Cambridge International AS & A Level

Cambridge International Examinations
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/41**

Paper 4 **May/June 2017**

MARK SCHEME

Maximum Mark: 75

Published

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Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and understanding

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

Analysis, evaluation and application

- An ability to 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.

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, but indicative marks per question attempted on Paper 3 are shown in brackets.

Assessment Objective	Paper 1	Paper 2	Paper 3	**Paper 4**	Advanced Level
Knowledge/ Understanding	50	30	50	**50 (13)**	50
Analysis/ Evaluation/ Application	40	60	40	**40 (10)**	40
Communication/ Presentation	10	10	10	**10 (2)**	10

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

Band 1 [0 marks]
The answer contains no relevant material.

Band 2 [1–6 marks]
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 [7–12 marks]
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 [13–19 marks]
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 [20–25 marks]
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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Question	Answer	Marks
1	**Explain and critically analyse the range of factors considered by the court when deciding whether or not a duty of care has been breached in negligence.** The focus of this question is the breach of duty in the tort of negligence. Candidates may begin by introducing the three essential elements of negligence but a detailed account of duty of care, causation and remoteness is not required. Candidates should explain the standard of care – the reasonable person – and examine the factors which may be considered by the court when deciding whether a defendant has not met this standard. The following factors should be identified and discussed: • Foreseeability of risk • Magnitude of risk • Extent of potential harm • Social utility Candidates should explain these factors and also critically analyse each one. The answer should be supported by relevant case law. Critical analysis is required to achieve the higher mark bands. Explanation only will be confined to Band 3.	**25**
2	**The basis of the tort of trespass to land is an unlawful entry.** **Assess the validity of this statement.** This question requires the candidate to present an explanation of the elements of trespass to land with a particular focus on the issue of unlawful entry. Credit should be given for an explanation of the elements of the tort – a direct interference with the land of another, intention and actionable per se. This explanation should be supported by relevant case law. Candidates should then focus on the issue of entry to land and what constitutes a wrongful entry in this context. In this way candidates should address the issue raised in the question and come to a conclusion as to whether the unlawful entry is the basis of the tort of trespass to land. Candidates should consider the meaning of entry, different examples of entry and in what circumstances an entry might not be unlawful. A detailed account of the law which does not assess the validity of the statement in the question will be confined to Band 3.	**25**

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Question	Answer	Marks
3	**The award of damages in tort involves a high level of uncertainty. Explain and critically evaluate how damages in tort are assessed.** This question requires candidates to examine the aim of the damages award in tort. Candidates should explain that damages is a sum of money which is meant to compensate the claimant. The purpose of the award in tort is to put the claimant in the position they would have been in if the tort had not occurred. Candidates can then proceed to explain how the award of damages in tort is made up of both special damages and general damages. Each of these should be explained. Candidates must address the issue raised in the question – that damages in tort is speculative and therefore the aim of damages in tort is difficult to achieve. Candidates should identify particular challenges in terms of predicting future losses, calculating future earnings, awarding a sum for pain and suffering and the use of the lump sum payment, Explanation only will be confined to Band 3. In order to achieve the higher bands the candidate must address the key issue raised in the question.	**25**
4	**Discuss the potential liability of ABC Garage to Bilal in this situation.** The subject matter of this question is the tort of negligence. Candidates can begin by introducing the three essential elements of negligence. However the focus of the question should be the standard of care, breach and causation. A detailed account of duty of care is not required here. Candidates should pay particular attention to the following issues: • The standard expected of a trainee as opposed to a fully qualified mechanic • Causation – does the incident with the football hitting the car break the chain of causation • Possible defences – Bilal chooses to drive the car – is this contributory negligence or volenti? • Vicarious liability – should he sue ABC Garage rather than the trainee mechanic? What are the requirements for vicarious liability here? The explanation of the law should be supported by reference to relevant case law. Candidates must explain the law and in order achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**

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Question	Answer	Marks
5	**Examine the rights of Adam and Mary and discuss any possible remedies which might be awarded by the court.** The issue here is private nuisance. Candidates should introduce the main elements of the tort and focus on the elements considered by the court in determining whether a particular activity is unreasonable. Candidates should pay particular attention to issues such as • The character of the neighbourhood • Duration of the activity • Seriousness of the nuisance – is there damage? • Social value/public benefit of the activity • Sensitivity of the claimant • Possible remedies The explanation of the factors should be supported with reference to relevant authority. Candidates must explain the law and in order achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion. In this case candidates should consider the appropriate remedy in their conclusion.	**25**
6	**Discuss the liability of XYZ to Jasmine in this situation.** This question requires a consideration of the Occupiers' Liability Act 1957. Candidates should identify the issue as occupiers' liability and identify the relevant legislation as the OLA 1957 as Jasmine is a visitor. Candidates can explain the meaning of key terms such as premises, occupier and visitor. Candidates should then explain the duty owed by the occupier to the visitor as per S2(2) of the OLA 1957. Candidates should consider the following issues • Is there contributory negligence on Jasmine's part in that she was running in the store? • Has XYZ done enough in terms of putting up a warning sign • Is XYZ at fault for the removal of the sign? • Is the fact that the cleaning material is stored at the other side of the premises a contributory factor? • Can Jasmine claim for both the personal injury and damage to her property? • Credit may be awarded for an explanation of vicarious liability and an application to the facts of the scenario. Candidates must explain the law and in order achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**