



Cambridge International AS & A Level

LAW

9084/02

Paper 2 Criminal Law

For examination from 2023

MARK SCHEME

Maximum Mark: 60

Specimen

This document has **14** pages. Any blank pages are indicated.

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 descriptors 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.

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.

Subject 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, e.g. a scattergun approach to a question asking for *n* items
- 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 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.

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.

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 <ul style="list-style-type: none"> Analysis leading to a developed and logical conclusion. Application which is fully developed.
2	2 marks <ul style="list-style-type: none"> Identification and accurate citation of most of the relevant law. 	3–5 marks <ul style="list-style-type: none"> Analysis leading to a conclusion which may or may not be entirely appropriate. Application which is partially developed.
1	1 mark <ul style="list-style-type: none"> Identification and citation of some relevant law. 	1–2 marks <ul style="list-style-type: none"> Analysis leading to a basic conclusion without reasoning or no conclusion. Application which is basic.
0	0 marks <ul style="list-style-type: none"> No creditable content. 	0 marks <ul style="list-style-type: none"> No creditable content.

Question	Answer	Marks
1(a)	<p>Explain how the source material will apply to Connor.</p> <p>Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • S9(1)(b) is the likely offence. • Reference to <i>R v Walkington</i> (1979). <p>AO2 Analysis and application</p> <p>Analysis:</p> <ul style="list-style-type: none"> • Connor has completed a s9(1)(b) offence as there is no evidence he intended to steal or commit GBH before he went behind the screen. • The maximum penalty for this offence is 10 years as the health club is not a dwelling. <p>Application:</p> <ul style="list-style-type: none"> • Entry – this occurs when Connor goes into the area behind the screen in the changing room. • Part of a building – although Connor is allowed in the changing room as a member of the health club he is now in a different part, which is identified by the sign. • Trespasser – Connor is in an area where he does not have permission to be as the sign says ‘staff only’ and so he is a trespasser. • <i>R v Walkington</i> is evidence of trespass as Connor can see the sign and still goes behind the screen. • Connor commits GBH when he punches Magid so hard he breaks his arm. • Connor commits theft as he takes Magid’s sports bag. <p>Accept all valid responses.</p>	10
	AO1	2
	AO2	8

Question	Answer	Marks
1(b)	<p>Explain how the source material will apply to Marie.</p> <p>Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • S9(1)(a) is the likely offence. • Reference to <i>R v Jones and Smith</i> (1976). <p>AO2 Analysis and application</p> <p>Analysis:</p> <ul style="list-style-type: none"> • Marie has committed a s9(1)(a) offence as she enters her father’s house with the intention to commit unlawful damage. • The maximum penalty for this offence is 14 years as Marie’s father’s house is a dwelling. <p>Application:</p> <ul style="list-style-type: none"> • Entry – Marie has gone into her father’s house. • Building – her father’s house would be a building. • Trespasser – Marie has permission to enter her father’s house as he has given her a door key. • <i>R v Jones and Smith</i> shows that Marie has exceeded her permission to enter as she intends to damage property in her father’s house by breaking into the cupboard. • This means Marie becomes a trespasser. • Marie commits one of the offences in s9(2) as she intends to damage the cupboard. <p>Accept all valid responses.</p>	10
	AO1	2
	AO2	8

Question	Answer	Marks
1(c)	<p>Explain how the source material will apply to James.</p> <p>Use Table A to mark candidate responses to this question. AO1 out of 2 marks. AO2 out of 8 marks.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • S9(1)(a) is the likely offence. • Reference to <i>R v Ryan</i> (1996). <p>AO2 Analysis and application</p> <p>Analysis:</p> <ul style="list-style-type: none"> • James has committed a s9(1)(a) offence as he enters the shop with the intention to steal the jacket. • The maximum penalty for this offence is 10 years as a shop is not a dwelling. <p>Application:</p> <ul style="list-style-type: none"> • Entry – James has entered the shop. • Building – a shop is a building. • Trespass – James has permission to enter the shop but only to buy. • <i>R v Ryan</i> shows that James does not need to actually be in a position to steal. • As James is inside the shop with the intention to steal he is a trespasser. • James commits an offence under s9(2) as he intends to steal the jacket. <p>Accept all valid responses.</p>	10
	AO1	2
	AO2	8

