CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2014 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 2014 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 The law of negligence has various aims: the compensation of victims of harm, identifying who is at fault, the deterrence of carelessness and spreading the costs of harm caused by carelessness. Critically assess the extent to which each of these aims is met by the law.

Compensating victims of harm: only a small proportion of victims receive compensation. Reasons should be explored. Possible reasons:
– harm caused, but in circumstances such that no-one can be blamed
– fall outside scope of rules (e.g. psychiatric injury or economic loss)
– chance of court success slim and costs heavy so no action taken

Marking fault: the basis of law of negligence is essentially moral. Is this still the case, or do the economic effects of decisions now frequently play a greater role?

Deterring carelessness: does the existence of insurance now mean that carelessness is no longer deterred? Are the rules so complicated and at times vague that tortfeasors pay little attention and thus the law of negligence merely serves to mop up after the event?

Spreading risk: some success is apparent in this area (e.g. *Smith v Eric Bush*), but it is clear that when insurers cover losses, it is the public that ultimately bears the cost in the form of increased premiums!

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Responses that attempt to demonstrate no critical assessment as required by the question, will be limited to the maximum marks allocated within Band 3.

2 A general principle in tort states that wrongdoers should be liable for their own actions. Explain what you understand by the concept of vicarious liability and analyse why it is imposed despite the apparent conflict with the general principle.

Candidates should define vicarious liability; namely, the liability for torts committed by others. It should then be explained that liability is not removed from the tortfeasor, but rather that liability becomes joint and that the claimant is free to sue either party. It is a situation which most commonly arises during the course of employment: employers can be held vicariously liable for the action of their employees whilst they are at work.

One reason for imposing such liability is that employers control the acts of employees and should be liable for them. This may have been true in the past, but to what extent is this true today? For example, what actual control can hospitals exercise in respect of highly skilled, specialist surgeons? However, if targets and work-loads are set, such that even specialist work cannot be done properly…?

Also, in the majority of cases, it will be the employer who will be in the best financial position to meet a claim, either because of resources or insurance cover. Inevitably, such losses get passed on to consumers through means of higher prices for goods or services. Does this argument thus hold water?

Some evidence suggests that the imposition of liability encourages employers to check that their employees do their work carefully. Would this happen if such a liability did not exist, and costs had to be reduced?

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

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3 The torts of trespass to land and private nuisance protect similar interests. Compare and contrast the two torts and assess whether they both continue to serve a useful purpose.

This question requires candidates to look at the similarities and differences between these two tort that affect interests in land.

Both torts must be defined and explained by candidates. Responses should entail a consideration of the following as a starting point:

Trespass to Land	Private Nuisance
Involves a direct, physical interference with the possession of land	Involves an indirect interference with the enjoyment or use of land in another's possession
Technically actionable per se	Only actionable on proof of actual loss
Justifies a series of legal actions as long as it lasts	Generally needs to be continuous state of affairs to give rise to a cause of action
Isolated incidents suffice to give rise to a cause of action	Interference must be substantial to give rise to liability
Reasonableness of act of no consequence; even if in ignorance, liability arises	Must be an unreasonable interference

The exercise of comparing and contrasting should then be followed up with an assessment of whether or not the two torts still need to co-exist. Without such assessment, marks will be limited to Band 3.

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Section B

4 Taking into account possible defences, consider Jonty's potential liability in tort for the financial loss sustained by Nasrah in this situation.

The principal focus anticipated is that of the liability for negligent misstatement leading to pure economic loss. The distinction between economic and pure economic losses and why the distinction is significant should be explained.

The basic elements of negligence, i.e. duty of care, breach of duty and resultant loss, should be identified, explained and illustrated, if only in outline, in order to set the context.

The question of economic loss should be raised and decisions in Hedley Byrne, Anns, Junior Books etc. should be discussed. The relevance to the scenario of Hedley Byrne should be identified and its principles and effects should be discussed and analysed.

Application to the case in hand should lead to a detailed discussion of whether a special relationship existed or not. The decision in Esso Petroleum v Mardon should also be considered.

The case of Chaudhry v Prabhakar should be considered and applied the context of the scenario.

Whichever conclusion is reached, it should be clear, compelling and fully supported. Marks will be limited to Band 3 where the candidate states the legal rules but does not apply the rules to the scenario.

5 Advise Andrew regarding his potential occupier's liability for Bella's injuries and for the damage to her car.

The key issue of occupiers' liability is signposted specifically by the question posed, hence candidates should be given only minimal credit for any consideration of trespass to land or negligence.

It is anticipated that candidates will identify the Occupiers' Liability Act 1984 as the source of an occupier of land's potential liability towards those who trespass on land. S1 (3) needs to be identified, explained and explored in the context to the scenario.

According to the Act, the occupier owes a duty of reasonable care to ensure that trespassers do not suffer personal injury whilst on the premises, provided that:

- (s)he is aware or has reasonable grounds to believe that the danger exists
- (s)he knows or has reasonable grounds believe that the trespasser is in the vicinity of the danger concerned or may come into the vicinity of it
- The risk is one against which the occupier can reasonably be expected to offer protection.

With regards to Bella and her losses, the Act makes a provision for personal injury only, so if she wishes to recover compensation for the damage to her car, she may need to pursue a claim in negligence; the question does not require candidates to discuss this matter further.

Bella found herself on land belonging to someone else without that person's permission; she was by definition a trespasser. In order to successfully claim for her personal injuries, she will have to establish that Andrew owed her a duty of reasonable care.

The key to liability in this instance seems to rest primarily on whether Andrew knew that the bridge was dangerous, or that anyone trespassing is or may come into the vicinity of it (*Swain v Natui Ram Puri, Scott v Associated British Ports*).

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If it can be established that he did, the question then arises as to whether Andrew was in breach of the duty of reasonable care imposed by the 1984 Act (*British Rail Board v Herrington, White v St Albans City).* No apparent warnings were given of the dangerous nature of the bridge, so could this indicate that Andrew was unaware of its state?

Even if a duty of care was imposed, might contributory negligence be raised as a partial defence? When she saw the bridge, did she consider whether or not it was safe to cross and if she realized it was not why did she not simply turn her car around?

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

6 Advise Hellenic Escapes as to its potential liability for Aaron's injury and losses.

The tort of negligence is pointed up in the question, so no credit will be given for any discussion outside this tort.

Candidates must contextualize their response by outlining the essential elements of the tort of negligence: duty of care, breach of duty and resultant loss, before beginning to focus on the most significant elements of the standard of care, the breach of duty and potential contributory negligence.

Candidates need to discuss what amounts to reasonable care, through an analysis of case law such as *Etheridge v E Sussex C.C. and Bradford-Smart v W Sussex C.C.* Special characteristics of the defendant also impact on the standard of care required: *Paris v Stepney Borough Council, Barrett v Ministry of Defence, Brannon v Airtours PLC.* The *m*agnitude of risk and practicality might also been given attention by the candidate, and should receive appropriate credit.

So did Hellenic Escapes owe a duty of care to Aaron when the dive was organized and if so, did they fall below the required standard? Could it be argued that Aaron was also negligent, and thus contributed to his own injuries (Brannon v Airtours PLC may suggest not….)? If so, might damages be reduced accordingly? A discussion of Contributory Negligence and/or Volenti should be credited.

Clear, concise and compelling conclusions are expected**.** Candidate responses that are limited to factual recall, however detailed, will be restricted to Band 3 marks.

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