Cambridge Assessment International Education

# Cambridge International AS & A Level

**LAW** **9084/42**

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.

Cambridge International is publishing the mark schemes for the May/June 2021 series for most Cambridge IGCSE™, Cambridge International A and AS Level components and some Cambridge O Level components.



© UCLES 2021

**[Turn over**

## 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.

© UCLES 2021

## 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.

© UCLES 2021

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.

© UCLES 2021

| Question | Answer | Marks |
|---|---|---|
| 1 | **An isolated incident cannot usually amount to a private nuisance.**<br><br>**Describe the elements of the tort of private nuisance and assess the validity of the statement above.**<br><br>This question concerns the tort of private nuisance. Candidates should describe the elements of the tort, referring to relevant case law where appropriate.<br><br>Potential Content<br>• Parties – who can sue/be sued<br>• Unreasonable interference – locality, duration, utility, sensitivity, malice<br>• Defences<br>• Remedies<br><br>Candidates should then address the assessment element of the question and reach a coherent conclusion as to whether the statement is valid.<br><br>Potential points of discussion include:<br>• Requirement that the interference is continuous<br>• Examples and case law relating to continuous activity<br>• Exceptions to the requirement of a 'continuing state of affairs'<br>• Analysis of the exceptional cases – possible justifications<br>• Assessment of the validity of the statement<br><br>Assessment of the statement and a coherent conclusion required to achieve marks in the highest bands. | **25** |

| Question | Answer | Marks |
|---|---|---|
| 2 | **Describe the rules governing nervous shock and assess the fairness of these rules in relation to rescuers and bystanders.**<br><br>This question concerns recovery of damages for nervous shock under the tort of negligence.<br><br>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 the issue of nervous shock and that should therefore be the focus of the question.<br><br>Potential content<br>• Meaning of nervous shock<br>• Primary and secondary victims<br>• Alcock case – control factors<br>• Special rules relating to rescuers<br>• Position of the bystander<br><br>Relevant case law should be used to support the description of the legal rules.<br><br>Candidates should assess the statement with reference to issues such as<br>• Policy issues – potential pool of claimants – floodgates<br>• Policy issues – professional rescuers/others<br>• Policy issues – circumstances in which a bystander might recover damages<br><br>Assessment and a coherent conclusion is required to achieve the higher mark bands. | **25** |

| Question | Answer | Marks |
|---|---|---|
| 3 | **Trespass to the person seeks to protect the individual from unlawful interference with their bodily integrity.**<br><br>**Describe the legal rules governing trespass to the person and assess the validity of the statement above.**<br><br>Potential Content<br>• Rules relating to assault<br>• Rules relating to battery<br>• Rules relating to false imprisonment<br>• Defences<br>• Remedies<br>• Special application – sport, medical treatment<br><br>Relevant case law should be used to support the explanation.<br><br>Candidates should then consider the assessment part of the question in relation to the purpose of the tort of trespass to the person. Is it concerned with the bodily integrity of the individual? Are there any other aims which can be identified in relation to the different types of trespass to the person?<br><br>Potential Content<br>• Actionable per se – no requirement to prove damage<br>• Three forms of tort provide broad protection for the person<br>• Development of the tort in relation to sport/medical treatment reflects the aim of protecting bodily integrity<br><br>Assessment and a coherent conclusion required to achieve the higher mark bands. | **25** |

| Question | Answer | Marks |
|---|---|---|
| 4 | **Advise the parties as to their rights, responsibilities and remedies in negligence.**<br><br>Candidates should introduce the tort of negligence and explain the general requirements for liability.<br><br>Potential Content<br>• Duty of care – test for establish liability<br>• Standard of care – qualified v learner<br>• Breach of duty – factors to be considered<br>• Causation – factual and legal<br>• Remoteness of damage<br>• Defences – volenti non fit injuria, contributory negligence<br>• Damages – personal injuries and damage to property<br><br>Relevant case law should be used to support the explanation.<br><br>Candidates should then apply the relevant law to the facts of the scenario. Candidates could examine the following issues:<br>• Who owes a duty of care and to whom?<br>• What standard of care applies to each potential defendant?<br>• Causation – which breach of duty caused the harm to the claimants<br>• Is there consent to the risk?<br>• Is there contributory negligence?<br>• What losses are recoverable?<br><br>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 relation to the rule in Rylands v Fletcher.**<br><br>Potential Content<br>• Potential claimants should be identified<br>• Potential defendant should be identified<br>• Explanation of purpose of Rylands v Fletcher<br>• Bringing something on to land<br>• Non-natural use<br>• Mischief<br>• Escape<br>• Defences<br>• Remedies<br><br>Relevant case law should be used to support the explanation.<br><br>Candidates should then apply the relevant law to the facts of the scenario.<br><br>Potential Content<br>• Identify the claimant/defendant<br>• The tree falling – natural or non-natural? Escape? Act of God?<br>• The toxic leaves – natural or non-natural? Escape?<br><br>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 and responsibilities in relation to occupier's liability.**<br><br>Candidates should first examine which Act applies – is Padma a visitor or is she a trespasser. Either approach is creditworthy.<br><br>Potential content<br>• Definitions – occupier, premises, visitor, trespasser<br>• Visitor on basis of permission – OLA 1957<br>• Trespasser on the basis of lack of permission to use the staff car park – OLA 1984<br>• Explanation of relevant duty<br>• Possible defences – contributory negligence/volenti non fit injuria<br><br>Relevant case law should be used to support the explanation of the law.<br><br>Candidates should then address the key elements of the scenario and apply the relevant law to the facts, including:<br>• Which Act applies<br>• Has the occupier fulfilled their duty under the relevant Act?<br>• Did Padma consent to the risk by parking in the wrong place and taking the shortcut?<br>• Was Padma negligent in choosing to use a shortcut?<br><br>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** |

© UCLES 2021