

**MARK SCHEME for the May/June 2011 question paper
for the guidance of teachers**

9084 LAW

9084/23

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.

- Cambridge will not enter into discussions or correspondence in connection with these mark schemes.

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General Marking Guidance

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.

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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows.

Indicative content for each of the questions follows overleaf.

Band 1: irrelevant answer.

The answer contains no relevant material.

Band 2:

The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge

OR

The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Band 3:

The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial

OR

The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules

OR

The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4:

Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue

OR

The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

Band 5:

The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

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- 1 (a) Band 1: irrelevant answer. [0]
Candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- principle without reference to case law; [1–5]
- **and/or**
- reference to the case law with little or no development. [1–5]

Band 4: clear understanding of pre-nuptial agreements in English Law e.g. the courts would not enforce such agreements but may give limited weight. Some development of the principles of the relevant case law. [6–7]

Band 5: candidate must refer to the relevant case law and at least one of the judgements in the case. Must refer to Lakshmi and Paul. Clear conclusion (without contradiction): whether or not pre-nuptial agreements are enforceable under English Law. [8–10]

Under *G v R* pre-nuptial settlements are not enforceable under English law, although the court will give them weight when deciding a financial award on divorce.

- (b) Band 1: irrelevant answer. [0]
Candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- principle without reference to case law – e.g. reference to fact that Lakshmi and Paul are British nationals but compare position if born abroad; [1–5]
- **and/or**
- reference to the case law with little or no development. [1–5]

Band 4: must refer to *G v R* and facts of the case and some development. [6–7]

Band 5: detailed reference to *G v R*, as below. Full development of analogy with the facts. (Reference to judgements not relevant in this part.) Clear conclusion, without contradiction. [8–10]

The Court of Appeal in *G v R* suggested that because other jurisdictions such as France and Germany are bound by pre-nuptial agreements the court will put greater weight on such agreements if either party was born abroad as in *G v R*, where the parties were from France and Germany or the agreement had been drawn up abroad as in *G v R*.

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(c) Band 1: irrelevant answer. [0]
Candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- principle without reference to case law; [1–5]
- **and/or**
- reference to the case law with little or no development. [1–5]

Band 4: some development of the source material. [6–7]

Band 5: a clear, sustainable and legal conclusion (without contradiction): these agreements are not enforceable. Weight should be given to sensible discussion of right of the parties to decide financial issues on divorce and reasons for this – e.g. greater wealth distribution, people from other countries, second marriages etc. Credit to be given where the candidate refers to the parties in the scenario, but not essential. [8–10]

Greater weight could be given to such an agreement today because the Court of Appeal, although not holding such agreements as part of the law, did hold these agreements to be influential. This was a change from the previous law. However, the Courts are still not bound by such agreements.

(d) Band 1: irrelevant answer. [0]

Band 2: discusses law reform in general. Can reach 6 marks without any reference to a law reform agency. [1–6]

Band 3: good discussion of one law reform agency (e.g. Law Commission) or means of law reform (e.g. media, pressure groups) **or** limited discussion of more than one. No mention of the Law Commission but good discussion of other agencies of law reform. [7–13]

Band 4/5: cannot reach band 4/5 without some discussion of Law Commission. Very good discussion of one method of law reform (e.g. Royal Commissions) **and/or** a mention of a range of law reforms. [14–20]

The Law Commission is one of the law reform agencies. These bodies will both introduce law reform by presenting to the legislature proposals for reform or act on recommendations from the legislature for reform. The Law Commission was introduced by statute and is the most influential of all the law reform agencies. Its suggestions are not binding and the legislature often ignores its suggestions or introduces a different version. The Law Commissioners are made up of lawyers from a variety of backgrounds including judges, academics and others connected with the law.

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- 2 (a) Band 1: irrelevant answer. [0]
Candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- principle without section – e.g. helps bring the individual into the country; [1–5]
- **and/or**
- reference to Immigration Act s.25A(1)(a) with little or no development – specific sub-section (a) not required. [1–5]

Band 4: some development of the correct section. Sensible reference to s.25(6) should be credited. [6–7]

Band 5: candidate must refer to and provide full development of the subsection. Clear conclusion (without contradiction): Amjad is in the lorry, but Fred does not know he's in the lorry therefore Fred does not knowingly and for gain facilitate Amjad's arrival in the UK and therefore cannot be guilty of an offence under s.25A(1)(a). Any sensible discussion of whether Fred does know Amjad is in the lorry should be given credit. Cannot reach 10 marks without specifying the subsection. [8–10]

Fred is not aware that Amjad is in his lorry so he cannot be guilty of an offence under s.25(A)(1)(a). A person commits an offence only if he facilitates the arrival in the UK of an individual knowingly and for gain.

- (b) Band 1: irrelevant answer. [0]
Candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- principle without section – discussion of guilt based on knowing he is an asylum seeker; [1–5]
- **and/or**
- reference to s.25A(1)(b) with little or no development. [1–5]

Band 4: some development of the correct section and discussion of facts. Max 7 marks if the candidate discusses circumstances of unexpected receipt of large sum of money. Sensible reference to s.25(6) should be credited. [6–7]

Band 5: candidate must refer to and provide full development of the subsection. Clear conclusion, without contradiction. Credit for discussion of a criminal offence. Candidates must refer to the specific subsection to reach 10 marks. [8–10]

Brian does not appear to have reasonable grounds to believe that Malik is an asylum seeker. The question does not suggest that Malik is an asylum seeker. Brian is unlikely to have committed an offence, although he has facilitated Malik's arrival in the UK and for gain.

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- (c) Band 1: irrelevant answer. [0]
Candidate needs to be selective in choosing the correct part of the source material.

Band 2/3:

- principle without section – general discussion of unless you receive money for personal gain you are not guilty of an offence; [1–5]
- **and/or**
- reference to s.25A(1)(a) and/or s.25A(1)(b) with little or no development. [1–5]

Band 4: some development of the correct sections and principles. Sensible reference to s.25(6) should be credited. [6–7]

Band 5: candidate must refer to and provide full development of all subsections. Clear conclusion, without contradiction. [8–10]

Marq is unlikely to have committed an offence here under s.25(A)(1)(a) as although he knows that Tariq is an asylum seeker he has not gained any money himself as Tariq has sent money for his own accommodation. It appears that Tariq would qualify under s.25(A)(2) as an asylum seeker.

- (d) Band 1: irrelevant answer. [0]

Band 2: discusses jury trial **and/or** trial in the Magistrates Court in general terms. [1–6]

Band 3: good discussion of either jury trial and/or trial in the Magistrates Court **or** limited discussion of both. [7–13]

Band 4/5: very good discussion of both jury trial **and** trial in the Magistrates Court. Citation and examples necessary to reach middle (16 marks) of the band. [14–20]

This is a straightforward review of the advantages of jury trial over Magistrates Court trial. The jury are far more likely to be like the defendant as they come from a wider background than the magistrates. However, trial at the Magistrates Court is quicker and less daunting and has the advantage of lower sentencing powers, although there is power to send the defendant to the Crown Court for a higher sentence.