Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/43**

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 test for establishing a duty of care in negligence. Assess the extent to which policy considerations are relevant when a court is deciding whether a duty of care exists.** This question concerns the rules relating to the duty of care in negligence with a specific focus on the relevance of policy issues to the imposition of a duty of care. Candidates should outline the elements required to establish a claim of negligence but a detailed explanation of all three elements is not required as the focus of the question is duty of care. Candidates should focus on describing the rules governing the imposition of a duty of care. Potential Content • Donoghue v Stevenson – neighbour test • Development of the three-part test – Caparo v Dickman • Reasonable foreseeability • Proximity • Just, fair and reasonable Candidates should support the explanation with reference to relevant case law. Candidates should then address the relevance of policy considerations which arise in the context of the third part of the test – is it just fair and reasonable to impose the duty. Potential Content • Meaning of policy in this context • Possible policy considerations • Special groups – police, advocates, local authorities • Balancing interests in when considering public policy • Alternative actions – Human Rights Act, Criminal Injuries Compensation Board Assessment is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
2	**Describe the purpose of compensatory damages in tort. Assess the extent to which the award of compensatory damages can provide justice to the parties.** This question requires candidates to describe the rules relating to the common law remedy of damages in tort. Candidates should explain the meaning and purpose of damages and then address the assessment element of the question. Potential Content • Compensatory damages – meaning • Pecuniary and non-pecuniary damages • Mitigation of damages • Cases involving death • Lump sum payments Relevant case law should be used to support the explanations. Candidates should then consider the issue of whether the award of damages can provide justice to the parties. Potential Content • Difficulties of calculating losses – past and future • Issue of fault • Loss of amenity/pain and suffering • Problems with lump sum payment • Idea of clean break with single payment Candidates should attempt to reach a reasoned conclusion.	**25**

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Question	Answer	Marks
3	**It is neither fair nor just that an occupier should be responsible for harm sustained by a trespasser.** **Describe the duty owed by an occupier under the Occupier's Liability Act 1984 and assess the validity of the statement above.** This question concerns the Occupiers' Liability Act 1984 and the duty which is owed to a trespasser. Candidates should describe the main elements of liability under the OLA 1984 and then address the issue raised in the statement. Potential Content • Definitions – occupier, premises, trespasser • Development of the law – common law approach • Duty owed under the OLA 1984 • Reducing the duty – what is reasonable in the circumstances • Reducing the duty – warning signs and exclusions • Defences • Children • Persons engaged in criminal activity Candidates should then consider whether it is fair that the occupier owes a duty to trespassers. Potential Content • Common duty of humanity • Limited duty in comparison to visitors • Difficulties of proof • Opportunities to reduce liability – exclusion, warnings • Need to protect children 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 negligence.** This question concerns negligence, nervous shock and contributory negligence. Potential Content Candidates should explain the legal rules in relation to the following: • Duty of care requirements • Breach of duty • Causation • Remoteness of damage • Nervous shock – definition • Primary victims – requirements • Secondary victims – control factors • Defence of contributory negligence • Damages 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: • Is a duty of care present – who owes the duty and to whom? • What is the standard of care – what are the relevant factors in determining whether there has been a breach? • Has damage resulted from the breach which is not too remote? • Is there contributory negligence present? • In relation to nervous shock – are the claimants primary or secondary victims? 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, responsibilities and remedies in relation to private nuisance.** Candidates should introduce the tort of nuisance and can be credited for an explanation of the following: Potential Content • Purpose of the tort of nuisance • Who can sue – be sued • Unreasonable interference • Relevant factors – location, duration, utility, sensitivity, malice • Possible defences • Possible 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: • Can the elements of nuisance be established in relation to couriers calling to Liz's apartment? • Can the elements of nuisance be established in relation to the loud music? • Is there malice present? • What remedies would be awarded by the court? 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 trespass to the person.** This question relates to the tort of trespass to the person. Candidates should explain all three forms of the tort. Potential Content • Legal rules governing an assault • Legal rules governing battery • Legal rules governing false imprisonment • Possible defences – lawful detention, self defence 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: • Is the statement by Vincent an assault? • Is the push by Peter a battery on Vincent? • Who is responsible for the injuries to Yvonne? • Is there a possible defence – self-defence? • Is there a false imprisonment or is this a lawful detention? 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**