for a building which is not a dwelling is 10 years so although Pietro's conviction is valid under s9(1)(a) the sentence is not valid. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(c)	**Explain how the source material will apply to Mary.** Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • S9(1)(b) is the likely offence. • Reference to s9(3)(a), s9(3)(b), *R v Rodmell* (1994). **AO2 Analysis and application** Analysis: • Mary has committed theft under s9(1)(b) in relation to the tools in the shed. • She has committed a further s9(1)(b) offence in relation to Graham. • Application: • Mary has made an effective and substantial entry into the shed. • She is a trespasser because she has no consent to enter. • Using *R v Rodmell* taking tools from the shed worth £200 is theft as the shed is seen as part of Graham's home. • Mary has also made an effective and substantial entry into the house. • She is a trespasser because it is not her home and she is intending to stay the night. • When Mary hits Graham so hard he breaks his leg she has inflicted GBH and this is sufficient for s9(1)(b). • Under *R v Rodmell* the sentencing for burglary under s9(3)(a) from the shed may not be seen so serious as from a domestic dwelling but Mary's sentencing for both theft and GBH is within s9(4) for a dwelling and the shed is an extension of this. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Section B

Table B

Use this table to give marks for each candidate response for **Question 2(b)** and **3(b)**

Level	AO1 Knowledge and understanding 2 marks	AO2 Analysis and application 8 marks	AO3 Evaluation 9 marks
	Description	**Description**	**Description**
4	**9–10 marks** • Accurate and detailed in most relevant areas. • Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.		
3	**6–8 marks** • Mostly accurate but may not be detailed in some relevant areas. • Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**5–6 marks** • Mostly focused and reasoned analysis throughout. • The analysis is supported by effective and well-developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.	**7–9 marks** • Mostly focused and reasoned evaluation of most of the relevant issues. • Effectively supported by relevant material. • Coherent argument
2	**3–5 marks** • Some accuracy but lacks detail in relevant areas. • Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology	**3–4 marks** • Some reasoned analysis. • The analysis is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**4–6 marks** • Some evaluation, reasoned at times, of some of the relevant issues. • Supported by some relevant material. • Some coherent argument.

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Level	AO1 Knowledge and understanding 2 marks	AO2 Analysis and application 8 marks	AO3 Evaluation 9 marks
	Description	**Description**	**Description**
1	**1–2 marks** • Limited accuracy. • Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**1–2 marks** • Limited analysis. • The analysis is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**1–3 marks** • Limited evaluation of a relevant issue. • Limited or no use of relevant material. • Limited or no argument.
0	**0 marks** • No creditable content	**0 marks** • No creditable content	**0 marks** • No creditable content

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Question	Answer	Marks
EITHER		
2(a)	**Describe the offence of fraud by false representation.** **AO1 Knowledge and understanding** • The offence is found in s2 Fraud Act 2006. • The defendant must make a representation which is false. • Representations may be express or implied and may be made to a machine. • Actual gain or loss does not need to be proved. • The representation must be made dishonestly. • There must be knowledge or belief that the representation is false or untrue. • There must be an intention to make a gain or cause a loss. • The offence is triable either way. • The maximum sentence is 10 years' imprisonment. Each point made is worth 1 mark up to a maximum of 5.	**5**

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Question	Answer	Marks
2(b)	**Evaluate the effectiveness of the law of robbery.** Use Table B to mark candidate responses to this question. AO1 out of 10 marks. AO2 out of 6 marks. AO3 out of 9 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • Robbery is in s8 Theft Act 1968. • All elements of theft must be present or there can be no conviction for robbery – *R v Zerei* (2012), *R v Waters* (2015). • At the moment the theft is complete there can be a robbery – *Corcoran v Anderton* (1980). • There must be a use of force or putting or seeking to put a person in fear of force – the amount of force can be small and the victim does not need to be frightened – *R v Dawson and James* (1976), *R v Clouden* (1985), *P v DPP* (2012), *B and R v DPP* (2007). • The force must be used before or at the time of stealing – this can be as part of an ongoing situation – *R v Hale* (1979), *R v Lockley* (1995). • The force must be in order to steal – if theft is already complete and then force is applied this will not be robbery. • The defendant must possess the same *mens rea* as for theft. • The defendant must also intend to use force in order to steal. • This is an indictable offence with a maximum penalty of life. **AO2 Analysis and application** Analysis: • The use of force is an indicator of blame which helps with sentencing. • The intention to use force leads to a higher sentence and helps to reflect blameworthiness which can be a deterrent. • Different categories of robbery help to distinguish between types of the offence; this is vital for fair labelling and sentencing practicalities between, for example a street or less-sophisticated commercial robbery, a professionally planned commercial robbery and robbery in a dwelling. • The development of the law shows complexity as the statutory definition has been extended and potentially become uncertain. • This is a serious offence so juries need to be sure of the elements to be able to convict and this can be an issue. **AO3 Evaluation** • Robbery requires a theft to be completed but this has been problematic. In theft an appropriation occurs at one point in time and if the other elements of theft are also present the offence is complete. However, in robbery the appropriation can be a continuing act and this disparity can have an impact on effectiveness.	**25**

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Question	Answer	Marks
2(b)	• This helps juries to convict, particularly where there is more than one defendant and each plays a different role in the full offence; this may be a necessary development to ensure conviction for a serious offence with a high maximum penalty and a significant stigma, helping with effectiveness. • It may be argued that robbery could be committed without a completed theft as this would be consistent with the law of burglary. • The level of force required for robbery is very low and 'force' is said to be an ordinary word which juries can decide on which should improve effectiveness. • Often there is no problem as the force is clearly significant; however, when the level of force is low it can lead to inconsistency between juries making the law less effective. • As the force must enable the theft to be committed, accidentally making contact with someone from whom the defendant has just stolen property could be robbery; this can lead to harsh convictions, sentences and stigma affecting effectiveness. • Uncertainties around definitions can make juries unwilling to convict as they are not sure robbery is the right offence even though the evidence supports such a conviction which can impact effectiveness. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9

