Cambridge International AS & A Level

**Cambridge Assessment International Education**
Cambridge International Advanced Subsidiary and Advanced Level

**LAW** **9084/41**

Paper 4 **May/June 2018**

MARK SCHEME

Maximum Mark: 75

**Published**

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

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## Generic Marking Principles

These general marking principles must be applied by all examiners when marking candidate answers. They should be applied alongside the specific content of the mark scheme or generic level descriptors for a question. Each question paper and mark scheme will also comply with these marking principles.

GENERIC MARKING PRINCIPLE 1:

Marks must be awarded in line with:

- the specific content of the mark scheme or the generic level descriptors for the question
- the specific skills defined in the mark scheme or in the generic level descriptors for the question
- the standard of response required by a candidate as exemplified by the standardisation scripts.

GENERIC MARKING PRINCIPLE 2:

Marks awarded are always **whole marks** (not half marks, or other fractions).

GENERIC MARKING PRINCIPLE 3:

Marks must be awarded **positively**:

- marks are awarded for correct/valid answers, as defined in the mark scheme. However, credit is given for valid answers which go beyond the scope of the syllabus and mark scheme, referring to your Team Leader as appropriate
- marks are awarded when candidates clearly demonstrate what they know and can do
- marks are not deducted for errors
- marks are not deducted for omissions
- answers should only be judged on the quality of spelling, punctuation and grammar when these features are specifically assessed by the question as indicated by the mark scheme. The meaning, however, should be unambiguous.

GENERIC MARKING PRINCIPLE 4:

Rules must be applied consistently e.g. in situations where candidates have not followed instructions or in the application of generic level descriptors.

GENERIC MARKING PRINCIPLE 5:

Marks should be awarded using the full range of marks defined in the mark scheme for the question (however; the use of the full mark range may be limited according to the quality of the candidate responses seen).

GENERIC MARKING PRINCIPLE 6:

Marks awarded are based solely on the requirements as defined in the mark scheme. Marks should not be awarded with grade thresholds or grade descriptors in mind.

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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 | **Describe and evaluate the elements which must be present to establish liability for a negligent misstatement.**<br><br>The focus of this question is liability for a negligent misstatement. Candidates should distinguish between liability acts/omissions and liability for a statement in the context of negligence. Candidates can introduce the tort of negligence and outline the three elements required for an action in general negligence. Candidates should then focus on the additional elements which must be present in order to establish liability for negligent misstatement. Candidates should refer to Hedley Byrne v Heller and identify elements such as special relationship, special skill, knowledge of reliance and reasonableness of reliance. Candidates should explain each element and also comment critically on the elements supporting their explanation and analysis with case law where appropriate<br><br>Evaluation is required to achieve the higher mark bands. Explanation only will be confined to lower Band 4 | 25 |

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| Question | Answer | Marks |
|---|---|---|
| 2 | **Describe the elements of the tort of *Rylands v Fletcher* and assess the extent to which it is a tort of strict liability.**<br><br>The candidates should explain the essential elements of the tort in Rylands v Fletcher:<br>• The bringing of something onto the land<br>• The thing is likely to do mischief if it escapes<br>• Non-natural use of land<br>• An escape<br><br>The explanation of each element could be supported with relevant case law. Candidates should then examine whether Rylands v Fletcher is actually a tort of strict liability. The meaning of strict liability should be explored and then the arguments relating to whether Rylands v Fletcher is a tort of strict liability can be examined. Candidates could discuss the decision in Cambridge Water which introduces an element of foreseeability into the tort. In addition candidates could identify the range of defences available in a claim for Rylands v Fletcher and comment on the significance of the availability of defences in the context of strict liability.<br><br>Candidates should seek to reach a coherent conclusion in relation to the issue of whether Rylands v Fletcher is a tort of strict liability.<br><br>Critical assessment is required to achieve the higher mark bands. Explanation only will be confined to lower Band 4 | 25 |

