Cambridge International AS & A Level

Cambridge Assessment International Education
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LAW **9084/41**

Paper 4 Law of Tort **October/November 2017**

MARK SCHEME

Maximum Mark: 75

Published

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Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

- Recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation

Analysis, Evaluation and Application

- Analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules

Communication and Presentation

- Use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

Specification Grid

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives, but indicative marks per question attempted on Paper 3 are shown in brackets.

Assessment Objective	Paper 1	Paper 2	Paper 3	**Paper 4**	Advanced Level
Knowledge/ Understanding	50	50	50	**50 (13)**	50
Analysis/ Evaluation/ Application	40	40	40	**40 (10)**	40
Communication/ Presentation	10	10	10	**10 (2)**	10

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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	**Explain and critically analyse the rules which apply to the recovery of damages for negligent misstatement.** This question concerns the special rules which apply to the recovery of damages for a negligent misstatement rather than a negligent act. Candidates can introduce the general requirements for negligence and then examine the distinction between liability for negligent acts and negligent statements. Candidates could also discuss the distinction between consequential loss and pure economic loss here. The special requirements for establishing liability in relation to negligent misstatements as set out in Hedley Byrne v Heller should be explained and analysed. Other relevant cases should be examined and analysed here and issues such as statements made in a social setting, reliance and knowledge of reliance should be discussed. In order to achieve the higher bands candidates must examine the current rules from a critical perspective. If the candidate focuses on explanation only the mark will be restricted to Band 3.	**25**

Question	Answer	Marks
2	**Trespass to the person is necessary in order to protect the personal rights and security of the individual.** **Explain the legal principles associated with this tort and assess the validity of the statement above** This question requires a consideration of the main elements of the tort of trespass to the person and an evaluation of these elements with particular focus on the statement given – is trespass to the person always direct, intentional and actionable per se? Is it essential in order to protect the individual? Candidates could begin by examining the general definition of trespass to the person and then explaining – in outline – the three varieties of the tort. In explaining the legal rules candidates should refer to appropriate case law. Candidates should then assess the statement in the question from a critical perspective. In particular candidates should consider whether the tort is actually essential. Other actions are often available – negligence, Protection from Harassment Act 1997 and the criminal law all provide alternative actions – raising the question as to whether the tort of trespass to the person is actually necessary. Candidates should present both explanation and evaluation and attempt to reach a conclusion in relation to the question asked. Responses which are explanation only will be restricted to Band 3.	**25**

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Question	Answer	Marks
3	**Explain and critically evaluate the use of vicarious liability in the law of tort.** The focus of this question is vicarious liability. Candidates should introduce the meaning of vicarious liability as the imposition of liability for a tort on some person other than the tortfeasor. Candidates should provide an example of this such as the employer – employee situation. Candidates should outline the requirements which must be satisfied – a contract of service and the commission of the tort in the course of employment. Relevant case law should be included in the explanation. Candidates should then address the question – is the imposition of vicarious liability a contraction of the principle that liability should be based on fault? To an extent it is therefore the candidates should considered how it can be justified. Arguments which should be considered include • Employer has control over the situation • Employer can hire and fire • Likelihood of compensation for the claimant • Deterrence if poor practice in the workplace Candidates should provide both an explanation and a critical evaluation of the justification for vicarious liability and reach a conclusion in the context of the question asked.	**25**

Question	Answer	Marks
4	**Advise Charles and Yasmin as to their rights in this situation.** This question concerns the tort of private nuisance. Candidates should define private nuisance and explain the key facts considered by the court in deciding whether there has been an unlawful interference with a person's enjoyment of their land. The explanation of the rules should be supported by reference to case law. Issues which should be considered include: • Character of the neighbourhood • Duration of the activity • Statutory authority • Sensitivity of claimant • Malice • Public benefit Candidates should explain each element and then apply the law to the facts of the case. Candidates should reach a clear conclusion and consider what the appropriate remedy might be.	**25**

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Question	Answer	Marks
5	**Advise Alice as to the potential liability of XYZ Supermarket and Dr Smith.** This question concerns negligence. While it does occur within a premises the injury is caused by the action of standing on the chair rather that the state of the premises. Therefore a discussion of the Occupiers' Liability Act 1957 would not be appropriate. Candidates should explain the three essential elements of negligence. However a detailed account of all three is not required. The focus of the discussion should be the breach of duty and causation. Therefore a more detailed explanation of these aspects of negligence would be required. Reference to relevant case law should be included in the explanation. Candidates should address the following issues: • The use of the chair as the ladder is broken – is this a breach of duty by the employer? • Is there contributory negligence on the part of Alice? • The actions of Dr Smith – what standard of care should be applied here • Is the action of the doctor a break in the chain of causation? • A discussion of vicarious liability in relation to Dr Smith and the hospital may be credited • Damages Candidates should explain the relevant law in relation to each relevant issue and apply the law to the facts in a logical way. Clear conclusions should be drawn as to liability.	**25**

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Question	Answer	Marks
6	**Advise Pedro as to his rights against Devi in this situation.** This question concerns the issue of occupiers' liability. The candidates could deal with this as an OLA 1984 on the basis that Pedro has not waited for Devi to arrive and therefore does not have permission to go on to the roof. If candidates choose this approach, they should first explain key elements such as premises, occupier and trespasser. The duty should then be explained with reference to S1(3) and relevant decided case law. The issue of what Devi said to Pedro and whether this constitutes a warning should be discussed. Also given that Pedro is a roofer and should be aware of the risks should also be highlighted. Possible defences of volenti and contributory negligence should also be discussed. Alternatively it could be argued that Pedro has implied permission to go on to the roof (given the arrangement with Devi) and therefore he is a visitor. Candidates should explain the nature of the duty under the OLA 1957 and consider the factors outlined above in this context. The issue of the duty owed to a skilled visitor should be discussed here An alternative approach using negligence should also be credited. In either case candidates must give an accurate account of the relevant legal rules and apply the rules in a logical way to the facts given and reach a clear conclusion.	**25**

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