CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2013 series

9084 LAW

9084/43 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 Analyse the protection offered by the tort of trespass to the person and critically assess its impact on the freedom of movement of the individual. [25]

Trespass to the person has now lost most of its significance in litigation in respect of personal injury and today arises mostly in the area of civil liberties, often associated with allegations of improper police conduct with regard to interference with freedom of movement.

Candidates should open their response with an analysis of the three forms of trespass to the person: assault, battery and false imprisonment. The key components of each of the three should be discussed and illustrated by reference to case law before drawing conclusions regarding the level of personal protection afforded.

With regard to impact on freedom of movement of the individual, candidates must critically assess the rules relating to false or wrongful imprisonment before drawing conclusions with regard to the tort's impact in this context.

Candidates are expected to draw clear conclusions from their deliberations in response to the question posed. Responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

2 Willing participants never suffer harm which is actionable in tort.

With reference to case law, critically analyse the extent to which the defence of *volenti non fit injuria* is an effective defence to actions brought in a variety of torts. [25]

Candidates are expected to identify the crux of this question as the general defence in tort commonly known as consent. If it can be established that the complainant truly consented to the risk or situation which resulted in the act complained of, the defendant will not be liable.

Candidates should recognise the 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.

Special cases such as sporting activity and rescue cases in the torts of negligence and trespass to the person might also be explored where the injuries sustained as a consequence of deliberate or negligent acts.

In negligence, cases such as *Smith v Baker*, *ICI v Shatwell*, and *Kirkham v Chief Constable of Greater Manchester* might be considered. In trespass, In the case of trespass to the person, *Herd v Weardale Steel Coke and Coal Co*, *Collins v Wilcock* and *Nash v Sheen* might be specifically referenced as examples.

Candidates must attempt an analysis of the statement. Responses limited to factual recall of principle will be restricted to maximum marks within band 3.

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3 Awards of damages in tort do not provide just remedies to all claimants in all circumstances.

Critically examine the truth of this view and the extent to which you agree. [25]

Damages in tort are intended to put the claimant in the position they would have enjoyed if the tort had never been committed; the aim of damages in tort is to compensate claimants rather than to punish defendants.

Candidates might start by outlining the role of general and special damages before moving on to discuss the principle of *restitutio in integrum* and how damages in tort are calculated and awarded. Candidates ought to highlight decided cases that reveal problems associated with such calculations (e.g. *Gardner v Marsh, South Australia Management v York Montague Ltd, Doyle v Wallace, Langford v Hebran* etc.) and then go on to discuss the extent to which compensation takes or fails to take account of degrees of fault involved in defendants' actions. Astute candidates will identify the fact that those who make momentary slips commonly end up paying the same damages as those showing gross carelessness, for instance.

Candidates must attempt to critically evaluate the statement. Responses limited to factual recall of principle will be restricted to maximum marks within band 3.

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Section B

4 Advise Timber Products as to their potential liability in the tort of nuisance. **[25]**

All candidates should identify and define the tort of private nuisance – unlawful indirect interference with another's use or enjoyment of land in his possession. The definition should be analysed and key elements explained. What sort of interference could constitute a private nuisance – noise, smoke, smell, vibration etc. When does it become unlawful, given our personal freedoms – duration, location, sensitivity etc.

The factors of the locality in which the plant is located, the frequency with which interference occurs and the sensitivity of the plaintiff, given the proximity of the house and underlying breathing problems of the plaintiff need to be discussed in some detail.

The bottom line, however, is whether there has been unreasonable interference with use or enjoyment of land possessed by another? There would be no defence that the machinery was already operating when Yves moved in to the house on the adjacent property.

If the complaint is justified, injunction may be deemed appropriate remedy. A clear, compelling conclusion should be drawn.

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5 Critically assess the extent to which Harpsden Drinks might be compensated for the three losses for which it now claims. [25]

This question requires candidates to focus on the compensation of the tort of negligence. However, candidates will receive some credit for a general introductory discussion as to whether or not Pipe Menders were in fact negligent in this case before moving on to the clearly signposted issue of compensation for purely economic losses.

The compensation of the victim requires detailed discussion of the principles of remoteness of damage and of liability in negligence for pure economic losses.

For any loss to be recoverable in an action in tort, that loss must not be so remote from its cause that it was not a reasonably foreseeable consequence of that cause (*The Wagon Mound; Hughes v Lord Advocate*). Candidates must make an assessment here. Were the three losses, in essence, reasonably foreseeable? Candidates might consider the courts approach in *Page v Smith, Margereson v J W Roberts Ltd* and *Brown v Lewisham & North Southwark Health Authority* in support of argument. More specifically, candidates might notice a remarkable similarity between the facts of the scenario and those in the decided case of *Spartan Steel & Alloys Ltd v Martin*.

More informed candidates will trace the issue of pure economic loss through case law development (e.g. *Weller & Co, Spartan Steel, Junior Books*) and should be appropriately rewarded.

The law of tort distinguishes between losses suffered as a result of damage to person or property and those of a purely economic nature where no such damage has occurred. In the case of pure economic loss, the courts have been reluctant to allow claims. So what of this case?

Loss (i) is a clear case of physical damage to property, so unless deemed too remote, is likely to be deemed recoverable.

Loss (ii) would appear to be an economic loss arising from damage to property and, in that case, the claim, subject to remoteness, would also succeed.

Loss (iii) looks like a pure economic loss and would probably not be compensated.

Clear, concise conclusions should be drawn and advice given.

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6 Assess the potential liability in negligence for Loretta's death. [25]

The focus of this question is straightforward negligence set in a medical context. Candidates should define negligence and briefly outline and illustrate the three elements: a duty of care between defendant and claimant, a breach of that duty and damage to the claimant as a result of chain of causation flowing from the breach of duty to the loss suffered.

Candidates are told that Jobi carelessly knocked Loretta off the ladder, thus indicating that he was in breach of his duty of care towards her as a fellow workmate? Was her death a reasonably foreseeable consequence of Jobi's carelessness? On the face of it, it would appear debatable. Nevertheless could the failings at the hospital be seen as an intervening act which broke the necessary chain of causation? Could the failure to attend to Loretta for several hours and superficial examination she was given during that first visit be a contributing factor here? It would appear not, as we are told that the post mortem examination suggests that death was almost certain in any event.

It would seem, therefore that the chain of causation was not broken. But was death a reasonably foreseeable result of Jobi's negligence? As a building site worker, personal injury to other workers must be within his reasonable contemplation, should he fail to take the necessary care when on the building site. Candidates may use the illustrative cases of *Hotson v East Berkshire Health Authority* and *McGhee v National Coal Board* would support this view.

Candidates should also discuss the principles of vicarious liability in an employment context and discuss whether or not Jobi's employer might also be liable in these circumstances.

Clear, concise and compelling conclusions should be drawn by candidates.

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