**CAMBRIDGE INTERNATIONAL EXAMINATIONS**

**GCE Advanced Level**

# MARK SCHEME for the October/November 2013 series

## 9084 LAW

**9084/42** 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 2013 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 Critically analyse the extent to which the Occupiers' Liability Acts 1957 and 1984 achieve an appropriate balance between the interests of occupiers of land and those of people who enter their land. [25]**

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. Now 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 conclusions in response to the question posed. Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3 marks; critical analysis of the law is essential.

**2 A principal aim of an award of damages in tort is to compensate a victim in full (*restitutio in integrum*).**

**Assess the extent to which the courts have been able to achieve this aim. [25]**

An award of damages in tort aims to compensate claimants for actual losses suffered; *restitutio in integrum* means restoration in full and the aim is to put a claimant in the position (s)he would have been in had the tort not been committed. Restoration in full may necessitate awards of general damages for losses arising naturally from the tort and special damages which have been claimed in particular because the loss is not a natural result of the tort in question. Candidates will be credited for discussion of these different types of damages that might be awarded.

Pecuniary and non-pecuniary losses may be subject to an award of damages. The former, which are financial, are easier to calculate than the latter, but even when losses are purely financial, the issue of what amounts to *restitutio in integrum* is not always straightforward; disagreements between first instance and appeal decisions were very evident in *Gardner v Marsh & Parsons* and *South Australia Asset Management Corporation v York Montague Ltd*. Issues of over-compensation also arise (*Parry v Cleaver*; *Longden v British Coal)* as do the issue of lump sum payments in cases where the true effects of a loss are not felt until after an award has been made (Pearson Commission (1978) recommendations might be referred to here).

Fault ought also be discussed. Compensation by way of damages does not take degree of fault into account.

Candidates are expected to draw clear conclusions, summing up by saying how far they feel that the aim of *restitutio in integrum* is achieved.

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**3 Unauthorised entry to another's land without permission is never justifiable and is actionable *per se*.**

**Critically assess the extent to which you agree with this view of the tort of trespass to land. [25]**

This question addresses the tort of trespass to land and some of its defences. Trespass to land should be defined: the unjustifiable direct interference with land which is in the immediate and exclusive possession of another. It should be explained that this tort is actionable per se, i.e. without proof of actual loss having been suffered.

Candidates may then expand in outline and briefly explain the elements of possession of land and direct interference (e.g. entry, abuse of rights of entry, remaining on land, placing things on land). No more is expected.

Does all non-permitted entry to another's land amount to an actionable trespass? Candidates should consider the issue of accidental trespass. *League against Cruel Sports v Scott* and *River Wear Commissioners v Adamson* both suggest so, provided that negligence can be proved on part of trespasser.

Recognised defences do exist and these should be investigated and reviewed by candidates:

Licence – express or implied permission granted and terms not exceeded.

Justification by law – for example the policeman's right to enter and search premises (S17 PACE 1984).

Necessity – restricted defence. Candidates might contrast approaches in *Esso Petroleum Co v Southport Corporation*, *Rigby v Chief Constable of Northumberland* and *Monsanto plc v Tilly*.

Responses that attempt no critical assessment as required by the question will be limited to maximum marks within mark band 3.

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## Section B

**4 What general defences in tort might Solid Build raise against actions brought by the city centre businesses, Gina and Stan? With reference to decided cases, discuss the likely success or failure of those defences. [25]**

General defences are those that can be raised in respect of more than one tort as opposed to specific defences peculiar to individual torts.

In the first instance, there has been an apparent negligent act as water pipes are broken and the water supply to city centre businesses is cut. A duty of care, breach of that duty and resultant loss would need to be established before liability in negligence can result. On the face of it, the facts would appear to speak for themselves (*res ipsa loquitur*). However, Solid Build could plead inevitable accident as a defence to the claims of the city centre businesses. By definition, an accident is deemed inevitable if, in all the circumstances of the case, it was one that the defendant could not have avoided however much care they took. This would appear applicable here as maps had been obtained, but the pipes were not shown on those available for reference.

In the second incident, private nuisance would appear to be at issue. Was there an unreasonable, indirect interference with a person's use or enjoyment of land in their possession? Apparently so. The engineering company may well try to use the defence of necessity in this case. However this defence is only available to those situations where the tort is inflicted out of necessity in the sense that it saves greater loss to the claimant that would otherwise be suffered. In this case, it would appear that the loss being saved is not the claimant's but the defendant's and hence such a defence is destined to fail (*Andreae v Selfridge*).

The final incident raises the issue of the defence of consent or *volenti non fit injuria*. Claims will fail if defendants can prove that claimants voluntarily assumed risks which resulted in losses suffered. As an employee, did Stan volunteer or did he merely accept the risk for fear of action against him by his employer if he refused (*Bowater v Rowley Regis Corporation*)?

In the event of candidates discussing the possible torts rather than the potential defences, maximum marks to the middle of band 3 might be awarded. The principles must be applied to the scenarios and clear, compelling conclusions drawn.

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**5 Assess City Buses' potential liability in negligence in each of the situations above. What is the likelihood of any defences being successfully raised? [25]**

Candidates might open their response by saying that as employer of someone carrying out their employment duties when the alleged tort was committed, City Buses are potentially vicariously liable for its consequences.

Candidates should outline and explain the three elements of negligence as a tort (duty of care, breach of duty and consequential loss) and then determine whether or not in each of the three circumstances, liability might exist.

In the instance of Anita, candidates should recognise that a duty of care is owed to passengers who have paid their fare to travel on a bus, that there has patently been a breach of that duty. The question here is whether the loss was a reasonably foreseeable one or not.

In Bethan's case we have a situation of injury sustained by a rescuer. Some candidates might argue that she knew that a rescue mission in the circumstances would be risky and that she thus consented to those risks. Better informed candidates will recognise that in situations where life is put at risk, rescuers act as a matter of compulsion; risks are not weighed and decisions taken (*Haynes v Harwood; Cutler v United Dairies*) and thus any defence of consent would be destined to fail.

In the case of Corinne, the question of nervous shock and whether Corinne was sufficiently proximate in terms of relationship, time and space. Candidates should then distinguish between primary and secondary victims of negligence and conclude which type of claimant Corinne is. Nervous shock should be defined and the principles on which liability rests as regards secondary victims should be identified and explained: relevant class of person, own sight, hearing of incident or its immediate aftermath, means by which shock received. Can she be successful in the light of *Alcock*?

In each instance, the principles must be applied to the scenarios and clear, compelling conclusions drawn.

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**6 Discuss Tanya's potential liability in tort for the financial loss sustained by Sameera. [25]**

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 advice (valuation) was given to Sameera 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 Tanya, 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. Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

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