CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the May/June 2014 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 2014 series for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level components and some Ordinary Level components.

CAMBRIDGE
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

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.

© Cambridge International Examinations 2014

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

© Cambridge International Examinations 2014

Section A

1 No Change

The tort of negligence aims to compensate claimants for their losses.

With reference to decided cases, discuss the extent to which the principles of causation and remoteness restrict the law's ability to achieve the above aim.

Candidates may open their response by identifying that not every injury or loss caused by someone else results in the person at fault having to pay compensation. The law aims to strike a balance between ensuring that compensation is fair for claimants while not being too harsh on defendants. Candidates should then recognise that it is the rules of causation and remoteness that assists courts achieve this desired balance.

Causation and remoteness must both be defined and explained. They must then be used to show how the rules apply to either one tort in particular or apply across a range of them.

As far as causation is concerned, the 'but for test' is of great significance, but in many cases, multiple causes and intervening events cloud the issue. Candidates should investigate and analyse the different approaches that courts have taken (e.g. *McGhee v National Coal Board; Wilsher v Essex Area Health Authority; Hotson v East Berks Health Authority; Holty v Brigham Cowan; Fairchild v Glenhaven Funeral Services*); which have proved helpful in achieving its aim and which have not?

The issue of Novus Actus Interveniens could be considered with reference to cases such as *Lamb v Camden.*

The development of the tests for remoteness also need to be traced and analysed against their aim (*re Polemis; Wagon Mound; Doughty v Turner; Hughes v Lord Advocate*).

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

2 No Change

The tort of private nuisance aims to balance rights between people who occupy neighbouring premises. Analyse appropriate case law and critically assess the extent to which you consider that this aim has been met.

The tort of private nuisance arises from the fact that, wherever we live, work or play neighbours are likely to be present 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. Relevant case law should be referenced in the discussion.

© Cambridge International Examinations 2014

Candidates may 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.

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

3 No Change

The notion of vicarious liability is at odds with the fundamental principle in tort that wrongdoers are liable for their own actions. Evaluate the reasons why such liability is imposed and consider the extent to which you agree with the above statement.

Candidates should define vicarious liability, which is 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 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?

Candidates must attempt to evaluate reasoning. Responses limited to the factual recall of principle will be restricted to the maximum marks available within Band 3.

© Cambridge International Examinations 2014

Section B

4

Advise Reid and Stevens whether they have grounds for any claim in tort against Williams and assess the possible success of their claims.

The scenario points to an act of negligence by the pilot concerned. Negligence should be defined and the three elements of the tort, namely duty of care, breach of duty and resultant damage, ought to be reviewed, at least in outline.

Candidates should also be credited for exploring the possibility that the maxim res ipsa loquitur might apply in this case. Why would an aircraft overshoot the runway but for the pilot's carelessness? If introduced, candidates must also explore the implication for the burden of proof.

Assuming that negligence is established, what of the liability for the rescuers' injuries? Could they be described as having acted voluntarily and therefore consented to the risk of injury? Would the pilot not be therefore liable? Was the risk taken a necessary one? Was the risk undertaken instinctively or was the doctor simply carrying out her duty to intervene? Case law such as *Haynes v Harwood, Cutler v United Dairies and Chadwick v British Railways Board* must be explored.

Credit should be awarded for a discussion of the relevance of vicarious liability in this scenario.

Whichever conclusions are reached, they should be clear, compelling and fully supported by references to case law.

5

Advise Bristow and Denver of their potential liability in trespass to the person and evaluate any potential defences that they might raise.

By way of introduction, candidates may introduce the reader to the three arms of trespass to the person: assault, battery and false imprisonment. Candidates should immediately recognise the irrelevance of false imprisonment to the scenario.

Assault should be defined and explained as a tort. Could Bristow's verbal threat of physical violence towards Denver amount to an actionable assault in tort law? Was immediate violence feared by Denver because of accompanying actions, for instance? (e.g. *R v Meade, R v Constanza*, *Turbervell v Savage*) Candidates should explore the issue here.

With regards to the trip which resulted in injury, did this amount to a battery in tort law? Was it deliberate or merely careless? Was it hostile? (e.g. *Letang v Cooper, Wilson v Pringle*). Candidates must explore these issues.

Ordinarily, it could be argued that basketball players participate in their sport in full knowledge that it is a contact sport and that injuries can result from such contact: participants frequently make contact with one another due to the very nature of the game. Hence, in most circumstances, consent is seen to be given to the tort trespass to the person that would otherwise be actionable as a result of the unlawful physical force imposed on one another during the game. Debate is called for to distinguish mere knowledge of risk from consent to risk (*Bowater v Rowley Regis Corporation*).

© Cambridge International Examinations 2014

Debate should then follow as to whether the trip in question was undertaken in a deliberate attempt to harm or whether it was indeed in and of itself an act of negligence which gave rise to harm (*Condon v Basi*). In either event, it would seem unlikely that Denver could be said to have consented to such harm by simply taking part in the game.

If Denver is thus able to refute a defence of consent, would he be able to recover his loss of earnings? Candidates should discuss the concept of compensation, in particular whether the loss suffered is likely to be compensated in the event of a court case.

What of Denver's raised fist and verbal threat to knock Bristow down? The physical movement of the hand could amount to an assault if it was deemed close enough to induce the fear of an immediate battery. However the decision in *Tuberville v Savage* would suggest that word can moderate actions. Did the words uttered remove reasonable fear on Bristow's part?

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 No Change

Advise Farlow Estates of its potential liability in this matter.

Candidates should recognise the key issue of occupiers' liability. Any discussion based purely in negligence will be credited with the maximum marks available within Band 3.

It is anticipated that candidates will identify that Evans enter the land of Farlow estates without permission and was thus a trespasser. Consequently, the Occupiers' Liability Act 1984 should be identified 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 Evans and his losses, the Act makes a provision for personal injury only, so if he wishes to recover compensation for the damage to his suit of clothes, he may need to pursue a claim in negligence. Candidates should investigate whether a duty of care was owed etc.

Evans deliberately entered land belonging to someone else without that person's permission; he was by definition a trespasser. In order to successfully claim of her personal injuries, he will have to establish that Farlow Estates owed her a statutory duty of reasonable care.

The key to liability in this instance seems to rest primarily on whether Farlow Estates knew that the deep hole 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*).

© Cambridge International Examinations 2014

If it can be established that Farlow Estates did know, for example, that people used the land as a shortcut to the station, the question then arises as to whether the company 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 deep hole to be found on the land, so could this indicate that the company was unaware of its state?

Even if a duty of care was imposed, might contributory negligence be raised as a partial defence? When he chose to cross the land, did he fail to take care for his own safety?

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

© Cambridge International Examinations 2014