Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/42**

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: Nathan and Maureen – purchase of café: **AO1 Knowledge and understanding** • Identify issue of negligent misstatement. • Explain elements of a special relationship. • Explain the rules applicable to a social relationship. • Explain the element of reasonable reliance. • Explain standard of care in context of recently qualified accountant and the requirement of a breach of duty. • Explain the elements of causation and remoteness. **AO2 Analysis and application and AO3 Evaluation** • Analyse whether the requirements for a special relationship are satisfied. • Assess whether duty was breached. • Assess whether the breach caused the damage. • Consider possible defences and remedies. Nathan and Maureen – confrontation: **AO1 Knowledge and understanding** • Identify forms of trespass to the person. • Explain elements of false imprisonment, assault and battery. • Identify any relevant defences and possible remedies. **AO2 Analysis and application and AO3 Evaluation** • Analyse whether a false imprisonment has occurred. • Assess whether an assault was committed. • Assess whether a battery has occurred. • Assess the extent of the loss which may be recoverable in this scenario. Credit all valid responses.	**25**
	AO1	12
	AO2	5
	AO3	8

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: Barchester University and Clive: **AO1 Knowledge and understanding** • Identify whether parties are occupier and visitor or trespasser. • Explain the duty owed to visitors under the Occupiers Liability Act 1957 (credit alternative claim under the OLA 1984). • Explain potential defences of *volenti not fit injuria*/contributory negligence. **AO2 Analysis and application and AO3 Evaluation** • Analyse the status of Clive as a visitor or trespasser. • Assess whether Barchester University is liable for a breach of duty under the OLA 1957. • Assess whether Clive consented to the risk or contributed to it. • Assess which losses are recoverable. Jim, Eoin and the Security Guard: **AO1 Knowledge and understanding** • Identify the issue as one of trespass to land. • Explain the elements of direct interference, intention and unlawful entry. • Explain the defences available for trespass to land. • Identify possible remedies. **AO2 Analysis and application and AO3 Evaluation** • Analyse the liability of Jim and Eoin for trespass to land. • Assess whether Eoin is liable for trespass to land arising from being pushed by Jim. • Assess whether any defences are available. • Consider the issue of an appropriate remedy. • Credit discussion of possible trespass to the person – battery – in relation to Jim pushing Eoin Credit all valid responses.	**25**
	AO1	12
	AO2	5
	AO3	8

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.

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Question	Answer	Marks
3	**To ensure a fair outcome, special considerations must apply to the defence of contributory negligence when the claimant is a child.** **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** • Identify the scope of contributory negligence as a partial defence. • Explanation of the elements of contributory negligence. • Identify torts in which the defence can be used. • Explanation of the use of subjective factors where the claimant is a child. • Explain the approach to apportionment of damages. **AO2 Analysis and application and AO3 Evaluation** • Development of the defence of contributory negligence as a partial defence • Analyse the justification for having special rules for child claimants • Assessment of whether the operation of the defence in relation to child claimants is fair. Credit all valid responses.	**25**
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
4	**The rules which determine who can sue or be sued for a private nuisance are unnecessarily strict.** **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 factors required to establish private nuisance. • The requirement of a proprietary interest in order to sue. • The position of an owner, a tenant and a visitor in relation to suing for private nuisance and reference to relevant case law. • Explanation of the rules relating to who can be sued – those which create, authorise or adopt a nuisance. **AO2 Analysis and application and AO3 Evaluation** • Evaluate the extent to which some parties impacted by a private nuisance cannot bring a claim. • Assess the policy reasons underlying the current approach who can sue. • Assess whether the current approach is appropriate. Credit all valid responses.	**25**
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
5	**The reasonable man test ensures a consistent approach to breach of duty in negligence.** **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 elements required to establish the tort of negligence. • Explain the meaning of 'the reasonable man' with reference to relevant case law. • Explain the meaning of an objective test. • Explain how the test is applied in the context of children, professionals and learners with reference to relevant case law. • Explain the factors considered by the courts when determining breach of duty – magnitude of risk, gravity of potential harm, cost of precautions and social value of the defendant's actions. **AO2 Analysis and application and AO3 Evaluation** • Assess the appropriateness of the reasonable man test in modern society. • Assess the extent to which the reasonable man test is consistent in its application. • Assess whether the test is particularly problematic in relation to specific categories of defendant such as children, professionals or learners.	**25**
	AO1	12
	AO2	5
	AO3	8

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