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Cambridge International AS & A Level

LAW **9084/23**

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 Gemma.** 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** • Category 3 is the likely sentencing category as the damage is of low value. • The offence is likely to be of lower culpability (C) because Gemma acts on impulse. **AO2 Analysis and application** Analysis: • Gemma has been convicted of arson but there was no planning to her action and the level of harm is low as only a wooden building is damaged. • There are no aggravating factors but there is a mitigating factor as Gemma has shown remorse so she is likely to be low on the sentencing scale. Application: • Gemma's offence was done without planning; she simply acted on impulse. • She was reckless as to whether some damage to property was caused by throwing a lighted match towards the wooden building. • Her responsibility is substantially reduced by her mental disorder linked to her temper and a lack of sleep due to three parties in a week. • The damage to the wooden building is of low value as it costs £100 to replace and there is no physical or psychological damage caused. • There is a mitigating factor as Gemma shows remorse at her trial. • Gemma's sentence will be in Category 3 at Culpability C and is likely to be at the starting point of a low community order. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(b)	**Explain how the source material will apply to Ranjit.** 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** • Category 1 is the likely sentencing category. • The offence is likely to be of high culpability (A) as there has been premeditation and an intention to do serious damage to property. **AO2 Analysis and application** Analysis: • Ranjit has been convicted of arson and there was premeditation and planning as he wanted to damage the offices of his competitor, Sasha, out of revenge. • There is an aggravating factor as Ranjit will benefit financially if Sasha goes out of business due to the fire. There is a mitigating factor as he has no previous convictions but the seriousness of the offence means he is likely to be high on the sentencing scale. Application: • Ranjit has high culpability as he plans the attack. • He uses the fuel as an accelerant to make the fire spread. • It is a revenge attack as he wants to put Sasha out of business and there is an intention to cause very severe damage to property. • Ranjit does not intend to create a high risk of serious injury to persons as he starts the fire at 07.00. • The offence is Category 1 as serious physical harm is caused to Sasha when she breaks her leg. • There is a serious consequential economic impact as Shasha's business is closed her for several weeks. • There is high value damage of £500 000 caused to the company offices. • There is an aggravating factor as Ranjit will make a financial gain if Sasha's business has to close. • There is a mitigating factor as Ranjit has no previous convictions. • Ranjit's sentence will be in Category 1 and Culpability A; it is likely to be above the starting point of 4 years' custody. Accept all valid responses.	**10**
	AO1	2
	AO2	8

Question	Answer	Marks
1(c)	**Explain how the source material will apply to Frank.** 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** • Category 2 is the likely sentencing category. • The offence is likely to be of medium culpability (B) as there has been some planning and recklessness as to whether very serious damage is caused to property or injury caused to people. **AO2 Analysis and application** Analysis: • Frank has been convicted of arson as he has shown some planning, there was very serious damage to the building and risk to a person as Frank did not check to see if anyone was there. • There are both aggravating and mitigating factors so he is likely to be in the middle of the sentencing scale. Application: • Frank has medium culpability as there is evidence of some planning as he waits for dark before starting the fire. • He is reckless as to very serious damage to the building, which is destroyed. • He is also reckless as to the risk of serious injury to a person; he knows Jed sometimes sleeps there but does not check before he starts the fire. • The offence will be Category 2 based on the cost of £50 000 to replace the building. • There are aggravating factors as Frank has a previous conviction for a property damage based offence, the building is in a public amenity and there is a significant impact on emergency services as three fire engines are needed to put the fire out. • There is a mitigating factor as Frank does call the emergency services after he starts the fire. • Frank's sentence will be in Category 2 and is likely to be around the starting point of 9 months' custody. 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 abuse of position.** **AO1 Knowledge and understanding** • The offence is found in s4 Fraud Act 2006. • The defendant is in a position in which they are expected to safeguard, or not to act against, the financial interests of another person. • They abuse that position by a positive act or an omission. • They do so dishonestly. • They intended by the abuse to make a gain or cause a loss. • The offence is triable wither way. • The maximum sentence is 10 years' imprisonment. Each point made is worth 1 mark up to a maximum of 5.	**5**
2(b)	**Evaluate the effectiveness of the law relating to the *mens rea* 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** • S2 Theft Act 1968 deals with dishonesty. • The statute does not define dishonesty although in s1(2) it is clear that a defendant's motive is not relevant to whether they are dishonest. • S2 creates a negative definition by specifying three situations in which a defendant is not dishonest. • S2(1)(a) an honest belief in a legal right to the property – *R v Robinson* (1977), *R v Holden* (1991). • S2(1)(b) an honest belief in the owner's consent. • S2(1)(c) an honest belief that the owner cannot be found having taken reasonable steps to do so – *R v Small* (1987). • If none of these exceptions apply the jury use their common sense to decide if the defendant is dishonest. • If they need help they use a two stage test: 1. What was the defendant's actual state of knowledge or belief as to the facts? 2. Was their conduct dishonest by the standards of ordinary decent people? – *Ivey v Genting Casinos Ltd t/a Crockfords* (2017), *R v Barton and Booth* (2020).	**25**

