

**MARK SCHEME for the May/June 2009 question paper
for the guidance of teachers**

9084 LAW
9084/02 Paper 2, maximum raw mark 50

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 must be read in conjunction with the question papers and the report on the examination.

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- 1 This act deals with the sentencing powers of the court.
- (i) A clearly is over 18 and he has committed burglaries which qualify under the Act giving court power to impose a sentence of over three years unless the provisos in s.111(2) apply here. MAX 10 only where answer is well expressed even if correct use of statute. MAX 8: where omit s.111(2).
 - (ii) B was not 18 at the time of the burglary but he has not been convicted of two dwelling house burglaries because the first burglary was of a petrol station rather than a dwelling house. The Act specifically refers to offenders over 18 when the burglary was committed so it will not apply to B. MAX 7: no mention of location of the burglary. Credit for appropriate discussion of the Youth Court.
 - (iii) The candidates may discuss sentencing principles. This should start with the principles such as the retributive issue in sentencing as opposed to the rehabilitative element. The courts may take a different approach where there is a history of offending and the sentence may be more retributive than where the offence is a first offence. Answers should include the following: (i) principles of sentencing including approach of court to mitigating circumstances. (ii) comparison of retributive and rehabilitative approaches (iii) examples of sentences. MAX 10 for generalised answer on sentencing procedure. MAX 25 for good answer which does not include examples of sentences. MAX 25 for answer which does not include any principles of sentencing however colloquial. MAX 25 no mention of comparison of retributive and rehabilitative approaches. MAX 22 no discussion of first time offenders and offenders with previous convictions.
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- (i) The defendant Ahmed can be prosecuted as he was offering for sale a knife which may be suitable for combat under the s.1 Knives Act 1997. MAX 8 no mention of s.1(4) or s.1(2). MAX 8: no mention of s.10. MAX 6 no proper application of the statute to the facts. MAX 6 where statute merely reproduced on the paper without proper application.
 - (ii) Yukio may be able to escape liability if the sword can be said not to be a weapon capable of inflicting injury. Here it is possible that the court would construe the sword as one capable of inflicting injury under s.10. MAX 8 omission of s.1(4). MAX 8 omission of s.1. MAX 8 omission of s.10. In both (i) and (ii) MAX 4 for no sections but general application.
 - (iii) Pepper v Hart introduced the use of Hansard in limited circumstances. The courts are prepared to allow this where there is ambiguity or obscurity; the material relied on has been made by a Minister and the statement itself is clear. Hansard may be used in certain circumstances including where the statute is ambiguous and there are clear statements made in Parliament concerning this ambiguity and those statements are made by the Minister promoting the Act. MAX 8 no reference to Lord Browne-Wilkinson's judgment. MAX 8 for no development in discussion on Hansard beyond Pepper v Hart e.g. discussion of historical background to the use of Hansard Davis v Johnson; explanation of what Hansard is. Credit for linking the purposive and mischief approaches to this part of the question and discussion of seeking the need to find the intention of Parliament.
 - (iv) Extrinsic aids are aids outside the Act. They play an important role in the interpretation of a statute. Examples other than Hansard are Law Reform bodies, International Conventions (Fothergill v Monarch Airlines) and Regulations which have been implemented by Parliament and includes dictionaries. Some credit for rules of language appropriately used. Credit for comparison between extrinsic and intrinsic aids. Lists of all rules of statutory interpretation should not be rewarded unless linked to extrinsic aids by way of comparison.