Question	Answer	Marks
OR		
3(a)	**Describe the *actus reus* of the offence of handling stolen goods.** **AO1 Knowledge and understanding** • The offence is found in s22 Theft Act 1968. • The goods must already be stolen at the time of the handling including those obtained by blackmail or fraud. • A thief or handler cannot wash away the taint of goods being stolen by simply selling on the goods. • Handling can be receiving stolen goods. • Handling can also be any of undertaking the retention, removal or realisation of goods by another person or for the benefit of another person. • Handling can be arranging to do any of types listed above. • The offence is indictable. • The maximum sentence is 14 years imprisonment. Each point made is worth 1 mark up to a maximum of 5.	**5**

Question	Answer	Marks
3(b)	**Evaluate the effectiveness of the *actus reus* of theft.** Use Table B to mark candidate responses to this question. AO1 out of 10 marks. AO2 out of 6 marks. AO3 out of 9 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • Appropriation is found in s3(1) Theft Act 1968 and means any assumption by a person of the rights of an owner. • It can be taking something, destroying property, switching price labels on items or giving worthless cheques in payment for goods. • Any or all of the owner's rights must be assumed for an appropriation – *R v Vinall* (2011), *R v Pitham and Hehl* (1977), *R v Morris* (1983). • Appropriation can occur even when the owner has given their consent – *Lawrence v Commissioner MPC* (1972), *R v Gomez* (1993). • There can be an appropriation in relation to a gift even if there is no deception – *R v Hinks* (2000). • An appropriation occurs early, at the first point when an owner's rights are interfered with – *R v Atakpu and Abrahams* (1994). • Under s3(1) there is an appropriation if the defendant acquires property without stealing it but then keeps or deal with it as an owner. • Property is found in s4Theft Act 1968. • Under s4(1) almost anything can be stolen. • Money can be stolen as can land in very specific situations. • Personal property covers all moveable items such as books, jewellery, clothes and cars. It can cover dead bodies and body parts – *R v Kelly and Lindsay* (1998), hair – *R v Herbert* (1961), blood – *R v Rothery* (1976) and urine – *R v Welsh* (1974). • Things in action can be stolen such as a bank account but information cannot be stolen – *Oxford v Moss* (1979). • Under s4(3) and s4(4) protected wild plants and cultivated plants can be stolen; other wild plants can only be stolen if for sale or reward or other commercial purpose. Domestic animals can be stolen but not wild animals unless they are in captivity, • Belonging to another is found in s5 Theft Act 1968 and s5(1) defines it as possession, control or any proprietary interest in the property – *R v Turner* (1971), *R v Woodman* (1974), *R v Webster* (2006), *Ricketts v Basildon Magistrates Court* (2010). • S5(2) makes trustees liable for theft from a trust. • S5(3) covers the situation where property has been given with an obligation to use it in a specific way – *R v Hall* (1972), *R V Klineberg and Marsden* (1999), *Davidge v Bunnett* (1984). • S5(4) covers the situation when property is handed over by mistake but there is a legal obligation to return it – *AG Ref (No 1 of 1983)*(1985), *R v Gilks* (1972).	**25**

Question	Answer	Marks
3(b)	**AO2 Analysis and application** Analysis: • Appropriation is a key element as it is a physical act which can be seen and so helps with allocation of blame and sentencing. • The development of the law on appropriation is complex; statutory and common law definitions are not the same which can cause problems. • The breadth of appropriation puts more emphasis on the difficult element of dishonesty. • Appropriation does not mean the same in robbery, which does not lead to fair labelling. • Issues relating to consent and gifts have caused particular difficulty. • S4 has a very broad definition; many cases are quite unique and so are decided on their facts. • S5(1) is very wide which can add to the complexities thrown up by the breadth of appropriation. • Sections 5(3) and 5(4) were enacted at a time when it was not known how broadly the courts would interpret appropriation. **AO3 Evaluation** • Appropriation has been extended since the Theft Act 1968 so it is not clear how far it fits with Parliament's intention but judicial developments perhaps make the law more effective. • Appropriation is defined differently in theft and robbery which could make the law less effective but there does not seem to be a big effect on juries. • Appropriation can occur even when the owner has consented to the act; critics argue that that such changes have made other offences in the Theft Act 1968 redundant which was not what Parliament intended – this impacts on effectiveness of the Act as a whole. • Issues around appropriation lead to a greater reliance on other elements such as dishonesty which can impact on effectiveness. • In shopping offences theft often seems less appropriate than fraud offences and so could make the law less effective. • Appropriation has not been redrafted which suggests it is effective. • S4 is very broad but this can make the law more effective as it covers a very wide range of types of property. • S5(1) helps to make the law effective as there is no need to prove legal ownership which means more situations are covered. Its breadth also reduces the occasions when other subsections need to be applied which can improve effectiveness. • S5(3) is helpful in making the law effective when property has been given over for a specific purpose, but it can be hard for juries to establish if this is the case. • S5(4) is wide ranging in theory but in practice the returning of property has be realistic which can help with effectiveness. To reach the top level available for each Assessment Objective candidates must deal with each of s3, s4 and s5. Accept all valid responses.	

Question	Answer	Marks
3(b)	AO1	10
	AO2	6
	AO3	9

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