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Question	Answer	Marks
2(b)	• S6 deals with the intention to permanently deprive. • This can mean taking property for ever, destroying property, dealing with property in a way which goes against the rights of the owner or borrowing property for a period of time or in such a way that the value is changed to the extent that all or most of the goodness has gone out if it – *R v Velumyl* (1989), *DPP v Lavender* (1994), *R v Lloyd* (1985). • It covers conditional intent where a defendant takes property and then replaces it as there is nothing worth stealing – *R v Easom* (1971). • It also covers the situation where the defendant appropriates property and then conceals it rather than taking it away – *CC Avon and Somerset Constabulary v Smith* (1984). **AO2 Analysis and application** Analysis: • The *mens rea* of theft is an important element of theft as it is the key indicator of blame. • Due to its hidden nature, it can be hard to prove. • The statutory wording has needed development, leading to complexity and there have been significant changes. • Case law developments can mean the law is different to what was intended in the statute. • Terms are not always clearly defined which does not necessarily lead to fair labelling. • Issues with *actus reus* elements means a great deal rests on the *mens rea* so if this is not clear it can lead to inconsistency. **AO3 Evaluation** • The purpose of the Theft Act 1968 was to clarify and codify the law of theft so it was more effective – issues surrounding key terms have made this harder • As the *actus reus* has broadened, especially in relation to appropriation, more importance has been placed on the *mens rea* elements and the negative statutory definition of dishonesty can be said to lead to potential ineffectiveness. • Most of the time juries know if a defendant is dishonest by using their common sense which means the law is effective. • The test for juries has changed in recent years in an effort to make it more effective. • A big change came in *Ivey;* as this was a civil case, its application to criminal law was technically limited. However, it was used in *DPP v Patterson* (2017) and confirmed as the test to use in criminal cases in *R v Barton and Booth* (2020). This means a defendant's beliefs as to their honesty are less important as an objective test is applied to the beliefs they actually hold, increasing convictions and therefore effectiveness. • However, this may not match the regular meaning of a word in regular use this can affect decisions and effectiveness.	

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Question	Answer	Marks
2(b)	• In s6 the meaning of permanently deprive has been stretched; this could mean the law is ineffective and no longer gives effect to the intention of Parliament. • However, it is now easier to fulfil s6 as it covers a range of situations perhaps not foreseen when the Theft Act was drafted which can make conviction easier and arguably the law more effective. • The law may be ineffective in situation relating to 'borrowing' as all the other elements of theft are met and something may be taken, such as potential profits in *Lloyd.* • If s6 was a temporary rather than a permanent deprivation then it would also cover situations where a defendant appropriates property with the intention to take anything worth stealing; this would make the law more effective, especially as this is the case in s9(1)(a) burglary. • As theft is an offence with a significant social stigma which can have wide ranging repercussions on conviction the law needs to be clear and certain if it is to be truly effective and also provide an effective deterrent message for potential offenders. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9

