

**MARK SCHEME for the May/June 2011 question paper
for the guidance of teachers**

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 must be read in conjunction with the question papers and the report on the examination.

- Cambridge will not enter into discussions or correspondence in connection with these mark schemes.

Cambridge is publishing the mark schemes for the May/June 2011 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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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 Evaluate the usefulness of the current rules relating to liability for secondary victims in the tort of negligence.

The Law Commission considered in 1998 that it was justified that there should be a close tie between primary and secondary victim and that this should remain. However, the belief of the Commission is that this should suffice and that the proximity in time, space and method of perception requirements be abolished. Candidates should express their views on this matter.

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*, *Alcock v Chief Constable of Yorkshire Police*, *McLoughlin v O'Brian*, *Chadwick v British Railways Board* and *Sion v Hampstead Health Authority* should all be analysed.

This question could be approached from various angles and appropriate credit should be awarded whichever angle it is tackled from. It would ordinarily be expected that emphasis be placed on problems relating to the position of rescuers, closeness of relationship, proximity and/or sudden shock requirements.

An account of the legal rules without critical analysis will be maximum band 3.

2 The basic principle in tort is that wrongdoers should be liable for their own actions.

In the light of this assertion, critically evaluate the reasons why vicarious liability should be imposed.

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 actions 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, there may be an element of liability if targets and work-loads are set, such that even specialist work cannot be done properly.

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 hold water?

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?

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

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3 Entry to another's land without permission is never justifiable and is always actionable per se. Discuss the above view of the tort of trespass to land.

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*.

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Section B

4 Pedersen sues Larsen in trespass to the person. Advise Larsen of his potential liability and evaluate any potential defences that he might raise.

By way of introduction, candidates might introduce us to the three arms of trespass to the person: assault, battery and false imprisonment. Candidates should immediately recognise the irrelevance of false imprisonment to the scenario.

Assault should be defined and explained as a tort. Could Larsen's verbal threat of physical violence towards Pedersen amount to an actionable assault in tort law? Was immediate violence feared by Pedersen because of accompanying actions, for instance (e.g. *R v Meade*, *R v Constanza*, *Turbervell v Savage*)? Candidates should explore the issue here.

Does the tackle which resulted in injury amount to a battery in tort law? Was it deliberate or merely careless? Was it hostile (e.g. *Letang v Cooper*, *Wilson v Pringle*)? Candidates must explore these issues.

Ordinarily, it could be argued that ice hockey players participate in their sport in full knowledge that it is a contact sport and that injuries can result from such contact: the participants frequently make contact with one another by the very nature of the game. Hence, in most circumstances consent is seen to be given to the tort of trespass to the person that would otherwise be actionable as a result of the unlawful physical force imposed on one another during the game. Debate is called for to distinguish mere knowledge of risk from consent to risk (*Bowater v Rowley Regis Corporation*).

Debate should then follow as to whether the fierce tackle in question was undertaken in a deliberate attempt to harm or whether it was indeed of itself an act of negligence giving rise to harm (*Condon v Basi*). In either event it would seem unlikely that Pedersen could be said to have consented to such harm by simply taking part in the game.

If Pedersen is thus able to refute a defence of consent, would he be able to recover his loss of earnings? Candidates should discuss the concept of compensation and in particular whether the loss suffered is likely to be compensated in the event of a court case.

A clear, compelling conclusion is expected.

5 Discuss whether Waring can be held liable in negligence for the loss suffered by his friend Houtt.

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

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business context. The issue here, therefore, would seem to be whether the statement made by Waring about ComputerCity 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 Waring, 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.

6 Milo's wife and the owners of the animals now wish to obtain compensation from Loddon Valley University. Advise them on the legal basis for their claims and consider the likelihood of their success.

The lack of direct human interference apparently rules out trespass. The lack of indirect interference with the use or enjoyment of neighbouring land also seems to rule out private nuisance. Candidates should thus draw the conclusion that the only realistic basis on which the claimant might proceed is either in the tort of negligence or in the tort known as the Rule in *Rylands v Fletcher*. As no negligence is apparent, the latter might appear the safer course of action as R v F is a tort of strict liability. Should candidates respond solely with regard to the tort of negligence, marks should be awarded to a maximum of band 3.

Candidates might outline the R v F case, but more importantly should state and explain the rule resulting from the case: if anyone, for their own purposes, brings anything on to their land which is likely to cause damage if it escapes, they keep it there at their peril and will be strictly liable for damage caused by such an escape.

Elements of tort should be discussed and related to the case in question: control of land, accumulation for unnatural use, dangerous thing, escape and damage should all be covered and illustrated by case law.

The defence of act of a stranger should be identified and explored.

Candidates should also consider whether or not the remoteness of damage principle might have the effect of reducing either claim for compensation in this case.

The issue of what type of damage is recoverable under R v F could also be considered.

Whatever conclusion is reached it should be clear, compelling and fully supported.