Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/41**

Paper 4 **May/June 2022**

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	**Compare and contrast the defences of *volenti non fit injuria* (voluntary assumption of risk) and contributory negligence.** The focus of this question is the defences available in negligence. Candidates should explain the elements of each defence Potential content: • Describe elements of volenti non fit injuria • Meaning of consent • Knowledge and understanding of the risk • Particular applications – sport, medical treatment, employment • Describe elements of contributory negligence • Explain effect of contributory negligence – reduction of damages Candidates should refer to relevant case law to support their explanation of the law Candidates should then compare and contrast the two defences. Candidates should identify both similarities and differences between the defences Potential content: • Volenti as a complete defence • Contributory negligence as a partial defence • Outcome for the parties • Availability in relation to different torts Candidates should consider fairness from the perspective of both claimant and defendant	**25**

Question	Answer	Marks
2	**Describe the elements of battery, in relation to the tort of trespass to the person. Assess the extent to which hostility is a necessary element of this tort.** This question requires candidates to examine one aspect of the tort of trespass to the person – battery. Candidates should describe each element of battery. Potential content: • Application of force • Direct interference • Intention • Particular applications – medical treatment, sport Candidates should then assess the extent to which hostility can be considered a necessary element of this tort Potential content: • Meaning of hostility • Acceptable level of contact in everyday life • Concept of unwanted contact • Medical treatment and requirement of hostility Candidates should refer to decided case law to support an exploration of conflicting judicial view on this issue Candidates should present a reasoned argument and consider the competing views on this issue. Candidates should try to reach a coherent conclusion as to the validity of the statement	**25**

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Question	Answer	Marks
3	**Describe the duty owed to a visitor under the Occupiers' Liability Act 1957. Assess the extent to which an occupier can avoid liability through the use of warnings and exclusion clauses.** This question requires candidates to examine the issue of occupier's liability, the duty owed under the 1957 Act and the extent to which the duty can be modified or excluded. Candidates should first describe the nature and scope of the duty owed under the OLA 1957 Potential content: • Key terms – occupier, premises, visitor • Duty owed under the OLA 1957 • Special duty in relation to child visitors • Discharging the duty Relevant case law should be used to support the explanation of the law. Candidates should then assess the extent to which the occupier can avoid liability through the use of warnings and exclusions Potential content: • The requirements in relation to warnings S2(4) • Effective warnings • Obvious risks • Use of exclusion clause • Restriction on the use of exclusion clause • Death and personal injury caused by negligence • Child visitors and exclusion clause Candidates should try to come to a reasoned and coherent conclusion as to the extent to which these mechanisms can be used by the occupier to avoid liability	**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 and the special requirements for establishing a duty of care in relation to nervous shock. Candidates should first explain the relevant legal rules. Potential content: • Duty of care requirements • Breach of duty – standard of care • Causation and remoteness of damage • Meaning of nervous shock • Primary and secondary victims • Special requirements for establishing liability in relation to secondary victims Relevant case law should be used to support the explanation of each element. Candidates should then apply the relevant law to the facts of the scenario. Potential content: • Liability for the physical injuries to John – are the elements of negligence present? • In relation to the nervous shock – is there a recognised psychiatric condition present in relation to each potential victim? • Is Margaret a primary or secondary victim? • If Margaret is a secondary victim, can she satisfy the requirements for establishing liability? • If Ian is a secondary victim, can he satisfy the requirements for liability? Where candidates approach the question on the basis of occupiers' liability, some credit may be awarded for a discussion and application of the duty owed by the occupier in this context. Candidates must apply the law in a logical fashion and try to reach a coherent conclusion as to liability	**25**

Question	Answer	Marks
5	**Advise the parties as to their rights, responsibilities and remedies in relation to private nuisance.** The focus of this question is private nuisance. Candidates should explain the legal rules governing private nuisance. Potential content: • Potential claimant • Potential defendant • Meaning of an unreasonable interference • Locality • Duration • Sensitivity of the claimant • Public benefit • Defences • Remedies Relevant case law should be used to support the explanation. Candidates should then apply the relevant law to the facts of the scenario and explore the balancing of the competing interests in this situation. Potential content: • Identify the claimant/defendant • The activities – unreasonable use? • Is this an interference of an inconvenience? • Is there an issue of sensitivity? • Public benefit • Coming to the nuisance • Possible remedies – injunction to reduce hours Candidates must 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, responsibilities and remedies in relation to negligent misstatement.** The focus of this question is the recovery of damages for a negligent misstatement. Candidates should introduce the tort of negligence and explain the general requirements for liability. Candidates should then focus on the special rules for establishing a duty in relation to a negligent misstatement. Potential content: • Negligence – duty of care, breach of duty and damage • Negligent misstatement – special requirements • Special relationship • Assumption of responsibility • Issues relating to reliance • Breach of duty • Damage – pure economic loss Relevant case law should be used to support the explanation. Candidates should then apply the relevant law to the facts of the scenario. Candidates could examine the following issues: • Is there a special relationship? • Was there reliance? • Was the reliance reasonable? • Was the defendant aware of the reliance? • Was there a breach of duty? • Did the breach cause damage? • Will AB be vicariously liable for the actions of Susan? Candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**

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