CAMBRIDGE INTERNATIONAL EXAMINATIONS

Cambridge International Advanced Level

MARK SCHEME for the October/November 2015 series

9084 LAW

9084/41 Paper 4, maximum raw mark 75

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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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1 The issue of fault is not relevant in determining liability under the tort of Rylands v Fletcher.

Outline the elements of this tort and critically analyse the above statement.

Candidates should explain the elements of the tort in Rylands v Fletcher, with reference to appropriate case law.

In order to address the central issue posed by the question, candidates should examine the meaning of fault and whether there is a fault requirement for liability in Rylands v Fletcher or whether it can be categorised as a tort of strict liability. A key issue in this discussion is the impact of the decision in Cambridge Water.

Candidates should also consider the fact that defences are available in an action for Rylands v Fletcher. The defences should be identified, briefly outlined and then linked to discussion on fault and Rylands v Fletcher.

Clear and supported conclusions should be drawn.

Where candidates explain the elements of Rylands v Fletcher but do not engage in a critical analysis as required by the question, the maximum mark should be limited to Band 3.

2 Trespass to the person is no longer necessary as the tort of negligence provides a satisfactory means of recovery for claimants.

Critically assess this view.

This question requires candidates to compare the basis for liability in trespass to the person with that of negligence and reach a conclusion as to whether trespass to the person is still necessary in providing a means of recovery in certain cases.

Candidates should outline the essential elements of each tort and then compare and contrast key elements in order to address the central issue raised in the question. Reference should be made to appropriate case law here.

Key points which should be discussed include issues such as intention and direct interference. Particular attention should be paid to the issue of false imprisonment and whether cases falling under this category of trespass to the person can be resolved through an action in negligence.

Candidates should reach a clear and supported conclusion.

If candidates explain the torts of trespass to the person and negligence but do not engage in a critical analysis as required by the question, then the maximum mark should be confined to Band 3.

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3 It is unfair to impose liability in tort on one person for the actions of another.

Critically analyse the principal of vicarious liability and consider whether its use is justifiable.

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.

Candidates should outline the requirements for establishing vicarious liability in the context of employment and refer to appropriate case law. Candidates should then go on to critically analyse the imposition of such liability by considering the arguments for and against it.

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?

Also, in the majority of cases, it will be the employer who will be in the best financial position to meet a claim, either because of resources or insurance cover. Inevitably, such losses get passed on to consumers through higher prices for goods or services. Does this argument thus stand up to scrutiny?

Some evidence suggests that imposition of liability encourages employers to check that their employees do their work carefully. Would this happen if such liability did not exist and costs had to be reduced?

Candidates should reach a clear conclusion through evaluating the competing arguments.

Where candidates explain the elements of vicarious liability but do not analyse the issue raised by the question – whether such liability is unfair – then the maximum mark should be in Band 3.

4 Advise Tania as to her potential claims against Barton Town Council and George.

The issue here is one of occupiers' liability. In the first instance Tania could take action against Barton Town Council. It would appear that she is a visitor and the Council is the occupier so a potential action under the Occupiers' Liability Act 1957 should be considered. Candidates should explain the extent of the occupier's duty under the OLA 1957 and refer to relevant case law before considering whether Tania might be able to recover for her initial injury on this basis.

In relation to the more serious incident on George's land it would appear that Tania has now become a trespasser, therefore a discussion of OLA 1984 would be appropriate. Candidates should explain the duty owed by the occupier to a trespasser under the OLA 1984 and apply the law to the facts of the scenario. The issue of the warning sign should also be examined and a conclusion drawn as to whether it can discharge George from liability.

Candidates might take the view that Tania was not aware of the fact that she was trespassing due to the state of the fence – therefore a discussion of OLA 1957 could also be creditworthy here.

Credit may be awarded for an alternative approach in which a claim in negligence is explored.

Candidates should reach clear and compelling conclusions in relation to each issue.

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5 Advise Alvin and Len as to their rights and responsibilities in this situation, and consider what remedies might be awarded by the court.

The issue here is private nuisance. Candidates should outline the elements of the tort and refer to relevant case law such as De Keysers Royal Hotel v Spicer and Crown River Cruises v Kimbleton.

A key issue here is the reasonableness of the activities of both Alvin and Len. It would appear to be a residential area and in the case of Alvin it would appear to be an on-going activity. It would appear that Len's actions are motivated by malice. Relevant cases such as Sturges v Bridgeman and Christie v Davy should be references here.

All of these factors should be discussed by candidates and appropriate conclusions reached.

The issue of liability in nuisance for personal injury should be identified – is it recoverable – see Bliss v Hall for example.

Candidates should examine the remedies available in an action for nuisance and consider which might be appropriate in this scenario.

Clear, compelling and supported conclusions should be reached.

6 Advise Olga, Nigel and the other students as to the likely success of an action in negligence against Mike.

The first issue to arise here is negligence. Candidates should outline the three essential elements of negligence, duty of care, breach of duty and resulting damage which is not too remote. Candidates should examine whether each of the elements is satisfied in the scenario.

There is also an issue of nervous shock, therefore the special requirements for establishing liability should be explained with reference to relevant case law such as Alcock v Chief Constable of South Yorkshire and McLoughlin v O'Brien where appropriate.

Candidates should explain the distinction between primary and secondary victims and apply the law to the scenario accordingly. Relevant cases such as White v Chief Constable of South Yorkshire and Page v Smith should be considered here.

In relation to Nigel there is also a possible defence of contributory negligence. The rules set out in the Law Reform (Contributory Negligence) Act 1945 and relevant case law such as Fro v Butcher and Sayers v Harlow should be considered.

The relevance of age to a defence of contributory negligence should also be discussed as per cases such as Gough v Thorns.

In relation to each issue clear and supported conclusions should be drawn.

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