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Question	Answer	Marks
OR		
3(a)	**Describe the law on recklessness in criminal law.** **AO1 Knowledge and understanding** • Recklessness is an element of *mens rea.* • Recklessness is a lower level of *mens rea.* • It is the most common level of *mens rea.* • There are very few offences where it is not sufficient. • A simple definition is that it is unjustified risk taking. • This fits with the idea that people take risks. • The test is subjective – this means that a defendant must have seen the risk and decided to take it. Each point made is worth 1 mark up to a maximum of 5.	**5**
3(b)	**Evaluate the effectiveness of the law of burglary.** 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** • Burglary is defined in s9 Theft Act 1968. • There are two offences – s9(1)(a) and (b). • Both have some common elements. • There must be entry and this may be effective even if it is only partial – *R v Brown* (1985), *R v Ryan* (1996). • Entry must under s9(4) be of a building or part of a building – *B and S v Leathley* (1979), *Norfolk Constabulary v Seekings and Gould* (1986), *R v Rodmell* (1994), *R v Walkington* (1979) • There must be entry as a trespasser – this means having no permission to enter or having exceeded any permission given – *R v Collins* (1972), *R v Jones and Smith* (1976) • The defendant must intend to trespass or be reckless as to whether they are trespassing. • An offence under s9(1)(a) requires a defendant to enter with the intent to commit any of the offences contained in s9(2) – theft, GBH or criminal damage. The offence is complete at the point of entry. • An offence under s9(1)(b) requires a defendant, having entered, to commit or attempt theft or GBH and they must have the necessary *mens rea* for the offence. • Sentencing is in s9(3) – the maximum penalty in relation to a building is 10 years and 14 years for a dwelling. It is usually a triable either way offence.	**25**

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Question	Answer	Marks
3(b)	**AO2 Analysis and application** Analysis: • Burglary is a serious offence, especially when it involves entering a dwelling, but it is also very common and relatively few offences are prosecuted which may mean the law is not very effective. • It is a complex and confusing offence; this can make it hard for juries to understand and reach fair verdicts which can be bad for effectiveness. • Key terms are often not clearly defined and have changed over time which may not lead to fair labelling. • Mixing civil and criminal law concepts, as in the meaning of a trespasser, can impair consistency and effectiveness. • It seems odd to extend liability to those who exceed permission to be in a building or part of a building; the justification is higher sentencing but a theft conviction would often be adequate which can affect effectiveness. **AO3 Evaluation** • The Theft Act 1968 did clarify the law in many ways but it does not define key elements of the offence of burglary. There is no definition of the common elements; judges have reached different decisions which means the jury's job is harder and this can make the law less effective. • As an entry now needs to be only partial and does not need to be effective it is not certain the law matches the intention of Parliament. • Similar issues arise in defining a building; this can lead to difficulties in cases and inconsistent decisions which impairs effectiveness. • There are anomalies between the different ways of committing burglary as for s9(1)(a), there must be *mens rea* to commit certain offences whilst for s9(1)(b) *mens rea* need not be proved on entry but there must be *mens rea* for specific crimes attempted or committed. This means burglary covers a wider range of offenders as the former covers the intentional burglar and the latter the opportunistic burglary. This can make the law more effective; but it is not necessarily easy to justify the differences. • There is an issue as to whether burglary is focused on protecting people or property. For s9(1)(a) an intention to damage property only needs to be slight but in relation to injuring a person there must be an intention to inflict GBH. This difference appears to put protection of property above the protection of people. However, for s9(1)(b) only theft or inflicting GBH can give rise to an offence and damage to property having entered a building or part of a building as a trespasser is not burglary. This leads to inconsistency and complexity which can impact on effectiveness. • The fact that judges have decided a person who is not a trespasser can become one if they exceed permission given to them can make it hard for juries to reach fair decisions and so the law may not be effective. Accept all valid responses.	
	AO1	10
	AO2	6
	AO3	9