CAMBRIDGE INTERNATIONAL EXAMINATIONS

Cambridge International Advanced Level

MARK SCHEME for the May/June 2015 series

9084 LAW

9084/41 Paper 4 , maximum raw mark 75

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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

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 **In cases involving nervous shock, special rules exist to restrict the number of potential claims.**
Critically assess the extent to which you agree with this statement.

Candidates can introduce the topic by outlining the basic requirements of negligence, duty of care, breach of duty and resulting damage which is not too remote. However a detailed account of general negligence is not required. Candidates should then explain the special rules which apply to cases involving nervous shock. Reference should be made to relevant case law such as *Dulieu v White*, *McLoughlin v O'Brien*, *Sion v Hampstead*, and *Attia v British Gas*. The control factors established in *Alcock v Chief Constable of South Yorkshire* should be examined carefully. Candidates should then proceed to critically assess the special rules and consider their function in the light of the question. Reference could be made to the Law Commission Report in support of any conclusions reached.
Where candidates focus on explanation of the rules without any critical assessment or consideration of the question the mark will be limited to a maximum in Band 3.

2 **With reference to decided case law, critically analyse the operation of the defence of volenti non fit injuria in relation to trespass to the person.**

Candidates should explain the requirements for establishing the defence of consent. The issue of knowledge of the risk should be examined thoroughly and relevant cases such as *Smith v Baker*, *ICI v Shatwell* and *Kirkham v Chief Constable of Greater Manchester* should be referenced here. The issue of consent within the context of trespass to the person should then be specifically addressed. Issues such as everyday contact, consent to medical treatment and sporting activity could be examined in this discussion.
Candidates should then critically analyse the operation of the defence of consent in the context of trespass to the person and reach a conclusion in relation to the question.
Where candidates present an explanation of the defence of the consent but without any critical analysis then the mark will be limited to maximum in Band 3.

3 **The aim of the compensation award in tort is expressed in the maxim restitutio in integrum (restitution in full).**
Critically examine the extent to which this aim is achieved.

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 (*eg 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 does achieve the aim of restitution in full. Candidates could discuss issues such as the difficulties associated with a one off lump sum payment and the difficulties involved in calculating future losses and pain and suffering. Candidates could consider possible reforms such as structured payments.

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

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4 **Advise Yves as to the liability in negligence of Pierre, Henri and the hospital.**

This case concerns the tort of negligence. Candidates should begin by briefly outlining the essential elements of negligence, duty of care, breach of duty and resulting loss which is not too remote.
Candidates should then focus on the issue of duty of care. Does Pierre owe Yves a duty of care in this situation. The three stage test in *Caparo v Dickman* could be used to explore this issue.
The issue breach of duty and resulting damage could then also be considered although in less detail.
Candidates should then examine the liability of Henri. This will involve a consideration of the issue of breach of duty and standard of care in the context of medical professionals so cases such as *Bolam and Bolitho* could be referenced here.
The issue of whether Henri's actions constitute a novus actus interveniens, thus removing liability from Pierre, should also be considered.
Candidates should also refer to the issue of vicarious liability in relation to Henri and the hospital.
Conclusions should be clear, compelling and fully supported.

5 **Advise Frank as to the likely success of any action brought against Adam and the remedies which might be granted by the court.**

In this question candidates should consider two possible actions. Initially the issue relates to private nuisance, in the context of the noise and disturbance caused by the taxis, and also in relation to the smell of the fuel. Candidates should explain the elements required to establish nuisance and focus on the factors considered by the court in deciding whether the defendant's activities could be considered to be reasonable. Factors such as duration, timing and the nature of the locality should be discussed and relevant cases referenced. Candidates should also consider what remedy a court would utilise should a finding in favour of the plaintiff be made.
In relation to the fuel and the damage to the plants the candidates could consider an action in *Rylands v Fletcher*. The elements of the tort should be outlined, accumulation, non- natural use, escape and damage, with reference to appropriate cases. The candidates should then apply the rules to the given facts and reach a conclusion. Credit could be given for a consideration of negligence as an alternative or in addition to the action in *Rylands v Fletcher*.
Candidates should reach clear and compelling conclusions which are fully supported.

6 **Assess Anil's liability, as the occupier of the hotel, to Pravin and Nadia.**

This question raises the issue of occupier's liability. As there is no issue of trespass the discussion should focus on liability to visitors under the Occupiers Liability Act 1957.
The candidates should briefly outline the meaning of both occupier and visitor. The candidates should then examine the nature of the duty owed by the occupier to the visitor under the OLA 1957 which is to ensure the reasonable safety of the visitor.
In relation to the initial injury to Pravin the candidates should discuss whether Anil has breached the duty. Was he aware of the risk of tiles becoming loose and falling? Does the storm constitute an act of god?
The rules relating to an independent contractor should then be examined and the candidates should discuss the injury to Nadia and the damage to her car, and in that context whether the liability has shifted from Anil to David.
Credit should be given for an alternative approach in which liability in negligence is discussed
Clear, concise and compelling conclusions should be reached in relation to each incident.

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