Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/42**

Paper 4 **October/November 2021**

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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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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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	**Describe the different types of damages available in tort and assess the extent to which a single lump sum payment can provide adequate compensation for the claimant.** This question concerns the common law remedy of damages. Candidates should describe the different types of damages which are available. Potential Content • Purpose of damages • Pecuniary damages • Non-pecuniary damages • Factors considered by the court • Calculation of losses • Lump sum payment Relevant case law should be used to support the explanation of the law. Candidates should then examine the specific issue raised in the question and assess whether the lump sum payment can provide adequate compensation. • Advantages of the lump sum payment – clean break • Problems with the single lump sum • Establishing the special relationship • Recommendations for reform – alternative approaches • Structured payments Candidates should attempt to come to a reasoned conclusion and therefore answer the question asked. Critical analysis is required to achieve the higher mark bands.	**25**

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Question	Answer	Marks
2	**Describe the factors taken into account when a judge is deciding whether there has been a breach of the duty of care in negligence. Assess the extent to which the application of these factors provides a just outcome for the parties.** This question relates to the tort of negligence and in particular the issue of standard of care and breach of duty. Candidates should outline the three elements of negligence but a detailed account of all three is not required as the focus of the question is specifically the breach of duty. Potential Content • Standard of care – reasonable man test • Variations in the duty – professionals. Learners • Children • Factors taken into account – magnitude of risk, gravity of harm, social utility, cost of precautions • Meaning of reasonable care Relevant case law should be used to support the explanation of the law. Candidates should then examine the factors taken into account by the court ensure a just result. • Difficulties with the reasonable man test • Fairness for the claimant – the objective standard – is it sufficiently precise to ensure a just outcome? • Fairness for the defendant – inexperience is not relevant in assessing breach – is this fair from the defendant's perspective? • Balancing the interests of the parties Candidates should try to come to a reasoned conclusion. Assessment is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
3	**'Lawful visitors to the land of another can still become trespassers.'** **Describe the elements of the tort of trespass to land and assess the validity of the statement above.** This question concerns the tort of trespass to land. Candidates are required to describe the elements of the tort and assess the issue of permission and how this may be exceeded by an entrant. Potential Content • Purpose of the tort of trespass • Direct interference • Unlawful entry • Intention • Permission • Possible defences Relevant case law should be used to support the explanation of the rules. Candidates should then assess the validity of the statement. Potential Content • Permission and trespass • Permission for a particular purpose • Effect of exceeding permission Assessment is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
4	**Advise the parties as to their rights, responsibilities and remedies in relation to private nuisance.** This question concerns the tort of nuisance. Candidates should explain the main elements of the tort and then apply the legal rules to the facts of the scenario. Potential Content • Purpose of the tort of nuisance • Who can sue – be sued • Unreasonable interference • Relevant factors – location, duration, utility, sensitivity, malice • Possible defences • Possible remedies 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: • Has here been an unreasonable interference • Is the utility of the train service relevant? • Is there an issue of sensitivity in relation to the specialist equipment? • Is interference with internet signal actionable? • Are there any potential defences available to the defendant? • What remedies would be appropriate if there is a finding of nuisance? 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
5	**Advise the parties as to their rights and liabilities in relation to negligence.** The focus of this question is negligence. Candidates should introduce the tort of negligence and explain all three elements before applying the law to the facts. Potential Content • Duty of care – test for establishing the duty • Standard of care – breach of duty • Causation • Remoteness • Defence – volenti non fit injuria • Vicarious liability • Joint liability • Remedy – 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. Potential Content • Is there a duty of care in this case – who owes the duty and to whom? • What is the standard of care and has there been a breach? • Is the club vicariously liable for the actions of Bob? • Has Alan consented to the risk of harm? • What remedy would the court award if the requirements of negligence are 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**

Question	Answer	Marks
6	**Advise the parties as to their rights and remedies in relation to occupier's liability.** This question relates the tort of occupiers' liability. Candidates should first determine which Act applies to this situation. If Connor is a visitor then the Occupiers' Liability Act 1957 should be examined. If Connor is a trespasser then the Occupiers' Liability Act 1984 should be examined. While the OLA 1984 may be a more realistic approach, candidates may be credited for a discussion of the OLA 1957. Potential Content • Definitions – occupier, premises, visitor, trespasser • Permission – express and implied • The statutory duty under the relevant Act • The danger • Allurement • Discharge of the duty by the occupier • Duty in relation to children – parental supervision • Defence – contributory negligence • 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 Connor have permission – is he a visitor or a trespasser? • The danger – has the occupier done what is reasonable in the circumstances • Was there sufficient parental supervision • Was there an allurement • Was Connor negligent? 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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