CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the October/November 2012 series

9084 LAW

9084/41 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 October/November 2012 series for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level components and some Ordinary Level components.

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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

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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.

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 According to s37 Supreme Court Act 1981, judges may only award an injunction as a remedy when it is considered just and convenient to do so.

Using example cases, critically analyse the circumstances under which injunctions have been awarded as remedies in the law of tort.

Common Law damages remain the principal remedy for all civil matters. All equitable remedies, of which an injunction is just one, are only ever issued at the discretion of the court when, in the circumstances, damages would be considered either inadequate, inappropriate or both. In the law of torts, injunctions can be particularly effective, especially when dealing with continuing or repeatable torts such as defamation and nuisance, as the effect is to prohibit commission, continuance, or repetition of a tort.

Because injunctions are equitable remedies, an award of such a remedy must be deemed the just and equitable thing to do in the circumstances. Candidates are expected to select appropriate case law and to evaluate whether this premise is indeed correct. *Redland Bricks Ltd v Morris* (prohibitory injunction), *American Cynamid Co v Ethicon Ltd* (interlocutory injunction) and *Shelfer v City of London Electric Lighting Co* (damages in lieu of injunction) would be good, but not exclusive starting blocks for discussion.

Candidates must offer a critical analysis of case law decisions and draw a compelling conclusion.

2 The Occupiers' Liability Acts 1957 and 1984 seek to ensure that the interests of the occupiers of land never completely override the rights of people who enter their land.

Discuss this statement and debate the extent to which the legislation achieves what it set out to do.

In the eyes of the ordinary man in the street, if a person enters the land of another with that person's permission, whether express or implied, then the occupier should be liable for any harm that befalls the visitor whilst using the premises in a way consistent with the purpose of his/her visit. Conversely, the person who enters without permission ought to enter at his own risk and the occupier should not be held liable for any harm that befalls the trespasser. Indeed, this approach was that adopted by the common law.

The principles concerning lawful visitors were enacted in the OLA 1957 which imposes a duty on occupiers to ensure the reasonable safety of visitors for the purpose for which their entry to premises is permitted.

In respect of the trespasser, OLA 1957 had no effect, so occupiers were still able to, for example, leave dogs loose on premises and to set traps etc. without fear of liability if a trespasser was to enter and subsequently get bitten by the dogs or fall into a trap. It also meant no duty on the part of the occupier to protect trespassers against other known dangers on the premises.

The decision in *British Railway Board v Herrington* first imposed a duty of common humanity to warn trespassers of known inherent dangers. This was later incorporated in the OLA 1984.

Candidates should explore OLA 57 and 84 provisions and draw clear, compelling conclusions in response to the question posed.

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3 In negligence cases it is the court's aim to compensate the innocent victims of the tort.

Critically assess the extent to which the application of rules relating to causation and remoteness in decided cases has impacted on this aim.

Candidates might 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 and not being too harsh on defendants. Candidates should then recognise that it is the rules of causation and remoteness that assists courts achieve the desired balance.

Causation and remoteness must be both defined and explained. They must then be used to show how the rules apply to either one tort in particular or 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 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 band 3 marks.

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Section B

4 Assess the likely success of any claims in the tort of private nuisance brought against Snuff & Co.

This question entailed the discussion of possible private nuisance claims. Candidates should define private nuisance as an indirect interference with the use or enjoyment of land in possession of another. This should then be followed by a discussion of the limitations of duration, locality, sensitivity etc. as applicable to the scenario.

As regards the general pollution, exploration should ensue as to whether residents in a housing estate provided by an employer adjacent to a workplace can expect less comfort than those in other areas (*e.g. Sturgess v Bridgman*).

As regards Bill and Ted are concerned the issue of undue sensitivity needs to be addressed as they already suffer from breathing problems. The issue of whether or not their breathing problems were caused by the smoke and fumes in the first place is an issue that does not need to be examined here (*e.g. Robinson v Kilvert*).

The issue of interference with mobile phones reception is an interesting one. Candidates should debate whether or not such interference could amount to nuisance or not (*e.g. Hunter v Canary Wharf*).

Candidates should debate the issues and draw clear, compelling conclusions.

5 Consider the potential liability of Haroon and the hospital for Nadia's death and Esther's subsequent illness.

Focus of candidates' attention should be on liability in negligence in general as regards Nadia and in nervous shock as regards Esther. Whilst Haroon might ordinarily be considered liable for his own actions, as he commits possible act of negligence in a work situation could the hospital be held vicariously liable too?

Liability in negligence results from the existence of a duty of care owed to the claimant, a breach of that duty and consequential loss or damage to the claimant. Candidates are expected to give a brief discussion and illustration of these elements.

Candidates will be familiar with the relevant law on the scope of a hospital's duty to warn of risks attaching to treatment. They should also see that causation was an important issue here: would Nadia have agreed to the treatment if she had been warned of the risks and did the drug in fact cause her to kill herself? The latter problem is caused by the unavailability of scientific evidence, but it is a very different situation from that in the *Fairchild* case where the House of Lords relaxed the 'but for' requirements in order to do justice.

Good candidates might also consider an alternative line of reasoning which avoids these problems: should Haroon and the hospital have ensured that Nadia was monitored continuously, given that the risk of depression was known? If they were in breach of that duty, the causation problem largely disappears (although of course she might have escaped even if she was supervised).

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Only once liability is established, can the question of whether Esther can recover for her psychiatric injury be addressed. Candidates should define and explain the meaning of key terminology: nervous shock, primary and secondary victims, etc. The generally accepted requirements for liability to exist should be detailed and explored: reasonable foresight, nature of psychiatric injury, relationship with primary victim and proximity.

Each test should be explored, analysing decided cases in each area and drawing conclusions. Key cases such as *White and Others* (1998), *Alcock v Chief Constable of Yorkshire Police* (1997), *McLoughlin v O'Brian* (1982), *Chadwick v British Railways Board* (1967), *Sion v Hampstead Health Authority* (1994) should all be analysed.

6 Discuss whether Harrison can hold Moody liable for the poor advice which ultimately led to him losing money.

This question focuses on liability for the results of negligent misstatements. Candidates will need to set the scenario in context by outlining the elements of negligence: duty of care, breach of duty and resultant loss.

The principles on which such cases are decided were established in the case of *Hedley Byrne v Heller & Partners* and represented a significant departure from previous principles. In this case, the House of Lords said that 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 statement made by Moody about Melchester United was 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 the circumstances imposed a duty of care on Moody, then candidates need to go on to consider the extent that reliance was placed on his statement and whether such reliance was reasonable. The decisions in *Esso Petroleum Co Ltd v Mardon* and the *Wills* cases should probably be explored, applied and conclusions drawn.

Clear, concise and compelling conclusions are expected.

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