UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2012 question paper

for the guidance of teachers

9084 LAW

9084/42 Paper 4, maximum raw mark 75

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 must be read in conjunction with the question papers and the report on the examination.

- Cambridge will not enter into discussions or correspondence in connection with these mark schemes.

Cambridge is publishing the mark schemes for the May/June 2012 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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International Examinations

Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

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

Analysis, Evaluation and Application

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.

Specification Grid

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.

Assessment Objective	Paper 1	Paper 2	Paper 3	**Paper 4**	Advanced Level
Knowledge/ Understanding	50	50	50	**50**	50
Analysis/ Evaluation/ Application	40	40	40	**40**	40
Communication/ Presentation	10	10	10	**10**	10

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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1:

The answer contains no relevant material.

Band 2:

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:

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:

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:

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.

Maximum Mark Allocations:

Question	1	2	3	4	5	6
Band 1	0	0	0	0	0	0
Band 2	6	6	6	6	6	6
Band 3	12	12	12	12	12	12
Band 4	19	19	19	19	19	19
Band 5	25	25	25	25	25	25

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Section A

1 Explain the difference in law between economic loss and purely economic loss in the tort of negligence. Critically analyse whether or not the distinction is truly justifiable with reference to case law.

Candidates should define economic loss (a financial loss by a claimant that results from neither personal injury nor damage to property) and offer an explanation for the courts' reluctance to compensate such losses (e.g. floodgates fears).

Candidates are expected to discuss the *Spartan Steel* case in which the defendants' negligence caused a power cut that resulted in three types of loss, all of which were easily foreseeable. They were found liable for two types of loss, but not the third; this was declared to be a purely economic loss and therefore not recoverable.

It is anticipated that candidates will trace the developments of the issue of economic loss through key case law such as:

Candler v Crane, Christmas & Co – responsibility to contractual client only and not to third party who suffered loss.

Hedley Byrne v Heller & Partners – economic loss recoverable in cases of negligent misstatements in 'special relationships'.

Anns v London Borough of Merton **–** defective premises considered property damage and thus allowed claim on that basis.

Henderson v Merrett Syndicates Ltd, Williams and Reid v Natural Life Health Foods Ltd and *Mistin and Londonwaste v AMEC Civil Engineering* evidence the extension of *Hedley Byrne* principles to the negligent provision of services as well as advice, but not to other negligent acts.

Candidates must approach this issue with a critical eye if marks in band 5 are to be awarded.

2 'Willing participants in activities can never be victims in tort.'
Using illustrative case law, assess the truth of this view.

Candidates are expected to identify the question as relating to a defence in tort known as volenti non fit injuria. Better candidates will translate the Latin as meaning "to one who is willing (volenti), actionable harm (injuria) is not done (non fit)". Commonly known as the defence of consent, which is of general application within the law of tort. Thus if it can be established that the complainant consented, the defendant will not be liable.

Objective test established: was the outward behaviour of the complainant such that it is reasonable for the defendant to conclude that he consented to the risk that he undertook? Difficulty arises, however, because it is frequently clear that a person knows of a risk, but is not conclusive proof that consent was actually given. Cases such as *Smith v Baker (1891), ICI v Shatwell (1965)* and *Kirkham v Chief Constable of Greater Manchester (1990)* should be referenced as examples.

Special cases such as sporting activity and rescue cases in the tort of negligence should also be explored and better candidates might also be expected to reference S1(6) Occupiers Liability Act (1984).

Responses that attempt no real assessment as required by the question will be limited to maximum marks within mark band 3.

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3 The tort of private nuisance sets out to balance neighbours' rights to enjoy their property. Critically evaluate the success or otherwise of the tort in achieving this aim.

The tort of private nuisance arises from the fact that wherever we live, work or play, we have neighbours and the way that we behave on our land may affect them when using theirs and vice versa.

Candidates are expected to analyse the elements of the tort, namely indirect interference, reasonableness of actions and the extent to which interests are balanced by taking into account the complainant's sensitivity, locality and duration of the alleged tort, and the extent to which some sort of damage needs to be caused.

Candidates might also consider the extent to which available defences (such as prescription and consent) and remedies (such as damages, injunction and abatement) enable the aim of balance to be achieved.

Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

Section B

4 Discuss the rights and liabilities of Lou, Milly and Findlay as a consequence of the above facts.

Candidates should briefly outline the essentials of the tort of negligence: duty of care, breach of duty and resultant loss. Focus should then be turned to the breach of the duty of care in particular; the defendant's breach of duty must have actually caused the damage suffered. Milly had driven negligently and as a consequence, Lou suffers personal injury and property damage.

On the face of it, Milly would appear liable for Lou's ultimate disablement, unless it could be established that the negligent treatment by Dr Findlay at the Royal Kennet Hospital broke the chain of causation. Candidates must examine the 'but for' test (*Barnett v Chelsea & Kensington Hospital Management Committee, Brooks v Home Office)* and its potential application in this case. Lou wouldn't have become disabled had his injuries been correctly attended to. Does Dr Findlay's lack of experience count for anything? Could this be a case of multiple causes (*Hotson v East Berkshire Health Authority*)?

The measure of damages likely to be awarded must also be considered in the light of remoteness principles.

Credit may be awarded for a discussion of the possible vicarious liability of the hospital in relation to the actions of Dr Findlay.

Whatever conclusion is reached it should be clear, compelling and fully supported.

5 Advise Jake, Rosa and the University as to their respective rights and responsibilities.

Candidates should identify that any potential claims will result from provisions of the Occupiers' Liability Acts 1957 and 1984 or possibly in common law negligence against Speedyclean.

As occupiers, the University owes a duty of care to ensure the reasonable safety of visitors for the purpose for which they are permitted to be there (S2(2) OLA 1957), but as the regulations only permit enrolled students on the hall of residence premises, it would appear that Jake is not a

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visitor. Credit may be awarded for a discussion of whether Jake has an implied permission – does the University allow such visits in practice?

If Jake is categorised as a trespasser, the University would still owe him a duty of care under OLA 1984 (S1(3)) provided that it is aware of the danger or has reasonable grounds to believe that one exists, knows that the trespasser is in or may come into the vicinity of the danger and if the risk is one against which protection ought to be afforded. Even if all conditions are fulfilled here, liability would not exist for the damaged laptop, only personal injury. Candidates clearly need to debate this issue and draw conclusions.

Good candidates might also explore whether or not Jake was ignorant of the ban on friends and could assume that Kate had authority to invite him to her room, or that it was common practice for students to do so and the university had taken no effective steps to prevent this, and therefore he was a lawful visitor. Therefore the OLA 1957 could be discussed. In this case, had the University sufficiently discharged its duty by employing SpeedyClean to carry out potentially hazardous tasks?

A final and perhaps simpler angle would be for Jake to sue Rosa's employer, Speedyclean, for negligence in which case his status of visitor or trespasser would not be relevant.

Clear, concise and compelling conclusions are expected.

6 Advise Ranjit and Kuldeep of their respective rights and liabilities towards one another based in the tort of trespass to the person.

By way of introduction, candidates might introduce us to the three arms of trespass to the person: assault, battery and false imprisonment.

Assault should be defined and explained as a tort. Could Kuldeep's verbal abuse towards Ranjit amount to an actionable assault in tort law? Could immediate violence have been feared by Ranjit because of any accompanying actions, for instance? (*E.g. R v Meade, R v Constanza, Turberville v Savage.*) Candidates should explore the issue here.

Ranjit inflicts physical violence upon Kuldeep. It appears to have been deliberate. Was it lawful? If not did this amount to a battery in tort? Candidates must explore the possibilities here.

Kuldeep is subjected to two forms of detention: he is compelled to stay in the Reception area but against his will or voluntarily – was this detention lawful or might it amount to false imprisonment? (*Sayers v Harlow UDC*, *Davidson v Constable of North Wales*, *R v Bournmouth Community & Mental Health NHS Trust).* The elements of the tort clearly need to be outlined, discussed and conclusions drawn.

Having knocked Kuldeep unconscious and locked him in a room, total deprivation of personal liberty is more likely, but as he was unconscious, he had no knowledge of the false imprisonment, which may have implications for the outcome of this claim. (*Herring v Boyle, Meering v Grahame-White Aviation Co Ltd.*)
Whatever conclusion is reached it should be clear, compelling and fully supported.

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