Cambridge International AS & A Level

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Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/41**

Paper 4 **May/June 2016**

MARK SCHEME

Maximum Mark: 75

Published

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Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

- recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation

Analysis, Evaluation and Application

- analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules

Communication and Presentation

- use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

Specification Grid

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives.

Assessment Objective	Paper 1	Paper 2	Paper 3	**Paper 4**	Advanced Level
Knowledge/ Understanding	50	50	50	**50**	50
Analysis/ Evaluation/ Application	40	40	40	**40**	40
Communication/ Presentation	10	10	10	**10**	10

Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows.
Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

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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.

Maximum Mark Allocations:

Question	1	2	3	4	5	6
Band 1	0	0	0	0	0	0
Band 2	6	6	6	6	6	6
Band 3	12	12	12	12	12	12
Band 4	19	19	19	19	19	19
Band 5	25	25	25	25	25	25

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Section A

1 Self-help remedies are of limited relevance in the modern law of tort. Critically assess the validity of this statement.

The candidates could begin by introducing the range of remedies available in tort. Brief reference to damages and injunctions is worth some credit here.

However the focus of the question is specifically self-help remedies.

Candidates should examine the rules governing the remedy of abatement in nuisance, outlining the elements of the defence and referring to relevant cases or examples.

Candidates could also consider the right to eject a trespasser (action for recovery of land) again with reference to cases or examples.

In order to achieve the higher bands candidates should critically assess the relevance of these remedies in the modern law of tort.

Answers which are descriptive only will be confined to Band 3.

2 The current rules governing liability for negligent misstatement are too restrictive. Critically analyse the development these rules and comment on whether they are now too restrictive.

Candidates should explain the current rules governing liability for negligent misstatement. Tracing the development from *Candler v Crane Christmas* to *Hedley Byrne v Heller* would be appropriate and creditworthy.

Candidate should then examine each element of liability, with reference to cases or examples for each one.

The question specifically requires evaluation; candidates could evaluate each element in turn. Alternatively candidates could describe the elements and then engage in a general evaluation. In any case evaluation is essential in order to achieve the higher bands.

Responses which describe the elements of the tort but do not evaluate will be confined to Band 3.

3 It is reasonable to allow occupiers to reduce their potential liability to a lawful visitor. Describe and evaluate the ways in which occupiers can reduce their liability to visitors.

This question concerns the liability of an occupier under the OLA 1957 but with a very specific focus. Candidates can gain credit for introducing the general elements such as the definition of occupier/visitor and the nature of the duty under the act. However the focus of the question is the ways in which the occupier can reduce their liability or avoid liability completely.

Candidates should examine the rules governing warnings under s2(4)(a) with reference to relevant cases or examples.

Candidates should also examine the use of exclusion clauses under s2(1) with reference to relevant cases or examples.

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Credit may be awarded for a discussion of issues such as liability of independent contractors, persons acting in the course of a trade, parent responsibility for child visitors and defences such as volenti and contributory negligence.

Candidates should then consider the question asked – is it reasonable to allow occupiers to reduce or avoid liability under the act using these methods. This requires some evaluation of whether these methods of avoiding/reducing liability are justified.

Where candidates describe the rules but do not engage in any evaluation of the reasonableness of the rules the mark will be maximum top of Band 3.

Section B

4 Analyse the liability of Andrew in relation to the potential claimants in this scenario.

This case requires an examination of the general rules of negligence and also the special rules governing claims involving nervous shock.

In the first instance, candidates should outline the general elements of duty of care, breach of duty and damage and then apply each of these first to Andrew.

Candidates should then outline the special rules governing nervous shock, with reference to relevant cases – *Alcock, McLoughlin, Attia v British Gas* for example.

Candidates should reach a reasoned conclusion in relation to each of the potential claimants.

Candidates should distinguish between primary and secondary victims and also analyse the type of harm which has resulted in each case. Candidates should also be credited for dealing with the consequential loss arising from the damage to Beth's shop.

Some credit may be awarded for a consideration of vicarious liability but a detailed account is not required.

5 Discuss the potential liability of Etienne and Fabien in this case.

There are a number of possible actions arising from these facts.

In the first instance candidates could consider a possible claim in *Rylands v Fletcher*. Each element of the tort should be outlined and applied to the facts of the scenario. If candidates conclude that there is a possible claim then the possible defence of 'act of a stranger' should be considered – did Fabien cause the escape by leaving the door of the shed unlocked. Is recovery for a personal injury possible under *Rylands v Fletcher*?

An alternative approach would be to consider the possibility of a negligence action against either Etienne or Fabien or both. Again the elements should be outlined with reference to relevant cases or examples, and then applied to the facts of the scenario.

Another potential issue is trespass to land in relation to Fabien. Candidates should outline the elements and consider then whether Fabien is a trespasser and whether any defences might be available to him.

An accurate analysis of either Rylands or Negligence will merit a mark in Band 4 or above – both are not required.

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6 Advise Katya and Lisa as to the likely success of any action against Big Build.

This question is primarily concerned with private nuisance. Candidates should outline each of the elements of nuisance and refer to relevant cases or examples for each. The question of whether the activities of Big Build could constitute a nuisance should be analysed and a conclusion reached.

A number of specific issues should be addressed.

Who can sue – candidates should identify that Katya can sue but that Lisa may not be able to. Candidates should be credited for a consideration of an alternative action in negligence for Lisa but a detailed account is not required.

Is there a defence available in relation to the granting of planning permission – is this statutory authority? Is public benefit a relevant factor?

Possible remedies – should Katya seek an injunction to restrict the hours in which construction takes place? Are damages available here?

In order to achieve the higher bands candidates must explain the law accurately and apply the law to the facts in a coherent way.

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