



# Cambridge International AS & A Level

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**LAW**

**9084/04**

Paper 4 Law of Tort

**For examination from 2023**

MARK SCHEME

Maximum Mark: 75

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**Specimen**

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This document has **10** pages.

## 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.

### Guidance on using levels-based mark schemes

Marking of work should be positive, rewarding achievement where possible, but clearly differentiating across the whole range of marks, where appropriate.

The marker should look at the work and then make a judgement about which level statement is the best fit. In practice, work does not always match one level statement precisely so a judgement may need to be made between two or more level statements.

Once a best-fit level statement has been identified, use the following guidance to decide on a specific mark:

- If the candidate's work **convincingly** meets the level statement, award the highest mark.
- If the candidate's work **adequately** meets the level statement, award the most appropriate mark in the middle of the range (where middle marks are available).
- If the candidate's work **just** meets the level statement, award the lowest mark.

### Assessment objectives

#### AO1 Knowledge and understanding

- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

#### AO2 Analysis and application

- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

#### AO3 Evaluation

- Evaluate legal concepts, principles and rules.
- Communicate legal argument coherently on the basis of evidence.

**Section A****Table A**Use this table to give marks for each candidate response for **Questions 1** and **2**.

<b>Level</b>	<b>AO1 Knowledge and understanding 12 marks</b>	<b>AO2 Analysis and application 5 marks</b>	<b>AO3 Evaluation 8 marks</b>
	<b>Description</b>	<b>Description</b>	<b>Description</b>
<b>4</b>	<b>10–12 marks</b> <ul style="list-style-type: none"> <li>Accurate and detailed in most relevant areas.</li> <li>Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.</li> </ul>		
<b>3</b>	<b>7–9 marks</b> <ul style="list-style-type: none"> <li>Mostly accurate but may not be detailed in some relevant areas.</li> <li>Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.</li> </ul>	<b>4–5 marks</b> <ul style="list-style-type: none"> <li>Mostly focused and reasoned application throughout.</li> <li>The application is supported by effective and well developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.</li> </ul>	<b>6–8 marks</b> <ul style="list-style-type: none"> <li>Mostly focused and reasoned evaluation of all the relevant issues.</li> <li>Effectively supported by relevant material.</li> <li>Coherent argument.</li> </ul>
<b>2</b>	<b>4–6 marks</b> <ul style="list-style-type: none"> <li>Some accuracy but lacks detail in relevant areas.</li> <li>Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.</li> </ul>	<b>2–3 marks</b> <ul style="list-style-type: none"> <li>Some reasoned application.</li> <li>The application is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.</li> </ul>	<b>3–5 marks</b> <ul style="list-style-type: none"> <li>Some evaluation, reasoned at times, of some of the relevant issues.</li> <li>Supported by some relevant material.</li> <li>Some coherent argument.</li> </ul>
<b>1</b>	<b>1–3 marks</b> <ul style="list-style-type: none"> <li>Limited accuracy.</li> <li>Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.</li> </ul>	<b>1 mark</b> <ul style="list-style-type: none"> <li>Limited application.</li> <li>The application is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.</li> </ul>	<b>1–2 marks</b> <ul style="list-style-type: none"> <li>Limited evaluation of a relevant issue.</li> <li>Limited or no use of relevant material.</li> <li>Limited or no argument.</li> </ul>
<b>0</b>	<b>0 marks</b> <ul style="list-style-type: none"> <li>No creditable content.</li> </ul>	<b>0 marks</b> <ul style="list-style-type: none"> <li>No creditable content.</li> </ul>	<b>0 marks</b> <ul style="list-style-type: none"> <li>No creditable content.</li> </ul>

