CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2013 series

9084 LAW

9084/41 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 should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

Cambridge will not enter into discussions about these mark schemes.

Cambridge is publishing the mark schemes for the May/June 2013 series for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level components and some Ordinary Level components.

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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 Legal action is not always necessary in order to protect oneself against a tort.

Using examples from a range of torts, discuss the extra-judicial remedy of self help which is available to a claimant and critically assess its virtue and limitations. [25]

It is true to say that it is not always necessary to take legal action to protect against torts or to put right damage done by a tort.

Candidates are expected to explore different situations where such remedies are available. Examples that could be selected are as follows:

- In trespass to land – the right to exert reasonable force to eject a trespasser from one's land or to keep them out in the first place.
- In trespass to land – the right to re-enter land in the wrongful possession of another.
- In trespass to goods – the right to take back chattels in possession of another with reasonable force if necessary.
- In trespass to the person – the right of self defence.
- In nuisance – the right to abate a nuisance by, for example, cutting branches from a neighbour's tree that overhang a boundary and interfere with use of land.

In each example selected, the candidate is expected to describe the remedy as applicable, explain its application and state the benefits to the injured party. The pitfalls of exercising such remedies, such as running the risk of breaking the law in doing so must be highlighted.

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

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2 'An occupier of premises owes a common duty of care to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.' [Section 2(1) Occupiers' Liability Act 1957].

Critically analyse how and to what extent occupiers might limit the liability imposed by statute. [25]

It is anticipated that candidates will open responses by explaining what is meant by a common duty of care. This is defined in S2(2) of the 1957 Act as 'a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted to be there.'

It may, thus, be sufficient for the occupier to ensure reasonable safety by displaying warning notices, provided that the wording and positioning of them ensure the reasonable safety of the visitor (S(4) '57 Act); short, succinct examples should be provided by the candidate (e.g. *Roles v Nathan*). S2(3) still provides that there must be evidence of a voluntary acceptance of risks referred to in any warning notices.

Likewise, S2(1) permits an occupier's duty to be restricted, modified or excluded; this can include the use of notices. Candidates need to fully discuss and illustrate the possible application of the 1957 Act's provisions.

However, if entry to premises is permitted only by contract, or for business purposes, the right to do this is restricted by the provisions of UCTA 1977.

S2(1), UCTA 1977, prevents occupiers from excluding liability for death or bodily injury caused by negligence (i.e. failing to meet the standard of the common duty of care).

S2(2) UCTA permits occupiers acting in the course of a business or from premises used for business purposes, liability for a visitor's property damage if reasonable in the circumstances.

Candidates need to fully discuss and illustrate the possible application of the UCTA's provisions.

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

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3 Trespass to the person no longer has any real significance in the law of tort.

Outline the elements of this form of trespass and discuss the extent to which you agree with this view. [25]

Candidates should define trespass to the person and the three forms that it might take: assault, battery and false imprisonment. An explanation should follow that to amount to a trespass, any act must be direct and physical even though no actual loss or harm needs to be proved as the tort is actionable per se. Appropriate case law should be selected and used to illustrate these points, such as *R v Chief Constable of Devon & Cornwall, Nash v Sheen, Letang v Cooper, Sayers v Harlow UDC, R v Governor of Brickhill Prison* etc).

Candidates must then consider the extent to which the tort's significance has been lost. Today, the Criminal Injuries Compensation Scheme, the power that criminal courts have to award compensation and the development of the tort of negligence frequently remove the need for a suit based in trespass. Main area in which trespass to the person now arises is that of civil liberties especially associated with police misconduct.

Candidates are expected to express a substantiated view in their response; marks should be limited to a maximum of band 3 where candidates fail to go beyond basic factual recall of legal principle.

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Section B

4 Jason, Kyleigh and Lambert are all diagnosed as suffering from various psychiatric problems which they attribute to that day's events. With reference to case law, advise the stadium owners regarding their liability in negligence towards each of them. [25]

Candidates should contextualise their responses by identifying negligence and nervous shock as the key issues. Negligence should not be discussed in detail as the scenario indicates that negligence has definitely taken place, however credit may be awarded for this limited to a maximum mark within band 3. The focus of the response should reference the liability of the defendant for nervous shock for marks within band 4 and beyond.

Candidates should then distinguish between primary and secondary victims of negligence and conclude which type of claimant each one of them is. Nervous shock should be defined and the principles on which liability rests as regards secondary victims should be identified and explained: relevant class of person, own sight, hearing of incident or its immediate aftermath, means by which shock received. These should then be related to each claimant separately.

