Cambridge International AS & A Level

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Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/42**

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	**The tort of private nuisance is often referred to as 'the law of give and take'.** **Explain the main elements of the tort of private nuisance and assess whether this description is accurate.** This question requires an explanation and evaluation of the tort of private nuisance. Candidates should define the tort and then explain key elements such as interference, indirect, the factors relating to reasonableness and possible remedies. The explanation of the legal rules should be supported with relevant case law. The question requires the candidates to consider the purpose of the tort which is to balance the completing interests of neighbours in the context of the use of their land. The idea of 'give and take' should be explained and discussed and elements of the tort (locality, duration, sensitivity etc.) should be used to illustrate how the balancing of interests can be achieved. Where the candidate explains the law but does not address the issue of 'give and take' this will be a maximum Band 3. In order to achieve the higher bands candidates must address the specific issue raised in the question.	**25**
2	**The recovery of damages for nervous shock is governed by many factors including policy considerations.** **Describe these factors and evaluate the role played by policy considerations.** This question requires candidates to examine the development of the rules governing the award of damages in negligence where the claimant has suffered nervous shock. Candidates should outline the development of the rules through a discussion of the case law. Issues such as the definition of nervous shock, the distinction between primary and secondary victims and control factors established in Alcock should all be discussed. Having explained the rules candidates should address the key issue raised in the question – is the development of the law linked to policy considerations? Issues such as the floodgates argument, the risk of false claims and difficulties of proof can be raised here. To achieve the higher bands candidates must engage with the issues raised in the question. Where the candidate explains the rules without considering the issue of policy the mark will be confined to Band 3	**25**

Question	Answer	Marks
3	**Equitable remedies are of limited relevance in the law of tort.** **Critically evaluate this statement.** This question requires candidates to explain the equitable remedies in tort. The focus of the question is therefore the injunction. Candidates can introduce the idea of an equitable remedy – as being derived from the Court of Chancery – and explain how the purpose of the equitable remedy is to operate where an award of damages would be inadequate. A detailed account of damages is not required here and should not be credited. Some credit can be awarded where the remedy of damages is compared or contrasted with the equitable remedies. Candidates should then explain what an injunction is, examine the different types of injunction – prohibitory, mandatory and interlocutory Candidates should then address the issue raised in the question – are equitable remedies, specifically the injunction of any relevance? Candidates should discuss the areas of tort law where the injunction is most likely to be used e.g. private nuisance and trespass to land. In this way candidates can come to a coherent conclusion as to whether the remedy is still of relevance in the law of tort. If the answer is explanation only the mark will be confined to Band 3.	**25**

Question	Answer	Marks
4	**Advise the parties as to their rights and responsibilities in this situation.** The issue here is liability under the Occupiers Liability Act 1957. Candidates should identify that Betty and Ellie are visitors and the injury has occurred due to the state of the premises and therefore the case falls to be decided under the OLA 1957. However credit may be awarded for an alternative approach in which the candidate focuses on general negligence. Candidates can explain the key terms in the Act such as occupier, premises and visitor. An explanation of the duty owed by the occupier to the visitor should be provided as per S2(2) of the 1957 Act. In this case a child has been injured so S2(3) should be discussed – the standard of care in relation to children. The issue of parental supervision is also relevant here and should be highlighted. Some credit may be awarded for a discussion of allurement. The shelving was installed by an outside contractor – S2(4) should be explained and applied to the facts of the case. A discussion of defences, such as volenti and contributory negligence should be credited. If a candidate chooses to argue the case on the basis of negligence, all three elements should be explained with a particular focus, in the application, on breach and causation. Relevant case law should be used in the explanation of the law. Candidates must apply the law to the facts of the case and reach a coherent conclusion in order to achieve the higher bands.	**25**

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Question	Answer	Marks
5	**Advise John as to his rights in this situation.** This question is concerned with negligent misstatement. Candidates may introduce the tort of negligence and outline the three essential elements but a detailed account of duty of care, breach, causation and remoteness is not required. Credit should be awarded for a discussion of the different types of loss and for identifying that this situation involves pure economic loss. Candidates should focus on the special rules which must be satisfied in order for a claimant to recover for pure economic loss resulting from a negligent statement. The elements of liability as set out in Hedley Byrne v Heller should be examined and relevant supporting cases should be identified. Candidates should consider • Is this a social or business context? • Is it reasonable to rely on an estate agent for investment advice? • Is the fact that Greg is newly qualified relevant? Candidates must explain the law and apply it in a logical fashion to the facts of the scenario in order to reach a clear conclusion.	**25**
6	**Advise Khalid, Shamid and Tom as to their rights and responsibilities in this situation.** This question requires an examination of the legal rules relating to trespass to the person. Brief reference to trespass to land is also creditworthy. All three varieties of trespass to the person are relevant here so assault, battery and false imprisonment should each be explained with reference to relevant case law. The law should then be applied to the different incidents outlined in the scenario • Khalid's entrance to the factory may be characterised as trespass to land – he has been informed that he cannot enter but does so • Khalid pushes Tom to gain entry – possible battery? • Khalid's threat to hurt Shamid – possible assault? • Khalid locks the door – possible false imprisonment? • Tom and grabs Khalid and drags him out resulting in a Khalid suffering a broken leg – a battery? Or ejecting a trespasser/self- defence? • Possible vicarious liability in relation to Tom's actions. Candidates must explain the law and apply it to the facts in a logical way in order to achieve the top bands.	**25**