Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/41**

Paper 4 **October/November 2020**

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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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 factors considered by the court when deciding whether a duty of care should be imposed for a negligent misstatement. Assess the effectiveness of these factors.** This question concerns the tort of negligence with particular reference to its application in the context of negligent misstatement. Potential content: • General negligence requirements • Duty of care, breach of duty, damage • Special requirements for negligent misstatement • Special relationship • Reliance • Pure economic loss. Relevant case law should be used to support the explanation of the law. Candidates should then evaluate these factors, examining any criticisms and assessing whether each factor operates effectively. Potential content: • Need for a special rule for statements • Pure economic loss • Establishing the special relationship • Issues relating to reliance • Social situations • Remedy in contract. Candidates should attempt to come to a reasoned conclusion to answer the question asked. Critical analysis is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
2	**Different levels of protection should be afforded to certain categories of visitor in the context of the Occupiers' Liability Act 1957.** **Describe the duty owed to visitors and assess the validity of the statement above.** This question requires candidates to examine the issue of occupiers' liability and different duties owned under the OLA 1957. Potential content: • Key terms – occupier, premises, visitor • Duty owed under the OLA 1957 • Children • Persons exercising a calling or trade • Independent Contractors • Discharging the duty. Relevant case law should be used to support the explanation of the law. Candidates should then examine the question of whether it is appropriate to vary the duty for different categories of visitor. Potential content: • Different categories of visitor • Special provision for children • Reference to trespassers as being outside scope of 1957 Act • Modifying the duty. Candidates should try to come to a reasoned conclusion. Critical analysis is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
3	**Explain the defence of contributory negligence and assess whether it achieves fairness between claimants and defendants.** This question concerns the defence of contributory negligence. Candidates are required to explain the defence and evaluate the elements required for it to be used successfully. An outline of the elements of negligence may be credited, a detailed account is not required. Potential content: • A partial defence – Law Reform (Contributory Negligence) Act 1945 • Apportionment of fault • Reduction of damages • Lack of care by claimant • Lack of care contributes to damage • Children • Overlap with other defences. Relevant case law should be used to support the explanation of the rules. Candidates should then evaluate aspects of the defence. Potential content: • Difficulty of assessing claimants contribution • Issues with causation • Fairness of apportionment of fault • Excessive reduction of damages. Critical analysis is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
4	**Advise the parties as to their rights and liabilities in relation to negligence in this situation.** Potential content: • The elements of negligence – duty/breach/damage • Duty of care – employer and employee • Breach of duty – reasonable employer • Issues relating to causation • Issues relating to remotes of damages. 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: • Is there a duty of care? • Has there been a breach of duty – reasonable employer? • Could there be a difficulty proving causation? • Nervous shock – primary or secondary victim? • Are the Alcock factors satisfied? Candidates must explain the law and, in order to achieve the higher bands, candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**

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Question	Answer	Marks
5	**Advise the parties as to their rights and liabilities in relation to trespass to the person in this situation.** Candidates should introduce the tort of trespass to the person and then explain each of the varieties of the tort. Potential content: • Definition of assault • Definition of battery • Definition of false imprisonment • Intention • Direct • Actionable per se • 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. Potential content: • Is there evidence of an assault – was there sufficient apprehension of immediate harm? • When the firework is deflected – is this a battery? • Alternative action in negligence? • Is there evidence of false imprisonment – was there total restraint? • Are there any defences? Candidates must explain the law and, in order to 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 remedies in relation to private nuisance in this situation.** Candidates should introduce the tort of private nuisance and explain the essential elements. Potential content: • Meaning of nuisance • Unreasonable interference • Factors – locality, duration, malice, sensitivity • Who can sue/be sued • Defences • Public benefit • Remedies. Relevant case law should be used to support the explanation of the law. Candidates should apply the law to the facts and reach a logical conclusion. Potential content: • Does the conduct of the respective parties constitute unreasonable interference? • Locality • Coming to the nuisance? • Public benefit? • Duration of the interference? • Malice? • Possible defences/remedies? Candidates must explain the law and, in order to achieve the higher bands, candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion.	**25**