Cambridge International AS & A Level

Cambridge Assessment International Education
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/41**

Paper 4 **October/November 2019**

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 October/November 2019 series for most Cambridge IGCSE™, Cambridge International A and AS Level components and some Cambridge O Level components.

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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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Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and understanding

- An ability to recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation

Analysis, evaluation and application

- An ability to 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.

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	30	50	**50 (13)**	50
Analysis/Evaluation/ Application	40	60	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	**The tort of private nuisance is no longer necessary as claims are generally covered by the tort of negligence.** **Explain the elements of private nuisance and assess the validity of this statement.** This question concerns the tort of private nuisance with some reference to be made to negligence. The main focus of the question is private nuisance so candidates should begin by explaining the purpose of the tort and the main elements, including: • Balancing the competing claims of neighbours • Importance of reasonable use of land • Who can claim/be sued • Indirect interference • Unreasonable use – relevant factors such as locality, duration, sensitivity and malice Relevant case law should be used to support the explanation of the law. Candidates should then address the questions asked – can actions generally be brought in negligence instead. Issues to be considered. • Overlap between nuisance and negligence • Both require damage • Reasonableness a factor in both • Level of harm required • Foresight of harm required Candidates should attempt to come to a reasoned conclusion and address the issue raised by the question as to whether the tort of private nuisance is not longer necessary as claims can be brought under negligence instead. Responses based on explanation only should be awarded top of band 3 as critical analysis is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
2	**Explain and assess the factors considered by the court when determining whether or not a duty of care should be imposed in the tort of negligence.** This question requires candidates to examine the tort of negligence with a particular focus on the rules governing the duty of care. Candidates can introduce the topic through a discussion of decision in Donoghue v Stevenson. Candidates should be credited for an explanation of any of the following: • The development of the test • Neighbour test to Anns v Merton • The three part test in Caparo v Dickman Relevant case law should be used to support the explanation of the law. Candidates should then examine the elements of the test from a critical perspective, including: • Reasonable foresight • Proximity • Fair and reasonable • Importance of policy issues • Need to restrict the duty • Fairness of the three part test Candidate must address both the explanatory and evaluative aspects of the question. Critical analysis is required to achieve the higher mark bands. A response which is based on explanation only should be credited at top of band 3 maximum.	**25**

Question	Answer	Marks
3	**Explain and evaluate the range of remedies available in tort.** This question concerns the remedies available in the law of tort. Candidates should consider the remedies of damages and injunction. Candidates should explain the meaning of damages and consider the purpose of damages in the law of tort. Credit can be awarded for a consideration of any of the following: • Purpose of compensatory damages • Types of compensatory damages • Method of calculation of compensatory damages • Purpose of non-compensatory damages • Types of non-compensatory damages Candidates should then examine the use of the injunction in the law of tort. Credit should be awarded for a discussion of any of the following: • Purpose of the injunction • Different types of injunction • Factors considered by the court when awarding an injunction Candidates should consider the use of both remedies and should be credited for any discussion as to the relative importance and use of the remedies. If a candidate explains and evaluates one remedy only this can be credited as band 4. Critical analysis is required to achieve the higher mark bands. Explanation only will be confined to Band 3.	**25**

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Question	Answer	Marks
4	**Advise ABC Ltd as to the likely success of an action against Wilhelm.** This question concerns the tort of negligence and in particular the recovery of damages for a negligent misstatement. Candidates can introduce the tort of negligence and can be credited for any of the following: • The elements of negligence – duty/breach/damage • Recovery for pure economic loss • The rule in Hedley Byrne – the special relationship Relevant case law should be used to support the explanation of the law. Candidates should apply the law to the facts of the scenario and discuss the following: • Does a special relationship exist in relation to ABC and Wilhelm? • Is there special skill/expertise? • Is it reasonable to rely on the statement? • Is it foreseeable that ABC will rely on the statement? • Is Wilhelm aware of the purpose for which the accounts are being prepared? • If a duty is owed – has it been breached? • Did the breach of duty cause damage which is reasonably foreseeable? 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
5	**Advise Yolande as to her rights in this situation.** The focus of this question is occupiers' liability. Candidates should introduce the purpose of occupiers' liability and credit can be awarded for any of the following: • Definitions of occupier, premises, visitor and trespasser • Consideration of the Occupiers Liability Act 1984 on the basis Yolande does not have permission to come on to the premises at the weekend • Consideration of the Occupiers Liability Act 1957 on the basis that the unlocked door could be considered as implied permission for the contractors to enter the premises at any time • Consideration of the nature of the risk and whether the occupier should have taken precautions • Possible defences Relevant case law should be used to support the explanation of the law Candidates should apply the law to the facts of the scenario and consider the following: • Is this a case of a visitor or a trespasser? • If OLA 1957 – risks associated with a trade, liability of independent contractor? • If OLA 1984 – have the elements of S1(3) been satisfied? • Are there any defences – contributory negligence or volenti? Candidates may be credited for an alternative approach using general negligence. 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 this situation.** This question relates the tort of negligence. Candidates should introduce the tort of negligence and explain the three essential elements. The explanation of the law should be supported with reference to relevant case law. Credit can be awarded for an explanation and application of the following: • Does the employer owe a duty of care here? • Has there been a breach of duty – factors such as the gravity of the risk could be considered • Are the causation and remoteness requirements satisfied? • Does the eggshell skull rule apply here? • Is DEF vicariously liable for the actions of the manager? • Possible defences of volenti/contributory negligence • The damages award 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**