CAMBRIDGE INTERNATIONAL EXAMINATIONS

Cambridge International Advanced Level

MARK SCHEME for the May/June 2015 series

9084 LAW

9084/42 Paper 4, maximum raw mark 75

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Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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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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1 **The tort in Rylands v Fletcher is no longer necessary as the tort of negligence provides a sufficiently extensive basis for liability.**
Outline the elements of the tort in Rylands v Fletcher and critically analyse this view.

Candidates should briefly explain the essential elements of the tort in Rylands v Fletcher and refer to appropriate case law to illustrate.
Candidates should then compare Rylands v Fletcher with the tort of negligence in order to address the key issue raised in the question. Candidates may refer to the three essential elements of negligence, duty of care, breach of duty and resulting damage which is not too remote, however a detailed account is not necessary.
Candidates should then examine whether the tort in Rylands v Fletcher is still necessary. This could involve an examination of the issue of fault and whether R v F is a tort of strict liability which would distinguish it from the fault based liability of negligence. Reference to cases such as Cambridge Water would be useful here.
Candidates should critically analyse the view expressed in the statement and come to a clear conclusion as to whether it is valid.
Where candidates present an explanation of the rules without a critical analysis the maximum mark will be limited to Band 3.

2 **The rules governing the recovery of damages for pure economic loss are based on policy considerations rather than the interests of justice.**
With reference to relevant case law, critically assess the validity of this statement.

Candidates should define economic loss (a financial loss by a claimant that results from neither personal injury nor damage to property) and offer an explanation for the courts' reluctance to compensate such losses (e.g. floodgates fears).

Candidates are expected to discuss the *Spartan Steel* case in which the defendants' negligence caused a power cut that resulted in three types of loss, all of which were easily foreseeable. They were found liable for two types of loss, but not the third; this was declared to be a purely economic loss and therefore not recoverable.

It is anticipated that candidates will trace the developments of the issue of economic loss through key case law such as:
Candler v Crane, Christmas & Co – responsibility to contractual client only and not to third party who suffered loss.
Hedley Byrne v Heller & Partners – economic loss recoverable in cases of negligent misstatements in 'special relationships.'
Anns v London Borough of Merton **–** defective premises considered property damage and thus allowed claim on that basis.
Henderson v Merrett Syndicates Ltd, Williams and Reid v Natural Life Health Foods Ltd and Mistin and Londonwaste v AMEC Civil Engineering evidence the extension of Hedley Byrne principles to the negligent provision of services as well as advice, but not to other negligent acts.

Candidates should address the key issue raised in the question – whether the rules relating to economic loss provide justice. Consideration should be given to the question of policy justifications, for example the 'floodgates' argument and the role of contract in resolving issues of economic loss.
Where candidates explain the law without any critical assessment the maximum mark will be confined to Band 3.

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3 **It is fair and just to reduce the amount of compensation awarded to a plaintiff in order to reflect their contribution to the damage suffered.**
Critically evaluate this statement.

The focus of this question is the partial defence of contributory negligence.
Up until 1945, any fault on the part of a complainant would have totally negated any claim made in negligence, regardless of how little the complainant had actually played a part in the incident giving rise to the action. The Law Reform (Contributory Negligence) Act 1945 now provides that such claims need not fail; damages can simply be reduced in accordance with the complainant's own degree of fault.

Many of the cases on contributory negligence in negligence actions concern accidents (e.g. *Baker v Willoughby, Brannon v Airtours plc*), but candidates should be aware that it could equally-well apply to economic loss cases (e.g. *Cavendish Funding Ltd v Henry Spencer & Sons Ltd*), should a complainant have failed to take reasonable care of his own economic interests.

It is an objective standard, with allowances made for children and disability if it would make it impossible for the standard to be reached.

Candidate could explore the issue of taking account of a child's age and development. Children develop at different rates and do get treated differently by the courts as a consequence – unsatisfactory state of affairs? Cases such as *Yachuk v Oliver Blais Co Ltd and Evans v Souls Garage* might be explored and contrasted.

Candidates could also explore the issue of fault calculations. How can degree of fault be accurately and fairly assessed? Reference could be made to cases such as Bake v Willoughby here.

Responses that attempt no assessment of the issues raised in the question will be limited to maximum marks within band 3.

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Section B

4 **Advise Nadia, Mary and Lynn as to the likely success of any actions in negligence arising from this incident.**

This question is primarily concerned with liability for nervous shock in the context of negligence. Candidates can introduce negligence and outline the three essential elements of duty of care, breach of duty and resulting damage which is not too remote. While a detailed discussion of these elements is not required, there must be some application of these rules in relation to Nadia.

Candidates should examine the special requirements which apply in cases of nervous shock. The meaning of nervous shock should be explored with reference to relevant case law. The distinction between primary and secondary victims should be explained and applied to the facts of the scenario.

The control factors established in *Alcock* should be discussed and applied to the facts of the scenario. The issue of direct aftermath and the case of *McLoughlin v O'Brien* should also be examined and applied.

Clear and compelling conclusions should be reached supported by appropriate authority.

5 **Advise Bob as to his potential liability as an occupier towards Carlos.**

Candidates should identify the issue here as one of occupiers' liability as the harm arises in the context of the state of premises. Candidates could explain the meaning of occupier and therefore identify that Bob is the occupier. Candidates could explore the question of how to categorise Carlos. It seems likely that he is a trespasser and therefore the duty of the occupier under the Occupier's Liability Act 1984 should be discussed and applied to the facts. However if a candidate chooses to argue that there was implied permission then a discussion of the Occupiers Liability Act 1957 could also be creditworthy.

In relation to the OLA 1984, candidates should explain the nature of the duty under the OLA 1984 and illustrate their arguments with appropriate case law.

There should also be some discussion of the issue of the warning sign and the age of the plaintiff.

Candidates should also distinguish between the personal injury which is recoverable and the damage to property which is not recoverable under the OLA 1984.

Clear, compelling and supported conclusions should be reached.

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6 **Consider the potential liability of Marco, Gianni and Luigi for trespass to the person in this situation.**

Candidates should identify the issue here as one of trespass to the person. Candidates should identify the specific incidents in the scenario as being concerned with assault and battery. Candidates should explain each of these forms of trespass to the person and explore the key requirements for each with reference to appropriate case law. The rules relating to consent in the context of sport should also be examined

In relation to the incidents during the warm up phase of the game the issue is whether the threats made by both Gianni and Luigi are sufficiently immediate to put the other party in genuine fear of harm. Cases such as *Turberville v Savage* could be incorporated into this discussion.

In relation to the aggressive tackles during the game candidates should consider whether these are covered by the defence of consent.

The incident which occurs at half time should be identified as a possible battery. As it is not in the course of the game then the issue of consent should not arise. In relation to the injuries suffered by Gianni candidates should consider the type of damages which might be relevant in this case.

False imprisonment is not relevant in this scenario. An explanation or application of false imprisonment should not be credited.

Clear and compelling conclusions should be reached supported by relevant authority.

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