Cambridge Assessment International Education

Cambridge International AS & A Level

LAW **9084/42**

Paper4 Law of Tort **October/November 2022**

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

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.

Question	Answer	Marks
1	**Describe the elements of the tort of private nuisance. Assess the extent to which the right to sue in this tort is linked to ownership of land.** This question concerns the rules relating the tort of private nuisance Candidates should describe the main elements if the tort, using relevant case law to illustrate the explanation of the legal rules. Potential Content • Definition of private nuisance • Meaning of indirect interference • Meaning of unreasonable interference • Locality • Duration • Sensitivity • Malice Candidates should then consider the issue of who can sue for private nuisance and assess the extent to which the right to use is linked to a proprietary right in land. Candidates should consider the conflicting decisions in relation to this issue. Potential Content • Who can sue and who can be sued? • Right of an owner not in occupation • Right of a tenant who does not own the property • Right of family members of the occupier Candidates should reach a coherent conclusion as to the issue raised in the question Assessment is required to achieve the higher mark bands.	**25**

Question	Answer	Marks
2	**Trespass to the person is one of the most important torts in terms of its aims and what it seeks to protect.** **Outline the elements of the tort of trespass to the person. Assess the validity of the statement above.** This question requires candidates to outline the main elements of trespass to the person, including: • Assault – definition and use • Battery – definition and use • False imprisonment – definition and use • Defences Relevant case law should be used to support the explanations. Candidates should then consider the issue of the relative importance of this tort in the context of its aims and what it seeks to protect Potential Content • Aims of the tort – protecting bodily integrity of the person • Provides a remedy on the basis of interference without the requirement to prove harm • Particular application in sport/medical treatment • Availability of alternative actions Candidates should examine the competing arguments and reach a reasoned conclusion in relation to the specific issue raised in the question	**25**

Question	Answer	Marks
3	**Describe the legal rules governing the recovery of damages for nervous shock.** **Assess the extent to which policy rather than foreseeability of harm has influenced the development of the current rules.** This question requires candidates examine the issue of damages for nervous shock from a critical perspective. A detailed account of general negligence is not required. Candidates should describe the rules governing who can recover damages for nervous shock Potential Content • Development of the current rules • Primary and secondary victims • The Alcock 'control mechanisms' • Rescuers • Bystanders Candidates should then consider relevance of policy issues to the development of the rules and assess whether it is a greater influence than the foreseeability of harm in this context Potential Content • Identification of policy • Floodgates argument • Fear of fraudulent claims • Difficulties in assessing psychiatric harm • Law Commission Report Candidates should present a reasoned argument and teach a coherent conclusion in relation to the key issue raised in the question	**25**

Question	Answer	Marks
4	**Advise the parties as to their rights, responsibilities and remedies in relation to occupiers' liability.** The focus of this question is occupiers' liability. Candidates should first examine which Act applies – are the children visitors or trespassers? The issue of permission should be examined and in particular the issue of whether Jayden has implied permission to enter the grounds or whether the children are in fact trespassers as they have been told to leave by the security staff. Potential content • Definitions – occupier, premises, visitor, trespasser • Duty owed to trespasser under the 1984 Act • Liability to child trespasser • Defences – volenti? • Parental supervision • Damages – personal injury and damage to property • Vicarious liability for the acts of the security guards Relevant case law should be used to support the explanation of the law. Candidates should then address the key elements of the scenario and apply the relevant law to the facts, including: • Which Act applies and why? • Has the occupier fulfilled their duty under the 1984 Act? • Has the duty to the child trespasser been discharged? • Should parental supervision be a factor? • Is the hospital vicariously liable for the acts/omissions of the security staff? • Are there any defences available? • What losses will be covered if liability is established? An alternative approach using the Occupiers Liability Act 1957 may be credited. In order to reach the higher mark bands using this approach, candidates should make a clear and convincing case for categorising Jayden as a visitor. 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 Ada as to her liability in relation to negligence.** The focus of this question negligence and liability for nervous shock. Candidates should introduce the tort of negligence and explain each of the essential elements of the tort. • Elements of negligence – duty/breach/damage • Liability for physical injuries • Meaning of nervous shock • Primary and secondary victims • Proximity in time, space and relationship • Defences – contributory negligence Relevant case law should be used to support the explanation of the law. Candidates should apply the relevant law to the facts of the scenario, with particular reference to: • Can the elements of negligence be established? • Is there a genuine medical condition present? • Are claimants primary or secondary victims • Can liability for nervous shock be established • Is there contributory negligence present in relation to both injured parties? 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 remedies in relation to the rule in Rylands v Fletcher.** The focus of this question is Rylands v Fletcher. Potential Content • Potential claimants should be identified • Potential defendant should be identified • Explanation of purpose of Rylands v Fletcher • Bringing something on to land • Non-natural use • Mischief • Escape • Foreseeability of harm • Defences • Remedies Relevant case law should be used to support the explanation. Candidates should then apply the relevant law to the facts of the scenario. Potential Content • Identify the claimant/defendant • The accumulation of tyres – a non-natural use? • Likelihood of mischief in event of escape? • Has there been an escape? • Foreseeability of harm? • Relevant defences • Recoverable damage 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**

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