Cambridge International AS & A Level

Cambridge Assessment International Education
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/42**

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.

Cambridge International will not enter into discussions about these mark schemes.

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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 the duty owed by an occupier to a lawful visitor and assess the extent to which liability can be avoided.** This question concerns the Occupiers' Liability Act 1957 and in particular the extent to which an occupier is free to extend, restrict, modify or exclude his duty to visitors. Candidates should be credited for presenting an outline of the duty owed under the 1957 Act but a detailed account is not required. Candidates should examine the following issues: • The use of warnings under s2(4)(a) • The use of an exclusion clause • General defences such as contributory negligence and volenti non fit injuria • Special categories – children, independent contractors, persons acting in the course of a trade/calling For each of these issues candidates should provide an explanation of the legal rules supported with reference to relevant case law. Candidates should also examine each of these issues from a critical perspective, considering whether the law should allow the occupier to avoid liability to a visitor to the extent which is currently permissible. 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
2	**Assess the extent to which it is justifiable to impose vicarious liability in the context of employment relationships.** This question concerns the imposition of vicarious liability with specific reference to the employment context. Candidates should explain the concept of vicarious liability, demonstrating an understanding that it is not a separate tort but rather a means of imposing liability for a tort on to a party other than the tortfeaser. Candidates should then focus on the application of vicarious liability in the employment setting. Candidates may be credited for outlining the basis of the imposition of such liability – a contract of service and a tort committed in the course of employment. Candidates should then address the key element of the question – what are the justifications for imposing vicarious liability on an employer for the acts/omissions of the employee. This could include: • Element of control exercised by employer over employee • Employer is responsible for selecting staff • Employer is in a better position to compensate • Deterrence effect • Encourages higher standards Candidates should evaluate these arguments and reach a coherent conclusion as to whether they do actually provide sufficient justification for the imposition of vicarious liability. 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 test for establishing a duty of care is complex and uncertain. Explain and evaluate the current test for establishing a duty of care in the tort of negligence.** This question requires candidates to explain the test for establishing a duty of care in negligence and then critically analyse the test. Candidates can introduce negligence through an outline of the three essential elements however a detailed explanation of all three elements is not required as the focus of the question is specifically the duty of care. Candidates should explain the current approach – the modern three part test from Caparo v Dickman. Candidates may be credited for a discussion of the development of the test from the neighbour principle in Donoghue v Stevenson to Caparo. Having explained the test candidates should then address the particular issues raised in the question – is the current test complex and uncertain? This could involve an examination of the following: • The meaning of proximity • Establishing reasonable foreseeability • The 'just and reasonable' requirement Candidates may be credited for discussing policy issues, considering whether the test is too restrictive or not, the floodgates argument or any other valid evaluative points 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
4	**Advise Pierre as to his potential liability to Marie and Yves.** The focus of this question is general negligence and liability for nervous shock. Candidates should first examine the issue of negligence. The three essential elements of duty of care, breach of duty and damage should be explain with reference to relevant case law. Candidates should then consider the issue of nervous shock and outline the requirements set out in Alcock v Chief Constable of South Yorkshire, Credit can also be awarded for a reference to a possible defence of inevitable accident. Candidates should then apply the legal rules to the facts and consider the following: • Can the three elements of negligence be established in relation to Maria? • Is Yves likely to recover for nervous shock? • Is this potentially an example of inevitable accident? Candidates must explain the law and in order to achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**

Question	Answer	Marks
5	**Advise Geeta and Pedro as to their rights and any potential remedies in this situation.** The focus of this question is private nuisance. Candidates should explain the elements of the tort of private nuisance, supporting their explanation with reference to appropriate case law. This explanation should include: • The unlawful (unreasonable) use of land • Indirect interference • Effect on the claimant's use of their land Candidates should make reference to issues such as: • The nature of the locality • The time of the activity • Malice • Sensitivity • Coming to the nuisance • Possible public benefit • Remedies Candidates must explain the law and in order to achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**

Question	Answer	Marks
6	**Advise the parties as to their potential liability in this situation.** This question involved elements of trespass to land and trespass to the person. In relation to trespass to land candidates should explain the essential elements of the tort including: • Intentional and unlawful entry • Direct interference • Land in the possession of another Candidates should identify and examine the issue of whether Paula and Jane have committed the trespass through exceeding the permission they were granted by Henry. The issue of trespass to the person should then be examined. Candidates should outline the legal rules governing assault and battery and the issue of self-defence. Relevant case law should be used to support the explanation of the legal rules. Candidates should then apply the rules to each of the incidents in the scenario and come to a conclusion in relation to the trespass to land and the issues relating to assault and battery. Consideration should also be given to possible remedies: • When Henry orders them to leave, is this an assault? • When Henry grabs Paula, is there a battery? • When Jane hits Henry is this a battery? Could she argue self-defence? Credit may also be awarded for a discussion of ejectment of a trespasser. Candidates must explain the law and in order to 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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