CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2014 series

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 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.

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

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.

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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

Victims of tort would ordinarily be compensated by an award of damages. Using decided cases to illustrate your response, analyse when a court might make a non-compensatory aware of damages instead.

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 punish defendants. However, in some cases, damages may be awarded for other reasons, and this may result in the award being more or less than what isrequired to directly compensate for the loss suffered by the claimant.

Candidates should identify and explain the purpose of the various types of non-compensatory award: contemptuous, nominal, aggravated and exemplary damages and analyse circumstances when they may be awarded. Case law examples should be used wherever possible to illustrate the purpose of the award, and to evaluate the extent to which the purpose was achieved. Examples (non-exhaustive) might include *Constantine v Imperial London Hotels, Khodaparast v Shad, Rookes v Barnard* etc. Limitations on the use of exemplary awards should also be addressed.

Candidates must attempt an analysis as requested by the question. Responses limited to factual recall of principle will be restricted to maximum marks within Band 3.

2 No Change

The tort of trespass to land is direct, forcible and consequently actionable per se.

Critically evaluate the legal principles associated with the tort and assess the truth of this statement.

This question addresses the tort of trespass to land and some of its defences. Trespass to land should be defined, namely: the unjustifiable direct interference with land which is in the immediate and exclusive possession of another. It should be explained that this tort is actionable per se, i.e. without proof of actual loss having been suffered.

Candidates may then expand in outline and may **briefly** explain the elements of possession of land and direct interference (e.g. entry, abuse of rights of entry, remaining on land, placing things on land). No more is expected.

Does all non-permitted entry to another's land amount to an actionable trespass? Candidates should consider the issue of accidental trespass. *League against Cruel Sports v Scott* and *River Wear Commissioners v Adamson* both suggest that it does, provided that negligence can be proved on part of trespasser.

Recognised defences do exist and these should be investigated and reviewed by candidates:

Licence – express or implied permission granted and terms not exceeded.

Justification by law – for example, the policeman's right to enter and search premises (S17 PACE 1984)

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Necessity – restricted defence. Candidates might contrast approaches in *Esso Petroleum Co v Southport Corporation, Rigby v Chief Constable of Northumberland* and *Monsanto plc v Tilly.*

Responses that attempt no critical evaluation nor assessment as required by the question, will be limited to maximum marks within mark Band 3.

3

The current law relating to nervous shock is unsatisfactory and only policy considerations can justify it. Critically assess this view.

Candidates should define the meaning of 'nervous shock' in the legal context and point up the fact that this area of the law has come under significant scrutiny in recent years.

Candidates are then expected to briefly discuss the categories of primary and secondary victim and the rules of law, together with an outline of key case law associated with each (such as *White and Others, Dulieu v White, Page v Smith, McLoughlin, Alcock, Greatorex* etc).

The main crux of the question is the assessment of the law and not a description of the law itself, so the main thrust of the response must entail a review of the law of nervous shock, which highlights the problems associated with it and considers why they have arisen. Policy has clearly played a role: issues regarding the floodgates opening and available insurance ought to be raised by candidates. References to the views of the Law Commission should be credited, as should any other relevant reports or judicial statements.

Candidates will need to discuss whether or not the policy considerations really do justify the present law, to achieve marks in Band 5.

Responses that are limited to factual recall of the law, however detailed, will be restricted to Band 3 marks.

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Section B

4

Discuss any legal liability that The Village Medical Practice, as occupier of the premises, might have for Pavel's two sets of injuries.

The focus of this question is occupiers' liability. **Responses based solely in negligence will be restricted to a maximum mark within Band 3.**

Candidates should identify The Village Medical Practice as the occupier of premises and that its liability for injury to people entering her premises is governed by either the Occupiers' Liability Act 1957 in the case of visitors or the Occupiers' Liability Act 1984 in the case of trespassers.

When Pavel enters the Practice's premises to do the cleaning, he clearly enters under licence, so he would be termed a visitor for those purposes. S2(2) of the 1957 Act imposes a duty to take such care as is reasonable to see that visitors are reasonably safe for the purpose for which they are invited or permitted to be there. The Practice owes a duty of care towards Pavel (and others); has that duty been discharged by the Practice asking ElecCo to renew the wiring, given that they appear to be independent contractors and outside her control? Was this company competent? Were even the most basic steps taken to check that they had done what they were supposed to do?