Question	Answer	Marks
1	<p><b>Advise the parties of their rights, responsibilities and potential remedies.</b></p> <p>Use Table A to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p><b>Indicative content</b></p> <p>Responses may include:</p> <p>Anne and Dan:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Identify the loss as pure economic loss.</li> <li>• Identify the potential claim as negligent misstatement.</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation</b></p> <ul style="list-style-type: none"> <li>• Factors required to establish a duty of care – special relationship as per <i>Hedley Byrne v Heller</i>.</li> <li>• Nature of relationship – possible social relationship.</li> <li>• If duty established, discuss breach and damage.</li> </ul> <p>Mia, Jim and Anne:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Elements of general negligence in relation to Anne’s conduct.</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation</b></p> <ul style="list-style-type: none"> <li>• Liability for the physical injury to Jim.</li> <li>• Liability for nervous shock – primary and secondary victims, nature of condition, proximity.</li> <li>• Remedies – damages – what losses would Mia be able to recover if Anne is found liable.</li> </ul> <p>Accept all valid responses.</p>	<b>25</b>
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
2	<p><b>Advise the parties of their rights, responsibilities and potential remedies.</b></p> <p>Use Table A to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p><b>Indicative content</b></p> <p>Responses may include:</p> <p>Rio and Nat:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Identify parties as occupier and trespasser.</li> <li>• Explain the duty owed to trespassers under the Occupiers' Liability Act 1984.</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation</b></p> <ul style="list-style-type: none"> <li>• Consider the nature of the risk and whether adequate steps have been taken by Rio to prevent harm.</li> <li>• Consider the issue of parental supervision.</li> <li>• Remedy – which losses are recoverable if Nat's claim is successful.</li> </ul> <p>Rio and Pete:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Identify and explain trespass to the person.</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation</b></p> <ul style="list-style-type: none"> <li>• Possible assault negated by words.</li> <li>• Possible false imprisonment depending on alternative route to leave.</li> <li>• Possible battery when Rio pushes Pete.</li> <li>• Possible defence for Rio – self defence.</li> <li>• Remedy – although trespass to the person is actionable per se there has been no harm to either party.</li> </ul> <p>Accept all valid responses.</p>	<b>25</b>
	AO1	12
	AO2	5
	AO3	8

**Section B****Table B**

Use this table to give marks for each candidate response for **Questions 3, 4 and 5**.

<b>Level</b>	<b>AO1 Knowledge and understanding 12 marks</b>	<b>AO2 Analysis and application 5 marks</b>	<b>AO3 Evaluation 8 marks</b>
	<b>Description</b>	<b>Description</b>	<b>Description</b>
<b>4</b>	<b>10–12 marks</b> <ul style="list-style-type: none"> <li>Accurate and detailed in most relevant areas.</li> <li>Thorough knowledge and understanding of the most appropriate legal concepts, principles and rules, key examples, cases and/or statutory authority, and legal terminology.</li> </ul>		
<b>3</b>	<b>7–9 marks</b> <ul style="list-style-type: none"> <li>Mostly accurate but may not be detailed in some relevant areas.</li> <li>Good knowledge and understanding of appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.</li> </ul>	<b>4–5 marks</b> <ul style="list-style-type: none"> <li>Mostly focused and reasoned analysis throughout.</li> <li>The analysis is supported by effective and well developed use of legal concepts, principles and rules, key examples, cases and/or statutory authority.</li> </ul>	<b>6–8 marks</b> <ul style="list-style-type: none"> <li>Mostly focused and reasoned evaluation of all the relevant issues.</li> <li>Effectively supported by relevant material.</li> <li>Coherent argument.</li> </ul>
<b>2</b>	<b>4–6 marks</b> <ul style="list-style-type: none"> <li>Some accuracy but lacks detail in relevant areas.</li> <li>Some knowledge and understanding of mostly appropriate legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.</li> </ul>	<b>2–3 marks</b> <ul style="list-style-type: none"> <li>Some reasoned analysis.</li> <li>The analysis is supported by some partially developed use of legal concepts, principles and rules, examples, cases and/or statutory authority.</li> </ul>	<b>3–5 marks</b> <ul style="list-style-type: none"> <li>Some evaluation, reasoned at times, of some of the relevant issues.</li> <li>Supported by some relevant material.</li> <li>Some coherent argument.</li> </ul>
<b>1</b>	<b>1–3 marks</b> <ul style="list-style-type: none"> <li>Limited accuracy.</li> <li>Limited knowledge and understanding of legal concepts, principles and rules, examples, cases and/or statutory authority, and legal terminology.</li> </ul>	<b>1 mark</b> <ul style="list-style-type: none"> <li>Limited analysis.</li> <li>The analysis is supported by limited use or makes no use of legal concepts, principles and rules, examples, cases and/or statutory authority.</li> </ul>	<b>1–2 marks</b> <ul style="list-style-type: none"> <li>Limited evaluation of a relevant issue.</li> <li>Limited or no use of relevant material.</li> <li>Limited or no argument.</li> </ul>
<b>0</b>	<b>0 marks</b> <ul style="list-style-type: none"> <li>No creditable content.</li> </ul>	<b>0 marks</b> <ul style="list-style-type: none"> <li>No creditable content.</li> </ul>	<b>0 marks</b> <ul style="list-style-type: none"> <li>No creditable content.</li> </ul>