Being present at the stadium and fearing for his own safety (was it reasonable fear, however?), Jason is classed as a primary victim (*Dulieu v White & Others*) and would simply need to establish consequent psychiatric injury.

There are two issues for Lambert: the means by which he learned of the accident and the difficulty, having to prove a tie akin to a family relationship. The principles set down in *Alcock* must be applied and conclusions drawn.

Although Kyleigh is Jason's wife, the findings in *Alcock* suggest that identifying bodies at the mortuary will not satisfy the aftermath test. Will her claim fail?

Clear, compelling conclusions must be drawn and marks should be limited to a maximum of band 3 where candidates fail to go beyond basic factual recall of legal principle.

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5 Consider the reported facts of the above case. Explain (a) how the plea of *res ipsa loquitur* and David's explanation might influence the proceedings in an action for negligence and (b) how damages might be assessed against David if he is found liable. [25]

Candidates should introduce their responses with a brief explanation of the elements of negligence and that ordinarily in negligence cases, there is a formal or legal burden placed on a claimant to prove that the accident was caused by the negligence of the defendant. It should then be explained that the maxim of res ipsa loquitur allows claimants to succeed in actions for negligence even when there is no evidence as to what caused the accident and whether it is in fact attributable to the defendant's negligence (*Scott v St Katherine's Docks Co*). However, if a set of facts concerning the accident infers that the defendant has been negligent (*Byrne v Boadle)*, the defendant will simply be held liable unless (s)he can provide evidence to rebut the evidence inferred by the circumstances of the case, in which case the burden of proof shifts back to the claimant (*Ng Chun Pui v Lee Chuen Tat*).

Candidates should discuss briefly the criteria for a successful plea of *res ipsa loquitur*: that at material times, the thing causing harm was under the defendant's control, that the incident is one that could only have been caused by negligence and that the cause of the incident is not known and there is no other obvious explanation.

As regards George's claim for damages, candidates need to discuss the concept of remoteness of damage and the issue of whether George's loss was a reasonably foreseeable consequence of David's negligence and the potential measure of damages which the defendant may be liable for. The receipt of state benefits suggests an act of mitigation, so candidates might correctly conclude that the sum received in benefits would be deducted from any award granted.

Whatever conclusions are reached they should be clear, compelling and fully supported.

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6 Consider NPG's potential legal liability to the owners of the slaughtered animals and to the next of kin of those who died in <u>each</u> of the following independent situations.

(a) The leak is caused when one of the nuclear reactors is damaged by a storm.
(b) The leak is caused by lack of maintenance of the reactor by NPG.
(c) The leak is caused when, despite good security measures, demonstrators against the use of nuclear power manage to break into the power station and cause damage to equipment that prevents radioactive emissions from the power station. [25]

The lack of indirect interference with the use or enjoyment of neighbouring land seems to rule out private nuisance. The lack of direct human interference apparently rules out trespass.

Candidates should thus draw the conclusion that the only realistic basis on which the claimant might proceed is either in the tort of negligence or in the tort known as the Rule in *Rylands v Fletcher*. Candidates whose response then fails to develop should be limited to marks within band 3.

Candidates might outline the *RvF* case, but more importantly should state and explain the rule resulting from the case: if anyone, for their own purposes, brings anything on to their land which is likely to cause damage if it escapes, they keep it there at their peril and will be strictly liable for damage caused by such an escape.

Elements of tort should be discussed and related to case in question: control of land, accumulation for unnatural use, dangerous thing, escape and damage should all be covered and illustrated by case law.

(a) As no negligence is apparent, the latter might appear the safer course of action as *RvF* is a tort of strict liability. Candidates should then consider the potential defence of act of God. The storm does not appear to have been unusually severe, so was this a phenomenon against which no safeguard was possible?

(b) In the event of lack of maintenance, there would be a case to be answered in negligence. Candidates should recognise the degree of fault necessary if an action was so based. As *RvF* is a tort of strict liability and there was an escape etc., candidates are required to advise which would be the best course of action to be advised.

(c) The defence of act of a stranger to *RvF* should be identified and explored. Could greater steps have been taken to exclude the protesters in the first place? Was an adequate inspection for damage carried out after the incursion?

Candidates should also consider whether or not the remoteness of damage principle might have the effect of reducing either claim for compensation in this case.

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

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