

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

**9084 LAW**

**9084/21**

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:

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 section – reference to: the basis of the offence which is that someone is guilty under the Official Secrets Act if they are a Crown servant and they make a damaging disclosure; [1–5]

**and/or**

- reference to correct section s.2(1) Official Secrets Act 1989 with little or no development. [1–5]

If the candidate does not state the correct section they cannot go above 5 marks.

Band 4: some development of the correct section and principle, i.e. need to show that Jayesh is a Crown servant or government contractor and he has made a damaging disclosure to his son. [6–7]

Band 5: candidate must refer to and provide full development of all subsections. Clear conclusion: whilst the documents remain in the cupboard it is not a damaging disclosure under the Act, therefore an offence has not been committed. [8–10]

Jayesh may have committed an offence under s.2(1) Official Secrets Act 1989. He might be considered to be a government contractor, although he only works as a designer. However, he has not made a damaging disclosure of the information.

- (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 – reference to the fact that the burglar must be a Crown servant or government contractor if he is to be guilty under the Act; [1–5]

**and/or**

- reference to s.2(1) Official Secrets Act 1989 with little or no development. [1–5]

If the candidate does not state the correct section they cannot go above 5 marks.

Band 4: some development of the correct section and discussion of whether Bill is a Crown servant or government contractor and whether he has made a damaging disclosure. [6–7]

Band 5: candidate must refer to and provide full development of the correct subsections. Clear conclusion: Bill is not guilty of an offence under the Act. Credit if comments that Bill may be guilty of other offences. [8–10]

Bill has made a damaging disclosure but he is not a Crown servant or government contractor so he cannot be charged under this Act.

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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 – reference to the fact that Jayesh has made a damaging disclosure to his son must be shown; [1–5]

**and/or**

- reference to s.2(1) and s. 2(3) Official Secrets Act 1989 with little or no development. [1–5]

If the candidate does not state the correct section they cannot go above 5 marks.

Band 4: some development of both the correct sections and comment that Jayesh may be guilty of an offence but may also have a defence under s.2(3). [6–7]

Band 5: candidate must refer to and provide full development of all subsections. Clear conclusion that although Jayesh could be found guilty of an offence he is likely to have a defence under the Act. [8–10]

Jayesh has disclosed information. It does not appear to be a damaging disclosure and he has a good defence under s.2(3), which relates to whether he thought that in showing the designs to his son the disclosure would be damaging.

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

Band 2: discussion of the principles of sentencing **and/or** the other factors that a court might take into account when sentencing a defendant. [1–6]

Band 3: good discussion of one **or** limited discussion of both the principles of sentencing or the background of the defendant and other mitigating circumstances. [7–13]

Band 4/5: very good discussion of either principles or general background of the defendant but some mention of the other method. Credit will be given to any discussion of the defendant, Jayesh, and his circumstances and also the nature of the offence, e.g. potentially a breach of trust but he appears to be a first time offender etc. [14–20]

The court will first consider the type of the offence and the tariff set for it. The Act sets a maximum for the offence of two years, so the defendant would expect a sentence of less than two years. The court will also consider Jayesh's background and the fact that he is in a position of trust, whether this is his first offence, and whether there are any mitigating circumstances. Credit can be given to a candidate who considers the principles of sentencing.

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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 reference to the relevant case. Must discuss when someone may be liable under the principles of negligence for advice given to another; [1–5]

**and/or**

- reference to *Hedley Byrne v Heller* with little or no development. [1–5]

If the candidate does not state the correct section they cannot go above 5 marks.

Band 4: some development of the principle from *Hedley Byrne* and the judgement of Lord Reid. [6–7]

Band 5: candidate must refer to and provide full development of the principles from *Hedley Byrne* and the judgement of Lord Reid. Clear conclusion. [8–10]

Fiola cannot claim this sum from Angus as his advice was given at a party in a social setting. The court will not find that Angus owes a duty of care to Fiola.

- (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 the correct case and relevant judgement; [1–5]

**and/or**

- reference to *Hedley Byrne v Heller* with little or no development. [1–5]

If the candidate does not state the correct section they cannot go above 5 marks.

Band 4: some development of the principles from *Hedley Byrne v Heller* and discussion specifically of the circumstances when someone gives advice to another in a social setting but may be found to be liable at a later date for the advice given. [6–7]

Band 5: candidate must refer to and provide full development of both the case and all relevant parts of Lord Reid's judgment. Clear conclusion. [8–10]

Angus would be liable according to Lord Reid if Fiola can show that Angus gave this advice believing that Fiola would rely on it. A duty of care is limited in these cases to where the defendant believed that the claimant had relied on the defendant's skill and judgment. In *Hedley Byrne v Heller*, although the merchant bankers had been asked their opinion and they had given advice, the House of Lords did not hold that they were liable as they did not believe that the claimants were going to rely on their advice.

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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: description of both *ratio decidendi* and *obiter dicta* in general terms. [1–5]

Band 4: some development of both terms and reference to what constitutes the *ratio decidendi* of *Hedley Byrne v Heller* by discussing the judgment of Lord Reid. [6–7]

Band 5: candidate provides full development of what constitutes both the *ratio decidendi* and *obiter dicta* in law and also refers to the *ratio decidendi* and *obiter dicta* of *Hedley Byrne v Heller*. Clear conclusion. [8–10]

According to Sir Rupert Cross, *ratio decidendi* means any rule of law expressly or impliedly treated by the judge as a step in his reasoning adopted by him. *Obiter dictum* is something said by the way and is not binding but can be a persuasive part of the judgment. The *ratio decidendi* of *Hedley Byrne v Heller* is that advice given in a social setting will not incur an action for negligence unless the person giving the advice is aware that the person who receives the advice is going to rely on it.

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

Band 2: a discussion of what constitutes a precedent in general terms. [1–6]

Band 3: good discussion of what constitutes a precedent and the hierarchy of the courts, including some limited reference to case law. [7–13]

Band 4/5: Very good discussion of what constitutes a precedent and the hierarchy of the courts, including case law. [14–20]

The precedent set was from the House of Lords, so all courts beneath the House of Lords in the hierarchy of courts will be bound by the judgment. The House of Lords is not bound according to the 1966 Practice Statement but will only overrule an existing House of Lords decision in limited circumstances. The value of precedent to the law is that it will provide an element of certainty to litigants when they decide to take cases to court.

Examples of when the House of Lords overruled a previous decision include *Murphy v Brentwood District council* (1990) overruling *Anns v Merton London Borough Council* (1978); *Herrington v British Railways Board* (1972) overruling *Addie v Dumbreck* (1929).