Section B**Table B**

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

Level	AO1 Knowledge and understanding 10 marks	AO2 Analysis and application 6 marks	AO3 Evaluation 9 marks
	Description	Description	Description
4	9–10 marks <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> Mostly focused and reasoned evaluation of most of the relevant issues. Effectively supported by relevant material. Coherent argument.
2	3–5 marks <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> Some evaluation, reasoned at times, of some of the relevant issues. Supported by some relevant material. Some coherent argument.
1	1–2 marks <ul style="list-style-type: none"> Limited accuracy. Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology. 	1–2 marks <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> Limited evaluation of a relevant issue. Limited or no use of relevant material. Limited or no argument.
0	0 marks <ul style="list-style-type: none"> No creditable content. 	0 marks <ul style="list-style-type: none"> No creditable content. 	0 marks <ul style="list-style-type: none"> No creditable content.

Question	Answer	Marks
EITHER		
2(a)	<p>Describe the offence of making off without payment.</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • Offence found in s1 Theft Act 1978. • Triable either way offence. • Sentence – maximum of two years in custody. <p><i>Actus reus:</i></p> <ul style="list-style-type: none"> • Making off – this means leave. • Without payment – this is a question of fact. • When it is required or expected on the spot – this is question of fact based on a need to pay arising. • For goods or services done – this must be something legal. <p><i>Mens rea:</i></p> <ul style="list-style-type: none"> • There must be knowledge that payment is required or expected on the spot – this is a question of fact. • The defendant must be dishonest – this has the same meaning as in theft. • There must be an intention to avoid payment – this means an intention never to pay. <p>Each point made is worth 1 mark up to a maximum of 5.</p>	5
2(b)	<p>Evaluate the role of intention in the criminal law.</p> <p>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.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • The defendant means to bring about/cause an unlawful consequence. • In murder it [intention] is often referred to as malice aforethought. • It is the most serious level of <i>mens rea</i>. • It is required for relatively few offences. • It indicates a high level of blameworthiness/fault. • It is not the same thing as a motive for committing a crime. <p>Direct intent:</p> <ul style="list-style-type: none"> • The unlawful consequence that occurs is the defendant's purpose and they set out to bring it about – <i>Mohan</i>. <p>Oblique/indirect intent:</p> <ul style="list-style-type: none"> • The unlawful consequence that occurs is not the defendant's clear purpose but it is a result of their actions. It is linked to their ability to foresee the consequences of their actions. 	25

Question	Answer	Marks
2(b)	<ul style="list-style-type: none"> • S8 Criminal Justice Act 1967 created a subjective test which said foresight of consequences was only part of the evidence from which intention could be inferred. • The concept has been developed by the courts to the law in <i>Nedrick and Woollin</i>. <p>AO2 Analysis and application Analysis:</p> <ul style="list-style-type: none"> • Intention is an indicator of blame which helps with sentencing. • Intention often leads to a higher sentence which is important to reflect blameworthiness – for example, robbery. • It can help to distinguish between offences which is vital for fair labelling and sentencing practicalities – for example, murder and manslaughter. • The development of the law shows complexity as statutory and common law definitions are not the same. • Although vital in relatively few offences it is hard for juries to know what is in a defendant's mind. <p>AO3 Evaluation</p> <ul style="list-style-type: none"> • As intention indicates blame it often leads to higher sentences and so juries need to be very sure before they convict; this is not always the case so they may only convict of lesser offences even if this is not the most likely conclusion based on the evidence. • In murder a conviction using intention leads to a mandatory life sentence and a significant stigma for the defendant which might make juries less willing to convict. • As the test for oblique/indirect intent, and especially the element of probability, can be hard for a jury to apply this can lead to uncertainty and inconsistency. • Many juries decide using their common sense rather than the tests which raises questions about justice, fairness and effectiveness. • There have been proposals for change in relation to murder and manslaughter offences but these have not happened which might suggest that the law is good enough; critics argue there is still a problem but no political will to resolve it. <p>Accept all valid responses.</p>	
	AO1	10
	AO2	6
	AO3	9

