Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/41**

Paper 4 **May/June 2023**

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 2023 series for most Cambridge IGCSE, Cambridge International A and AS Level and Cambridge Pre-U components, and some Cambridge O Level components.

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[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.

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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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Guidance on using levels-based mark schemes

Marking of work should be positive, rewarding achievement where possible, but clearly differentiating across the whole range of marks, where appropriate.

The marker should look at the work and then make a judgement about which level statement is the best fit. In practice, work does not always match one level statement precisely so a judgement may need to be made between two or more level statements.

Once a best-fit level statement has been identified, use the following guidance to decide on a specific mark:

- If the candidate's work **convincingly** meets the level statement, award the highest mark.
- If the candidate's work **adequately** meets the level statement, award the most appropriate mark in the middle of the range (where middle marks are available).
- If the candidate's work **just** meets the level statement, award the lowest mark.

Assessment objectives

AO1 Knowledge and understanding

- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

AO2 Analysis and application

- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

AO3 Evaluation

- Evaluate legal concepts, principles and rules.
- Communicate legal argument coherently on the basis of evidence.

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Section A

Table A

Use this table to give marks for each candidate response for **Questions 1** and **2**.

Level	AO1 Knowledge and understanding 12 marks	AO2 Analysis and application 5 marks	AO3 Evaluation 8 marks
	Description	**Description**	**Description**
4	**10–12 marks** • Accurate and detailed in most relevant areas. • Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.		
3	**7–9 marks** • Mostly accurate but may not be detailed in some relevant areas. • Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**4–5 marks** • Mostly focused and reasoned application throughout. • The application is supported by effective and well developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.	**6–8 marks** • Mostly focused and reasoned evaluation of all the relevant issues. • Effectively supported by relevant material. • Coherent argument.
2	**4–6 marks** • Some accuracy but lacks detail in relevant areas. • Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**2–3 marks** • Some reasoned application. • The application is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**3–5 marks** • Some evaluation, reasoned at times, of some of the relevant issues. • Supported by some relevant material. • Some coherent argument.
1	**1–3 marks** • Limited accuracy. • Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**1 mark** • Limited application. • The application is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**1–2 marks** • Limited evaluation of a relevant issue. • Limited or no use of relevant material. • Limited or no argument.
0	**0 marks** • No creditable content.	**0 marks** • No creditable content.	**0 marks** • No creditable content.

Question	Answer	Marks
1	**Advise the parties of their rights, responsibilities and potential remedies.** Use Table A to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks. **Indicative content** Responses may include: John and Andy: **AO1 Knowledge and understanding** • Identify the issue as one of trespass to the person. • Explain the meaning of actionable per se. • Explain the elements of assault. • Explain the rules relating to direct and intentional interference. • Explain the rules relating to apprehension of immediate harm. • Identify possible instances of battery. • Explain the elements of battery. • Explain the element of hostility. • Identify any potential defences and remedies. **AO2 Analysis and application and AO3 Evaluation** • Analyse whether John's actions constitute an assault. • Analyse whether John's actions constitute a battery. • Analyse whether Andy's actions constitute a battery. • Consider possible defences. • Consider possible remedies. Bob and John: **AO1 Knowledge and understanding** • Identify elements required to establish negligence. • Explain the rules relating to duty of care. • Explain the rules relating to breach of duty. • Explain the rules relating to causation and remoteness. • Identify any potential defences. • Identify possible remedies. **AO2 Analysis and application and AO3 Evaluation** • Analyse whether a duty of care is present. • Analyse whether Bob's conduct constitutes a breach of duty. • Analyse whether the resulting damage was caused by the breach and is not too remote. • Assess whether any defences are applicable. • Discuss the appropriate remedy. Credit all valid responses.	**25**

