Cambridge International AS & A Level

Cambridge Assessment International Education
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/41**

Paper 4 **May/June 2019**

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 4 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 factors which must be present for a duty to be imposed upon an occupier under the Occupiers Liability Act 1984 and assess whether it is fair to impose such a duty.** The focus of this question is the duty owed by an occupier to trespassers/non-visitors under the OLA 1984. Credit can be awarded for: • Explanation of key terms – occupier, premises, trespasser • Background to the development of the duty – common humanity • Pre 1984 case law – Herrington v British Rail The focus of the question should be the duty under S1(3) of the 1984 Act which outlines the three requirements for establishing the duty and S1(4) which sets out the level of duty owed. Relevant case law should be used to support the explanation. Candidates should then address the assessment element of the question – this requires a discussion of whether the duty is fair. This could include the following: • The harshness of the previous law • The particular need to protect children • The limited nature of the duty • Restriction to damages for personal injury only • The means of avoiding the duty Candidates should reach a clear and coherent conclusion based on the material presented. Critical analysis is required to achieve the higher mark bands.	**25**

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Question	Answer	Marks
2	**The current rules governing the recovery of damages for negligence resulting in nervous shock are illogical and unfair.** **Describe the current rules and assess the validity of this statement.** This question requires a discussion of the rule governing recovery for nervous shock in negligence. Credit can be awarded for an explanation of any of the following: • The meaning of nervous shock • Need for a medically recognised condition • The development of special rules under the duty of care in negligence • Primary and secondary victims • Restrictions on the scope of the duty – Alcock factors • Bystanders and rescuers Relevant case law should be used to support the explanation. Candidates must then address the critical element of the question and consider whether the rules are illogical and unfair. This could encompass policy issues, floodgates, distinctions between different categories of claimant. Reference could be made to the Law Commission Report 1998. Candidates should reach a coherent conclusion which addresses the question asked. Critical analysis is required to achieve the higher mark bands.	**25**

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Question	Answer	Marks
3	**Describe the purpose of a damages award in tort and assess whether damages can provide an adequate remedy.** Candidates should explore the issue of the purpose of damages in tort – to put the claimant in the position they would have been in had the tort never occurred. The following points can be credited: • The element of speculation • Risk of over/under compensation • Types of damages – special/general • Issues related to calculation • Lump sum v structured payments • Damages related to death Candidates should then address the issue raised by the question – can damages provide an adequate remedy for the claimant? This requires a critical analysis of the topic – from the issue of speculation and the artificial nature of the remedy to the practical issues around calculating future losses and placing a value on pain and suffering. Candidates should try to reach a reasoned conclusion which answers the question. Critical analysis is required to achieve the higher mark bands.	**25**

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Question	Answer	Marks
4	**Advise the parties as to their rights and responsibilities in this situation.** This question is concerned with the tort of private nuisance. Candidates should define the tort and explain the key elements, including the following: • Who can sue/be sued? • Indirect interference • Unreasonableness – locality, duration, sensitivity, malice • Defences • Remedies Relevant case law should be used to support the explanation of the law. Candidates should then address the key elements of the scenario and apply the relevant law to the facts, including: • The nature of the interference • Locality • Duration • Malice • Public benefit/utility • Possible 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
5	**Advise the parties as to their rights and responsibilities in this situation.** This question concerns the tort of negligence and in particular the issue of consequential and pure economic loss. Candidates should be credited for the following: • Explanation of the requirements for establishing negligence • Duty of care • Breach of duty • Damage – causation and remoteness • Different types of loss – Spartan Steel v Martin • Vicarious liability Relevant case law should be used to support the explanation of the law. Candidates should then address the key elements of the scenario and apply the relevant law to the facts, including: • Can the elements of negligence be established? • Who is liable – can ABC Ltd be sued? • How should the different losses be categorised? • Which losses are recoverable? 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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Question	Answer	Marks
6	**Advise the parties as to their rights and responsibilities in this situation.** This question concerns trespass and negligence. Candidates should be credited for an explanation of the following: • Trespass to land • Belief that entry was permitted/intention • Right to eject a trespasser • Possible trespass to the person – assault • Trespass to the person – false imprisonment • Trespass to the person – battery Relevant case law should be used to support the explanation of the law. Candidates should then address the key elements of the scenario and apply the relevant law to the facts, including: • Initial entry onto the land – trespass to land? • Intention • Blocking the path – false imprisonment? • The collision – a battery? • Alternative claim in negligence if contact was not intentional 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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