Question	Answer	Marks
3	<p><b>Discuss the view that the rule in <i>Rylands v Fletcher</i> is no more than a form of nuisance.</b></p> <p>Use Table B to mark candidate responses to this question.            AO1 out of 12 marks.            AO2 out of 5 marks.            AO3 out of 8 marks.</p> <p><b>Indicative content</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Explanation of the nature of the claim in <i>Rylands v Fletcher</i>.</li> <li>• Who can sue and who can be sued.</li> <li>• Elements of the claim – dangerous thing, accumulation, escape and damage.</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation</b></p> <ul style="list-style-type: none"> <li>• Development of the claim and reference to strict liability and reasonable foreseeability.</li> <li>• Discussion of the relationship between <i>Rylands v Fletcher</i> and nuisance.</li> <li>• Assessment as to whether <i>Rylands v Fletcher</i> is a subset of nuisance or a separate tort.</li> </ul> <p>Accept all valid responses.</p>	<b>25</b>
	AO1	12
	AO2	5
	AO3	8



Question	Answer	Marks
4	<p><b>Evaluate the rules governing causation in the tort of negligence.</b></p> <p>Use Table B to mark candidate responses to this question.            AO1 out of 12 marks.            AO2 out of 5 marks.            AO3 out of 8 marks.</p> <p><b>Indicative content</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Introduce tort of negligence – outline elements but detailed account not required.</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation</b></p> <ul style="list-style-type: none"> <li>• Analyse the meaning of causation.</li> <li>• Analyse the test for factual causation – the ‘but for’ test.</li> <li>• Analyse the rules governing intervening acts (<i>novus actus interveniens</i>).</li> <li>• Analyse the rules governing material contribution in relation to concurrent and multiple causes.</li> <li>• Evaluate the issue of fairness from perspective of both claimant and defendant.</li> </ul> <p>Accept all valid responses.</p>	<b>25</b>
	AO1	12
	AO2	5
	AO3	8

Question	Answer	Marks
5	<p><b>The defence of contributory negligence ensures that the court achieves justice by examining the conduct of both parties.</b></p> <p><b>Assess the validity of the statement above.</b></p> <p>Use Table B to mark candidate responses to this question. AO1 out of 12 marks. AO2 out of 5 marks. AO3 out of 8 marks.</p> <p><b>Indicative content</b></p> <p>Responses may include:</p> <p><b>AO1 Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Development of the defence of contributory negligence as a partial defence – Law Reform (Contributory Negligence) Act 1945.</li> </ul> <p><b>AO2 Analysis and application and AO3 Evaluation</b></p> <ul style="list-style-type: none"> <li>• Apportionment of blame.</li> <li>• Discussion of examples of use of the defence.</li> <li>• Application where the claimant is a child.</li> <li>• Possibility of 100% reduction.</li> <li>• Assessment of whether the defence provides a fair result for both parties.</li> <li>• Difficulties associated with apportioning blame.</li> </ul> <p>Accept all valid responses.</p>	<b>25</b>
	AO1	12
	AO2	5
	AO3	8