CAMBRIDGE INTERNATIONAL EXAMINATIONS

Cambridge International Advanced Level

MARK SCHEME for the May/June 2015 series

9084 LAW

9084/43 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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Section A

1 The current approach to establishing a duty of care can restrict the liability of defendants and result in the claimant being refused compensation.

Critically analyse the impact of this approach with reference to decided cases.

This question requires candidates to undertake a critical analysis of the current rules governing the duty of care in negligence. Candidates may introduce the issue by outlining the three essential requirements for a successful action in negligence, duty of care, breach of duty and resulting damage which is not too remote. However a detailed account of all three elements is not required.

Candidates should focus on the requirements for establishing the duty of care, from the neighbour test in *Donoghue v Stevenson* to the three stage test in *Caparo v Dickman*. Each part of the three stage test should be examined and appropriate case law referenced.

Candidates should then address the key issue raised in the question. Does the current approach to the duty of care allow defendants to escape liability? This requires a critical analysis of the three stage test in Caparo. Reference to relevant case law, which demonstrates the application of the Caparo test, is important here.

Where candidates focus on explanation of the rules only and do not address the critical analysis aspect of the question, the mark will be confined to a maximum in Band 3.

2 The key issue when deciding liability in the tort of private nuisance is the reasonableness of the defendant's activities.

Critically evaluate whether the current rules achieve a satisfactory balance between the rights and interests of neighbours. Support your view with decided case law.

The tort of private nuisance arises from the fact that wherever we live work or play, we have neighbours and the way that we behave on our land may affect them when using theirs and vice versa.

Candidates should explain the key elements of the tort of nuisance, such as 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. Reference to relevant case law is vital here.

Candidates should analyse the approach taken by the courts when dealing with the issue of reasonableness and examine relevant case law as part of this discussion.

Candidates might 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 should address the question and form a conclusion as to whether the issue of reasonableness is the key issue in a nuisance action or whether it is simply one of the factors to be taken into account.

Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3.

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3 Explain the principle of vicarious liability and evaluate the rules used to determine the circumstances under which an employer will be held liable for the acts of an employee.

Candidates should define vicarious liability – 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 is the imposition of vicarious liability justifiable?
Candidates should examine the tests which are used to establish whether an employer – employee relationship exists. Candidates could distinguish between the contract of service and the contract for services in the context of vicarious liability. Tests such as control, integration and economic reality should be explained and also evaluated. Candidates could also identify areas of particular difficulty here such as agency and casual workers.
Candidates should also examine the issue of the scope of employment and discuss how the courts determine whether an employee is operating within the scope of their employment or not. Relevant case law should be credited here.
Candidates should be given some credit for identifying the reasons why vicarious liability is imposed although this is not the main focus of the question.
Candidates must approach this issue with a critical eye if marks in band 4 and 5 are to be awarded.

4 Advise Simone as to whether she should bring an action in negligence against Fiona.

This question focuses on liability for the results of negligent misstatements. Candidate will need to set the scenario in context by outlining the elements of negligence: duty of care, breach of duty and resulting loss which is not too remote.

The principles on which such cases are decided were established in the case of *Hedley Byrne v Heller & Partners*, and further developed in cases such as *Caparo v Dickman*.
In order to establish a duty of care there must be a special relationship between the parties, a voluntary assumption of responsibility by the party giving advice and reliance by the other party on that advice or information and such reliance must be reasonable.

Candidates need to examine whether there was a special relationship in this instance, as the outcome would seem to hinge very much on this. It was suggested by Lord Reid in *Hedley Byrne v Heller & Partners* that special relationships only cover situations where advice is given in a business context. The issue here therefore would seem to be whether the statements made by Fiona to Simone were made in a business or social context. The decision in *Chaudry v Prabhakar* ought to be considered in this context.

If it is concluded that either set of circumstances imposed a duty of care on Fiona, then candidates need to go on to consider the extent that reliance was placed on her statement and whether such reliance was reasonable.
The decisions in *Esso Petroleum Co Ltd v Mardon* and the wills cases could be explored, applied and appropriate conclusions drawn.

Candidates should also be credited for a discussion of the standard of care in this context – given that Fiona is in the final year of a degree course, should there be any adjustment made to the standard of care? Cases such as *Nettleship v Weston* could be cited in this context.

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

5 Advise ABC Ltd as to their liability for the injuries suffered by Tom, Jim and Anne.

This question is concerned with liability negligence both in the context of physical injury (Tom) and nervous shock (Jim and Anne). 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 they should be applied to the facts of the scenario.
The fact that the people have gained entry using counterfeit tickets is relevant to the issue of liability for negligence and in particular to the issue of breach of duty and causation. Candidates should be credited for a discussion of this issue. This also eliminates the possibility of an action under the Occupiers Liability Act 1957 as the injuries arise from an act/omission on the part of ABC Ltd rather than the state of the premises. A discussion based on the OLA 1957 therefore should not be credited.

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 question of whether Jim would qualify in terms of his friendship with Tom should be examined.

The control factors should established in Alcock should be discussed and applied to the facts of the scenario. The issue of 'direct senses' should be explored and applied in the context of Anne watching the event unfold live on television.

Clear and compelling conclusions should be reached supported by appropriate authority. Where candidates explain the rules but do not apply them to the facts given a maximum mark in Band 3 would be appropriate.

6 Consider the liability, in trespass, of all four parties in this scenario.

This question raises the issues of trespass to land and trespass to the person.
The issue of trespass to land should be identified where the students enter the library to protest rather than to study – does this exceed their permission to enter the library? Alternatively when they are asked to leave and refuse to do so it can be argued that they then become trespassers.
Having dealt with trespass to land, candidates should then explain each of the three forms of trespass to the person, assault, battery and false imprisonment. Candidates should refer to relevant case law to support their explanations.
When Ali, the security guard, makes physical contact with Fabien and begins to push him towards the door this could be characterised as a battery. However the issue of self- help should be identified here – is Ali ejecting a trespasser?
When Imran threatens to punch Ali this could be seen as an assault. The candidates should examine whether the words used are sufficient to cause Ali to apprehend immediate and unlawful contact, reference could be made to cases such as *Thomas v National Union of Mineworkers.*
Does Bill commit a battery against Imran or are his actions justified on the grounds that he is using reasonable force to protect Ali?

A final issue which arises here is false imprisonment. When Bill instructs Imran not to move until the police arrive can this be said to be false imprisonment. Does Imran have an alternative route to escape? Does Bill have authority to detain Imran until the police arrive?

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If a candidate does not discuss trespass to land but focuses just on trespass to the person this could achieve Band 4 depending on the quality of the answer.
Where the candidate focuses on trespass to land and does not discuss trespass to the person this will be a maximum Band 3.

In relation to each incident candidates should come to clear and compelling conclusions.

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