Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/41**

Paper 4 **May/June 2021**

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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Social Science-Specific Marking Principles (for point-based marking)

1 Components using point-based marking:

- Point marking is often used to reward knowledge, understanding and application of skills. We give credit where the candidate's answer shows relevant knowledge, understanding and application of skills in answering the question. We do not give credit where the answer shows confusion.

From this it follows that we:

a DO credit answers which are worded differently from the mark scheme if they clearly convey the same meaning (unless the mark scheme requires a specific term)

b DO credit alternative answers/examples which are not written in the mark scheme if they are correct

c DO credit answers where candidates give more than one correct answer in one prompt/numbered/scaffolded space where extended writing is required rather than list-type answers. For example, questions that require *n* reasons (e.g. State two reasons …).

d DO NOT credit answers simply for using a 'key term' unless that is all that is required. (Check for evidence it is understood and not used wrongly.)

e DO NOT credit answers which are obviously self-contradicting or trying to cover all possibilities

f DO NOT give further credit for what is effectively repetition of a correct point already credited unless the language itself is being tested. This applies equally to 'mirror statements' (i.e. polluted/not polluted).

g DO NOT require spellings to be correct, unless this is part of the test. However spellings of syllabus terms must allow for clear and unambiguous separation from other syllabus terms with which they may be confused (e.g. Corrasion/Corrosion)

2 Presentation of mark scheme:

- Slashes (/) or the word 'or' separate alternative ways of making the same point.
- Semi colons (;) bullet points (•) or figures in brackets (1) separate different points.
- Content in the answer column in brackets is for examiner information/context to clarify the marking but is not required to earn the mark (except Accounting syllabuses where they indicate negative numbers).

3 Annotation:

- For point marking, ticks can be used to indicate correct answers and crosses can be used to indicate wrong answers. There is no direct relationship between ticks and marks. Ticks have no defined meaning for levels of response marking.
- For levels of response marking, the level awarded should be annotated on the script.
- Other annotations will be used by examiners as agreed during standardisation, and the meaning will be understood by all examiners who marked that paper.

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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 rules which apply to establishing a duty of care for a negligent misstatement. Assess the extent to which the rules are too restrictive.** An outline of the essential elements of negligence will be credited but a detailed account of each is not required as the focus of the question is negligent misstatement. Candidates should describe the particular issues which arise in relation to statements – e.g. poor economic loss, floodgates. The rules set out in Hedley Byrne v Heller should be described and the requirements for establishing a special relationship should be explained. Issues which should be covered include: • Reliance • Knowledge of reliance • Reasonableness of reliance • Voluntary assumption of responsibility Candidates should support the explanation with relevant authority. Candidates should examine these issues from a critical perspective and reach a coherent conclusion as to whether the rules are too restrictive. Potential content: • Remedy in contract • Unlimited claims/floodgates • Difficulties in applying the rules consistently • Advice given in social setting Critical assessment is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
2	**Describe the equitable remedies available in tort. Assess the extent to which these remedies achieve justice for claimants.** Candidates may be credited for providing a brief explanation of damages as the main remedy in tort but the emphasis should be on equitable remedies. Candidates should identify that the injunction is the equitable remedy available in tort. Candidates should also be credited for identifying the torts where the injunction might be used as an alternative to damages. Candidates should be credited for describing the injunction in general and then examining the different types of injunction – mandatory, prohibitory and interlocutory. Candidates should then consider the criteria used by the court in determining which remedy to use. Candidates should identify that the common law remedy of damages should generally be used but that an injunction may be awarded if damages are not adequate in the circumstances. The criteria used by the courts should be considered. Relevant case law should be used to support the explanation. This can relate to any of the torts on the syllabus where an injunction would be used, e.g. trespass or private nuisance. Candidates must assess the statement and reach a conclusion as to whether equitable remedies achieve justice for claimants. Critical assessment is required to achieve the higher mark bands.	**25**

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Question	Answer	Marks
3	**Describe the elements of the rule in Rylands v Fletcher and assess whether this tort is still necessary given the range of alternative actions available.** Candidates should describe the elements of the rule. Potential Content: • Who can sue/be sued • Things brought onto the land • Mischief • Escape • Damage • Defences The explanation should be supported by reference to relevant authority. Candidates should assess whether the tort is still necessary and identify the alternative actions which are available. Potential Content: • Alternative claim in nuisance • Alternative claim in negligence • Environmental protection • Recent case law/developments Candidates should reach a coherent conclusion in relation to the issue raised in the question Assessment 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 relation to occupier's liability.** Candidates should first examine which Act applies – is Andre a visitor or is he a trespasser. Either approach is creditworthy Potential content: • Definitions – occupier, premises, visitor, trespasser • Visitor on basis of implied permission OLA 1957 • Trespasser on the basis of lack of permission to enter premises/use ladder – OLA 1984 • Explanation of relevant duty • Possible defences – contributory negligence/volenti non fit injuria 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: • Which Act applies • Has the occupier fulfilled their duty under the relevant Act? • Did Andre consent to the risk? • Was Andre negligent? 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 the parties as to their rights, responsibilities and remedies in relation to trespass to land.** Candidates should be credited for an explanation of the following: • Meaning of land – including the airspace • Unlawful entry – by an object or by a person • Intention to enter the land • Actionable per se • Possible 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: • Is the flying of a drone a trespass? • Does entering the property to retrieve the drone constitute trespass? • Is there sufficient evidence of intention? • Is there any lawful authority present? • Which remedies would be appropriate? 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 rights, responsibilities and remedies in relation to negligence.** Candidates should define the tort and explain the key elements, including the following: • The duty of care • Standard of care/breach of duty • Damages – causation • Damages – remoteness • Defence – contributory negligence 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: • Who owes a duty of care in this situation? • What is the standard of care owed by each potential defendant? • Has there been a breach of duty? • Which breach caused the harm? • Was the harm too remote? • Who can be sued in this situation? • Is there contributory negligence in relation to Ebrahim's cycling? • Is there contributory negligence in relation to Ebrahim not wearing a helmet? 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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