Cambridge International AS & A Level

Cambridge Assessment International Education
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/43**

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

- 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.

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 factors which must be considered when deciding whether there has been a breach of duty in negligence.** This question concerns the tort of negligence with a particular focus on the issue of breach of the duty of care. Candidates should outline the main elements of the tort of negligence – duty of care, breach of duty and damage. However a detailed account of all the elements is not required as the question is quite specifically asking about breach of duty and this should be the main focus of the candidates' response. Candidates should examine the 'reasonable man' test and the objective standard. Candidates should then examine the range of factors which are considered by the court when deciding if there has been a breach • Foreseeability of risk • Magnitude of risk • Social utility • Practicality of precautions • Any other relevant issue – children, professionals, trainees 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 factors from a critical perspective, considering whether the law relating to breach of duty operates effectively. Critical analysis is required to achieve the higher mark bands. Explanation only will be confined to lower band 4.	**25**

Question	Answer	Marks
2	**Whether the defendant's use of land is reasonable is the key issue when determining liability in private nuisance.** **Assess the validity of this statement.** This question concerns the tort of private nuisance and in particular the issue of whether the defendant's use of land is unlawful in the sense that it can be considered unreasonable. Candidates may introduce the tort of private nuisance and should be credited for outlining the main elements • An unlawful (unreasonable) use of land • An indirect interference • With the claimant's use or enjoyment of land However a detailed account of each element is not required – the candidate should focus on the issue raised in the question – determining whether the defendant's use of land can be considered reasonable. The following issues should be considered • Locality • Duration • Level of interference • Sensitivity • Malice • Any other relevant issues e.g. human rights Candidates should present an accurate explanation of the legal rules with reference to relevant authority. Candidates should then consider the question – is reasonable use of land the key issue for the court? 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	**Describe the elements of the duty imposed on an occupier in relation to a trespasser and assess the fairness of this duty.** This question requires candidates to examine the nature of the duty imposed on the occupier under S1(3) of the Occupiers' Liability Act 1984. Candidates may examine the development of a duty to trespassers through a discussion of case law such as Addie v Dumbreck and British Rail v Herrington. While candidates might refer to the OLA 1957 at this point, a detailed examination of the 1957 Act is not required and should not be credited. Some credit may be awarded for explaining key terms such as occupier, premises and trespasser. The main focus should be a discussion of the three elements which must be established under S1(3) of the OLA 1984, namely that the occupier is • Aware of the danger • Aware of the likely presence of a trespasser • The risk is one that it is reasonable to expect the occupier to offer some protection from Candidates should refer to relevant case law when explain the elements of the duty and then address the issue of fairness from a crucial perspective. 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	**Advise Mark as to his rights in this situation.** The focus of this question is general negligence and vicarious liability. Candidates should first examine the issue of negligence. The three essential elements of duty of care, breach of duty and causation should be explained with reference to relevant case law. Candidates should explain the possible defences of contributory negligence and volenti. Candidates should outline the rules relating to vicarious liability. Reference should be made to relevant case law when explaining the legal rules. Candidates should then apply the legal rules to the facts and consider the following: • Can the three elements of negligence be established? • Did Mark consent to the risk or contribute to the damage by choosing not to wear the safety googles? • What standard of care is required of a junior doctor? • Can the hospital be made liable for the actions of the doctor? 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**

Question	Answer	Marks
5	**Advise Jake, Stefan and Boris as to their potential liabilities in trespass to the person.** The focus of this question is trespass to the person. Candidates should explain the different types of trespass to the person relevant to this case – specifically assault and battery and false imprisonment. Candidates should present an accurate explanation of each form of trespass to the person and also refer to relevant case law in their explanation. In relation to battery candidates should consider the following issues: • The requirement of a direct interference • Intention In relation to assault candidates should consider the following issues: • The requirement that the actions of the defendant cause the claimant to apprehend that he will be subject to immediate harm • Intention • Can words constitute an assault? In relation to Boris, the issue of a possible false imprisonment should be discussed with particular emphasis on whether there has been complete restraint and the possibility of an alternative route of escape for Stefan. Credit may be awarded for discussion of any relevant defences or remedies. 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	**Advise Ann and John as to their rights in this situation.** This question relates to negligence and in particular the recovery of damages for a negligent misstatement. Candidates can introduce the tort of negligence and outline the essential elements of duty of care, breach of duty and damage. However a detailed account of each element in not required. Candidates may be credited for identifying the distinction between consequential loss and pure economic loss and referring to the difficulties associated pure economic loss. Candidates should explain the special requirements for recovery as set out in Hedley Byrne v Heller: • Special relationship • Special skill or expertise • Reasonable reliance Relevant case law should be used to support the explanation of the rules. Candidates should then apply the law to the facts of the case in relation to the two potential claimants – Ann and John: • Is there a special relationship in each case? • Does Marie have a special skill or expertise? • Have both claimants relied on her advice? • Should Marie have foreseen that Ann and John would rely on her advice? • What standard of care is owed by a newly qualified professional? 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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