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| Question | Answer | Marks |
|---|---|---|
| 3 | **The defence of *volenti non fit injuria (consent)* will not apply merely because a claimant has knowledge of the existence of a risk. Describe the elements of this defence and assess the extent to which the statement above is true.**<br><br>Candidates should explain the meaning of volenti non fit injuria in terms of consent to the risk of harm or voluntary assumption to the risk of harm. In addition candidates should explain that this is a complete defence which if successful will mean that the claimant will receive no damages. Relevant case law should be referenced in the explanation of the defence. Candidates should provide examples of where the defence might apply e.g. sport or medical treatment<br><br>Candidates should then consider the particular issues raised by the question. In addition to knowledge of the risk it must be shown that the claimant had a full understanding of the risk. It must also be established that the claimant freely assumed the risk and voluntarily undertook the risk of harm. Through this discussion candidates can address the question and reach a reasoned conclusion.<br><br>Critical assessment is required to achieve the higher mark bands. Explanation only will be confined to lower Band 4 | **25** |

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| Question | Answer | Marks |
|---|---|---|
| 4 | **Discuss the potential liability of the parties for trespass to the person.**<br><br>The focus of this question is trespass to the person with a possible alternative claim in negligence.<br><br>The question involves potential claims of assault, battery and false imprisonment therefore candidates should provide an explanation of the legal requirements for each action and refer to relevant case law where appropriate.<br><br>Having explained the law candidates should then apply the law to the facts of the case. In relation to the loosening of the screws on the chair candidates should considered whether this constitutes a battery. In particular candidates should consider whether the act was sufficiently direct and intentional. Candidates can be credited here for considering an alternative action in negligence.<br><br>When Bill shouts at Dave this is a possible assault but has it been negative by his words?<br><br>When Tom grabs Dave there is another potential battery although there may be possible defences available here – candidates may be credited for discussing any relevant defence<br><br>Finally candidates should examine the possible false imprisonment. The issue of whether there is complaint restraint and also Dave's knowledge of this should be examined<br><br>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 | **Advise the parties as to their rights in this situation.**<br><br>The focus of this question is general negligence, vicarious liability and nervous shock. Candidates should explain the essential elements of negligence – duty of care, breach of duty and resulting damage. Candidates should then explain the special rules which apply in the context of nervous shock in relation to primary and secondary victims. Candidates should also outline the meaning of vicarious liability and the requirements for establishing such liability.<br><br>Having explained the law candidates should then apply the legal rules to the facts. Candidates should examine whether a duty of care was owed in this context, was there a breach of the duty and has damage resulted which is not too remote. Candidates could then consider whether ABC Ltd could be vicariously liable for John's actions – was he an employee acting within the scope of his employment?<br><br>Candidates should then examine the status of the claimants from the perspective of recovery for nervous shock – who is a primary victim and who is a secondary victim?<br><br>The Alcock requirements should be applied to the facts. Issues relating to bystanders and rescuers should also be explored.<br><br>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 |
|---|---|---|
| 6 | **Discuss the rights and responsibilities of the parties in this situation.**<br><br>The focus of this question is occupiers' liability.<br>Candidates should introduce the concept of occupiers' liability and define the term occupier. At this point candidates should consider whether the case falls under the Occupiers' Liability Act 1957 or the Occupiers' Liability Act 1984. This will depend on whether the claimant is characterised as a visitor or a trespasser. The OLA 1984 would appear to be appropriate here given that there is a sign which states that the premises are private property.<br><br>Candidates should explain the meaning of 'trespasser' and outline the duty which is established under the OLA 1984. Relevant case law should be used to support the explanation.<br><br>Candidates should then apply the legal rules to the facts and consider issues such as:<br>• Has the standard of care been satisfied?<br>• The age of the trespassers<br>• The effect of the sign at the entrance<br>• Possible defences<br>• Are both damage to property and personal injuries recoverable?<br><br>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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