Cambridge International AS & A Level

Cambridge Assessment International Education
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/43**

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 and evaluate the elements of liability for a claim in respect of loss resulting from a negligent misstatement.** This question concerns the tort of negligence with a particular focus on the issue of liability for a negligent misstatement. 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 negligent misstatement and this should be the main focus of the candidates' response. Candidates can be credited for an explanation of any of the following issues: • Nature of pure economic loss • The judgement in Hedley Byrne v Heller • The elements of the special relationship Relevant case law should be used to support the explanation. Candidates should critically analyse aspects of the liability, including: • Social relationships • Special skill/expertise • Reasonable reliance • Policy issues Critical analysis is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
2	**Explain the purpose of damages in the law of tort and assess the factors considered by a court when calculating the amount of damages to be awarded.** This question concerns the remedy of damages. Candidates should explain the purpose of damages in tort and how the award is calculated by the court, including: • Aim is to put the claimant in position they would have been in had the tort no occurred • Types of damages – compensatory/non-compensatory • Special and general damages • Method of calculation • Lump sum Candidates should then consider whether the purpose of damages in tort can actually be achieved. Issues which could be considered include: • Speculative nature of damages • Difficulty of calculating future losses • Pain and suffering • Problems with the lump sum • Damages relating to death Critical analysis is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
3	**The tort of trespass to the person is no longer essential in the law of tort as a variety of alternative actions are available to a claimant.** **Explain the tort of trespass to the person and assess the validity of this statement.** This question requires candidates to explain the main elements of trespass to the person, including: • Assault – definition and use • Battery – definition and use • False imprisonment – definition and use • Defences Relevant case law should be used to support the explanations. Candidates should then consider the issue of whether the tort of trespass is still essential. This could include a discussion of: • Alternative actions – criminal law, harassment, criminal injuries compensation, negligence • Relevance in medical treatment • Relevance in sport • Examples of where an alternative action is not available Candidates should attempt to reach a reasoned conclusion. 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.** The focus of this question is occupiers liability under the Occupiers Liability Act 1957. Candidates should be credited for an explanation of any of the following: • Definition of key terms – occupier, premises, visitor • The nature of the duty – S2(1) • Visitors carrying out a trade or calling – S2(3)(b) • Liability for the torts of independent contractors – S2(4) • Defences – contributory negligence, volenti Relevant case law should be used to support the explanation. Candidates should then apply the relevant law to the facts of the scenario, with reference to the following: • Classification of the claimant as a visitor • The nature of the danger and the duty of the occupier • The risks associated with the work • The potential liability of the independent contractor • Possible defences Credit should be awarded for a discussion of an alternative claim in general negligence. 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
5	**Advise the parties as to their rights and responsibilities in this situation.** The focus of this question is negligence and in particular liability for nervous shock. Candidates should introduce the tort of negligence and can be credited for any of the following: • Elements of negligence – duty/breach/damage • Liability for physical injuries • Meaning of nervous shock • Primary and secondary victims • Proximity in time, space and relationship Relevant case law should be used to support the explanation of the law. Candidates should apply the relevant law to the facts of the scenario, with particular reference to: • Can the elements of negligence be established? • Is there a genuine medical condition present? • Are claimants primary or secondary victims? • Did the secondary victims witness the incident with unaided senses? • Are there sufficiently close ties of love and affection? 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 relates to the tort of Rylands v Fletcher. Candidates should introduce the main elements of the tort, including: • Bringing on to the land • A thing likely to do mischief if it escapes • The escape • Non-natural use of land • Foreseeability of harm • Possible defences • Remedies Relevant case law should be used to support the explanation of the law. Candidates should apply the relevant law to the facts of the scenario, with particular reference to: • Has there been a non-natural use of land? • What has escaped? • Was harm foreseeable? • Was the fire an Act of God? • What damage is recoverable – damage to property or personal injuries or both? Candidates should be credited for a discussion of an alternative claim for general negligence or private nuisance. 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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