Question	Answer	Marks
1	AO1	12
	AO2	5
	AO3	8

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Question	Answer	Marks
2	**Advise the parties of their rights, responsibilities and potential remedies.** Use Table A to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks. **Indicative content** Responses may include: Mary, Simon and Brian: **AO1 Knowledge and understanding** • Identify parties as occupier and visitor. • Explain the duty owed to visitors under the Occupiers Liability Act 1957. • Explain the special rules applicable to persons exercising a trade or calling under S2.3(b). • Explain the potential defences such as *volenti non fit injuria* and contributory negligence. • Credit alternative approach based on negligence. **AO2 Analysis and application and AO3 Evaluation** • Analyse whether Mary is liable for a breach of duty under the OLA 1957. • Analyse whether Simon is responsible for the harm caused in the exercise of his trade or calling. • Analyse the likely success of defences such as *volenti non fit injuria* and contributory negligence. • Credit alternative approach based on negligence. Mary, Regina and Tom: **AO1 Knowledge and understanding** • Identify the issue as one of private nuisance. • Identify the parties to a claim of private nuisance. • Explain the elements of private nuisance such as unreasonable interference, enjoyment of property and damage. • Explain the rules relating to locality, duration and malice. • Identify possible defences and remedies. **AO2 Analysis and application and AO3 Evaluation** • Identify the potential claimants and defendants. • Analyse the nature of the interference caused by the building works. • Analyse the nature of the interference caused by the parking of the car. • Assess the potential remedies. Credit all valid responses.	**25**

Question	Answer	Marks
2	AO1	12
	AO2	5
	AO3	8

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Section B

Table B

Use this table to give marks for each candidate response for **Questions 3**, **4** and **5**.

Level	AO1 Knowledge and understanding 12 marks	AO2 Analysis and application 5 marks	AO3 Evaluation 8 marks
	Description	**Description**	**Description**
4	**10–12 marks** • Accurate and detailed in most relevant areas. • Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.		
3	**7–9 marks** • Mostly accurate but may not be detailed in some relevant areas. • Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**4–5 marks** • Mostly focused and reasoned analysis throughout. • The analysis is supported by effective and well developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.	**6–8 marks** • Mostly focused and reasoned evaluation of all the relevant issues. • Effectively supported by relevant material. • Coherent argument.
2	**4–6 marks** • Some accuracy but lacks detail in relevant areas. • Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**2–3 marks** • Some reasoned analysis. • The analysis is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**3–5 marks** • Some evaluation, reasoned at times, of some of the relevant issues. • Supported by some relevant material. • Some coherent argument.
1	**1–3 marks** • Limited accuracy. • Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.	**1 mark** • Limited analysis. • The analysis is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.	**1–2 marks** • Limited evaluation of a relevant issue. • Limited or no use of relevant material. • Limited or no argument.
0	**0 marks** • No creditable content.	**0 marks** • No creditable content.	**0 marks** • No creditable content.

Question	Answer	Marks
3	**The distinction between primary and secondary victims of nervous shock is no longer necessary.** **Assess the validity of the statement above.** Use Table B to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • Explanation of the nature of nervous shock. • Explanation of different categories of victim. • Explanation of the development of the legal rules governing recovery of damages for primary and secondary victims. • Explain the elements of reasonable foreseeability, close ties of love and affection, proximity in time and space and witnessing with unaided senses. **AO2 Analysis and application and AO3 Evaluation** • Assess the development of the concept of nervous shock as recoverable harm. • Assess the development of the control factors governing recovery by secondary victims. • Assessment of underlying reasons for the distinction between primary and secondary victims. • Assessment as to whether the distinction is necessary. Credit all valid responses.	**25**
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
4	**Evaluate the legal rules governing the award of damages for negligence.** Use Table B to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • Identify the purpose of damages in negligence claims. • Explain the different heads of damages. • Explain the approach used by the courts to calculate losses. • Explain both the lump sum and structured payment. **AO2 Analysis and application and AO3 Evaluation** • Evaluate the difficulties involved in assessing loss. • Assess the policy reasons underlying the current approach to damages. • Assess whether the current approach is appropriate. Credit all valid responses.	**25**
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
5	***Rylands v Fletcher* is no longer a strict liability tort.** **Assess the validity of the statement above.** Use Table B to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks. **Indicative content** Responses may include: **AO1 Knowledge and understanding** • Explain the meaning of strict liability. • Explain the elements of *Rylands v Fletcher*. • Explain the development of a requirement of foreseeability of harm with reference to relevant case law. • Explain the available defences in relation to *Rylands v Fletcher.* **AO2 Analysis and application and AO3 Evaluation** • Analyse the importance of the foreseeability requirement in establishing a claim in *Rylands v Fletcher.* • Analyse the justifications for strict liability in the context of *Rylands v Fletcher.* • Analyse whether the availability of defences impact on whether *Rylands v Fletcher* is a tort of strict liability. • Assessment of whether *Rylands v Fletcher* is a tort of strict liability.	**25**
	AO1	12
	AO2	5
	AO3	8