Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/42**

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	**Describe the duty owed to a trespasser under the Occupiers' Liability Act 1984.** **Assess the fairness of the duty in relation to both the occupier and trespasser.** The focus of this question is the duty owed by an occupier to trespassers/non-visitors under the OLA 1984. Potential content: • Explanation of key terms – occupier, premises, trespasser • Background to the development of the duty – common humanity • Pre-1984 case law – Herrington v British Rail The focus of the question should be the duty under S1(3) of the 1984 Act which outlines the three requirements for establishing the duty and S1(4) which sets out the level of duty owed. Relevant case law should be used to support the explanation. Candidates should then address the assessment element of the question – this requires a discussion of whether the duty is fair in relation to both parties. Potential content: • The harshness of the previous law • The particular need to protect children • The limited nature of the duty • Restriction to damages for personal injury only • The means of avoiding the duty – warnings • Possible defences Candidates should consider fairness from the perspective of both claimant and defendant and try to reach a coherent conclusion.	**25**

Question	Answer	Marks
2	**In the tort of negligence, losses of a purely economic nature should be treated very differently from personal injury and damage to property.** **Describe the rules governing pure economic loss. Assess the validity of the statement above.** This question requires candidates to distinguish between consequential economic loss and pure economic loss. This can be done through an exploration of relevant case law such as Spartan Steel v Martin and Weller v Foot and Mouth. Potential content: • Meaning of pure economic loss • Meaning of consequential loss • Development of the rules restricting recovery to consequential loss • Development of rules governing recovery of pure economic loss for negligent misstatement – supported with reference to appropriate case law – Hedley Byrne v Heller and subsequent cases Candidates should examine the reasons for the distinction, including: • More appropriate remedy in contract law? • Difficulty of accurately calculating damages • Role of insurance • Floodgates arguments Candidates should consider the justifications for the difference in treatment of the different types of loss and address the issue raised in the statement. Candidates should try to reach a coherent conclusion as to the validity of the statement	**25**

Question	Answer	Marks
3	**Describe the purpose of the remedy of damages in relation to the tort of negligence. Assess the extent to which the current rules achieve justice for the claimant.** Candidates should explore the issue of the purpose of damages in tort and in particular in relation to the tort of negligence– to put the claimant in the position they would have been in had the tort never occurred. Potential content: • Compensatory damages • Special damages • General damages • Damages in relation to death • Methods of calculation • Lump sum v structured payments Candidates should then address the issue raised by the question – can damages achieve justice for the claimant. This requires an assessment of the issue raised in the question. Do the current rules provide justice for the claimant? Potential content: • Difficulty of speculation • A false remedy – harm cannot be repaired or undone? • Difficulty of assessing pain and suffering • Problems with the lump sum Candidates should try to reach a reasoned conclusion which addresses the key issue of justice for the claimant	**25**

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Question	Answer	Marks
4	**Advise the parties as to their rights, responsibilities and remedies 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 • Contributory negligence 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 – are the elements of negligence present? • In relation to the nervous shock – is there a recognised psychiatric condition present? • Is Emma a primary or secondary victim? • If Emma is a primary victim can she satisfy the requirements for establishing liability? • If Emma is a secondary victim can she satisfy the requirements for liability? • Will defence of contributory negligence be used in relation to Shannon's failure to wear a seatbelt? Either approach (primary or secondary victim) can be credited. In either approach candidate 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 and responsibilities in relation to trespass to the person.** This question involved trespass to the person and a possible alternative claim in negligence. Candidates should explain the key elements of Trespass to the Person, including: Potential content: • Actionable per se • Intentional • Direct interference • Assault – need for the claimant to apprehend immediate harm • Battery – application of force • False Imprisonment – total restraint of claimant's liberty Relevant case law should be used to support the explanation. Candidates should then apply the relevant law to the facts. Potential content: • The initial blocking of the car – could this be categorised as a false imprisonment? Was there intention? Complete restraint? • Bob's statement to Flynn – could this be categorised as an assault? • Flynn drives the car and Bob falls from the car – is this a battery? • Potential defences? Consent? Self-defence? 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
6	**Advise the parties as to their rights and responsibilities in relation to private nuisance.** This question is concerned with the tort of private nuisance. Candidates should define the tort and explain the key elements, including the following: • Who can sue/be sued • Indirect interference • Unreasonableness – locality, duration, sensitivity, malice • Defences • 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: • Who is responsible for the potential nuisance(s) • Nature of the interference – unreasonable? • Seriousness of the interference – inconvenience or damage? • Locality • Duration • Sensitivity of the claimant • Malice • Possible remedies Candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**

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