Given that Pavel is a cleaner, S2 (3) is also relevant, in that an occupier can expect that a person who enters in the exercise of his/her calling will appreciate and guard against any special risks ordinarily incident to it. But was this a risk against which he could be expected to safeguard?

Discussion is needed and conclusions need to be drawn by candidates, but it would seem likely that the Practice has discharged its duty under the 1957 Act and would not be liable for Pavel's injuries. Was he contributorily negligent or was he compelled to intervene to put out the fire?

Some credit should be given for identifying the possibility that Pavel could sue ElecCo rather than VMP, however, an extended discussion of this is not required or creditworthy.

When he decided to sleep on the premises overnight, he became a trespasser, as he no longer had justification to be there and the 1984 Act applies. This imposes a duty to take reasonable care to see that trespassers do not suffer injury, but only on the basis of the conditions set out in S1 (3). Is the danger something that The Village Medical Practice is aware of? Does the practice know that Pavel, as a trespasser, is likely to come into the vicinity of the dangerous bed? Is it a danger against which he could reasonably offer some protection? If the answer to all three conditions is affirmative, then the Practice would be liable. Discussion is called for.

Credit should be awarded for a discussion of an alternative claim in negligence.

Even if the Practice is liable, did Pavel contribute to his injuries through his own carelessness? Is the defence of contributory negligence relevant here? If so, any damages payable will be reduced in accordance with Pavel's own degree of fault.

Clear, concise and compelling conclusions should be drawn by candidates. Candidate responses that are limited to factual recall, however detailed, will be restricted to Band 3 marks.

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5 No Change

Discuss Yves' potential liability in private nuisance if Wahid decides to sue him and advise Wahid of the possible remedies (if any) that might be awarded.

This question focuses on liability for the results of private nuisance and in negligence. Candidates are expected to define the torts tort. An explanation of the elements of the tort should then be elaborated on as the scenario is explored.

Wahid will only be able to make a claim against Yves for private nuisance if he has a sufficient interest in the land in which he was disturbed. He will have a sufficient interest if he is an owner or a tenant in occupation.

Assuming that Wahid has a sufficient interest, the disturbance suffered by him will only amount to a private nuisance, however, only if it is an unreasonable interference. Factors relevant in determining whether it is unreasonable include:

- the volume, regularity and time of the noise.

The reasonableness of such volume, regularity and timing of it (disturbance more likely to be unreasonable if during the hours when sleep or rest is normal) need to be considered

- the nature of the locality (*St. Helen's Smelting v Tipping)*.

In areas where there is a mix of industrial and residential property more noise will be reasonable than in exclusively residential districts.

- Wahid's sensitivity (*Robinson v Kilvert).*

The question which needs to be posed is whether the noise would unreasonably disturb a reasonable neighbour, not whether it would unreasonably disturb an ultra-sensitive neighbour. It will be relevant to determine whether Wahid's use of his home for professional (creative?) writing is such as to make him more sensitive to noise than ordinarily robust neighbours.

If the noise is found to be considered an unreasonable disturbance, then Wahid can claim damages for the *past* interference with his enjoyment of his land. B might also claim an injunction preventing *future* unreasonable noise (*Kennaway v Thompson)*. If the extent to which the noise is unreasonable is minor, and it would be harsh to restrict Yves' activities, the court might instead choose to award damages for *future* unreasonable noise *in lieu* of an injunction (*Shelfer)*.

Credit should be given to candidates who recognize that the decision of the House of Lords in *Hunter v Canary Wharf* suggests that the tort of private nuisance does not protect claimants against personal injuries, and that an action carried out in negligence might be required to recover such a loss.

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

6

Advise Jumbo's Flying Circus as to their potential liability for Zak's losses in the tort of negligence.

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The tort of negligence should be defined and briefly explained by way of introduction. Candidates should then focus their response on the burden of proof imposed on claimants who base actions in this tort.

In negligence cases, the burden rests with the claimant to provide evidence of the essential elements of the tort (duty owed, breach of duty and resultant loss). The issue of causation and novus actus interveniens should be given particular attention in the context of the facts of the scenario.

Credit should be awarded for a discussion of vicarious lliability in relation to JFC's liability for the acts of the keeper.

Candidates should explore the three elements in turn. Credit can be granted for candidates that mention that the escape of the elephants might have led to a claim under the tort in *Rylands v Fletcher* but for the fact that this tort does not cover personal injury.

Whichever conclusions are reached by, they should be clear, compelling and fully supported by evidence.

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