Question	Answer	Marks
OR		
3(a)	<p>Describe two types of sentence that can be given to adult offenders who commit theft.</p> <p>AO1 Knowledge and understanding</p> <ul style="list-style-type: none"> • Custody – the offence or its combination with other offences is so serious a fine or a community sentence is not justifiable. The court must look at the circumstances of the offence, the harm caused, the culpability of the offender and any previous convictions. Custody includes a suspended sentence. The maximum penalty is seven years. • Community Order – the seriousness of the offence determines the requirements to include; at least one must be for punishment unless this would be unjust. Requirements could include unpaid work, curfews and exclusion orders. • Fine – this must reflect the seriousness of the offence and take into account the financial circumstances of the offender. It should remove any economic benefit they have gained. The offender must disclose information about their financial position so the court can assess what they can reasonably afford to pay. The maximum fine will depend on the court and the amount involved in the offence. <p>Each point made is worth 1 mark up to a maximum of 5. Award up to 3 marks for one type of sentence only.</p>	5
3(b)	<p>Evaluate the extent to which the aims of sentencing are effective in reducing re-offending among young offenders.</p> <p>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.</p> <p>Indicative content</p> <p>Responses may include:</p> <p>AO1 Knowledge and understanding S142 Criminal Justice Act 2003 sets out aims:</p> <ul style="list-style-type: none"> • Punishment – this is linked to the idea of retribution for wrongdoing. Punishment expresses society’s disapproval but should be proportionate to the crime committed using a sentencing tariff. • Reduction of crime – this is linked to the idea of deterrence for the individual so that they will think twice about offending again. It also aims to deter others and can be used to send a message to society as a whole. • Reform and rehabilitation – this is linked to the idea of changing the offender so that they do not commit another crime. It looks to the future and aims to rehabilitate by training and/or education so that an offender does not need to commit a crime again. • Protection of the public – this is linked to the idea of making society safe and feel safe. This also prevents offenders committing further offences by taking them out of society for a period. 	25

Question	Answer	Marks
3(b)	<ul style="list-style-type: none"> • Reparation – this is linked to the idea of the offender giving back to the victim. This can also be used to give back to society as a whole. <p>AO2 Analysis and application</p> <p>Analysis:</p> <ul style="list-style-type: none"> • Young offenders are treated differently to adult offenders. • Punishment – this may be necessary but must be proportionate and take into account aggravating and mitigating factors relating to the offence and the offender. • Reduction of crime – this should focus on deterrence through education and the addressing of issues which led to the offending behaviour. • Reform and rehabilitation – this is providing the means to live a life without crime through education, training and support with issues such as mental health, disabilities, learning difficulties and addiction. • Protection of the public – this may be necessary in some situations for very serious offences. • Reparation – the offender can pay back so that they can learn that their actions have caused hurt and damage and they can do something to put that right. <p>AO3 Evaluation</p> <ul style="list-style-type: none"> • The major aims are to prevent a cycle of criminality alongside rehabilitating the offender to improve their welfare and life chances without crime but published statistics show a mixed picture in terms of success. • Custodial sentences are less frequently used other than for very serious offences or for persistent re-offending as there is a focus on re-integration rather than retribution but this is not always achieved. • Custodial sentences are individualistic but they can create a climate of re-offending and establish networks for further criminal activity. • Community sentences can be seen as less demanding and may not be effective unless there is a lot of support from professionals and parents which can be hard to get right. • Community sentences require significant funding and infrastructure to be effective and resources are often overstretched. • All sentences need to take into account social factors which may be difficult and complex leading to a lack of effectiveness. • Some aims, such as reparation, may be valuable but their appropriateness needs to be carefully monitored or it will be unsafe or ineffective. <p>Accept all valid responses.</p>	
	AO1	10
	AO2	6
	AO3	9

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