

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the November 2004 question paper

9084 Law

9084/04

Paper 4, (Law of Tort) maximum mark 75

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which Examiners were initially instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began. Any substantial changes to the mark scheme that arose from these discussions will be recorded in the published *Report on the Examination*.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the *Report on the Examination*.

- CIE will not enter into discussion or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the November 2004 question papers for most IGCSE and GCE Advanced Level syllabuses.

Grade thresholds taken for Syllabus 9084 (Law) in the November 2004 examination.

	maximum mark available	minimum mark required for grade:		
		A	B	E
Component 4	75	45	38	24

The thresholds (minimum marks) for Grades C and D are normally set by dividing the mark range between the B and the E thresholds into three. For example, if the difference between the B and the E threshold is 24 marks, the C threshold is set 8 marks below the B threshold and the D threshold is set another 8 marks down. If dividing the interval by three results in a fraction of a mark, then the threshold is normally rounded down.

November 2004

GCE ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/04

LAW
(Law of Tort)

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Section A

Question 1

Compare and contrast the torts of trespass to land and private nuisance.

The question requires candidates to look at the similarities and differences between these two torts that affect interests in land.

Both torts must be defined by candidates and those definitions should be explained. Responses should entail consideration of the following as a starting point:

Trespass to Land

Involves a direct, physical interference with the possession of land

Technically actionable per se

Justifies a series of legal actions as long as it lasts

Isolated incidents suffice to give rise to a cause of action

Reasonableness of act of no consequence; even if in ignorance, liability arises

Private Nuisance

Involves an indirect interference with the enjoyment or use of land in another's possession

Only actionable on proof of actual loss

Generally needs to be continuous state of affairs to give rise to a cause of action

Interference must be substantial to give rise to liability

Must be an unreasonable interference

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Question 2

The law of torts encourages us to take care in what we do and discourages us from doing anything likely to be dangerous to others.

Critically assess whether these aims are achieved by the rules that determine the standard of care in the tort of negligence.

In order to establish liability in the tort of negligence, a duty of care, breach of that duty and resultant loss or damage is required.

Detailed coverage of the duty of care and resultant loss is not required by this question and should not therefore be credited, except in so far as it contextualises what is to follow or what has gone before.

A breach of the duty of care takes place when standard of behaviour of someone falls below that expected in someone undertaking the said activity. In each set of circumstances, the standard set is an objective one, but the general premise has always been 'the greater the risk to others, the greater the care required' with conduct being measured against that of a reasonable person (*Vaughan v Menlove*): the characteristics of the individual are usually ignored. So, for example, all drivers of vehicles are required to achieve the standard of a reasonable driver, whether they have 20 years or 20 days experience (*Nettleship v Weston*).

Candidates should assess and comment on what amounts to a reasonable person in different circumstances. Various factors always have to be considered and balanced against one another: characteristics of both parties, magnitude of risk, how practical it would have been to reduce the risk further and whether there are any benefits to taking the risk. Candidates should conclude that none of these factors is conclusive on its own; they interact.

Credit should be given to candidates who then explore these factors in more detail, provided that material is used in such a way as to further analysis and assist a clear, concise conclusion.

Question 3

According to S37, Supreme Court Act 1981, a judge may only award an injunction as a remedy when it is considered just and convenient to do so.

Using examples of cases from the Law of Torts, evaluate the circumstances under which injunctions have been awarded as remedies.

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 Cyanamid 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.

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Section B

Question 4

Discuss the racecourse owners' potential liability towards George and critically evaluate the remedies provided by English Law in such instances.

It would seem from the facts that the basis for any action taken by George against the racecourse owner would lay in the tort of private nuisance. The use and enjoyment of George's property is being indirectly interfered with by the disruption and noise resulting from regular activities taking place at the racecourse nearby.

George would have to prove the disruption and noise to be a continuous state of affairs and that, on that basis, it amounts to an unreasonable interference with the use/enjoyment of his land. The courts would take into account factors such as locality, frequency, sensitivity of George and the social utility of the activity complained about before passing judgment in George's favour.

What about remedies? Damages are awarded unless inappropriate to do so, when they might be replaced by a more appropriate remedy such as injunction. This is frequently the case in nuisance cases, but as with all equitable remedies, injunctions which prohibit or restrict interfering behaviour can only be granted subject to precondition. Not only must it be an equitable solution but it will need to be implementable without constant court supervision. Would it be equitable, for instance, to prohibit activity which was of social benefit to the community?

Clear compelling conclusions are required.

Question 5

Discuss the liability of the van driver for the losses incurred by the farmers and the auctioneers.

Candidates should address their thoughts and commentary to the liability of a tortfeasor for the economic losses suffered by others as a consequence of his negligence.

A brief discussion of the elements of negligence may be entertained in order to put the candidate's response in context, but no more is necessary and thus will receive no credit.

In principle, pure financial loss unaccompanied by any physical loss to person or property is not recoverable in tort, whereas economic loss which results from physical damage is recoverable. Known as the 'floodgates' argument, restriction on recovery for pure economic loss is justifiable on the grounds that it is undesirable to make a person liable for 'an indeterminate amount for an indeterminate time to an indeterminate class' (*Ultramares Corporation v Touche*). Candidates should consider the outcomes in the cases of *Weller & Co Ltd v Foot & Mouth Disease Research Institute*, *Spartan Steel & Alloys Ltd v Martin & Co* and *Junior Books v Veitchi* as a means of tracking and explaining developments.

Candidates are also expected to address the issue of remoteness of damage and foreseeability of harm.

Application to the case in hand suggests that the farmers should be compensated for both sheep and income dependant on the sheep. It would seem far less likely, but not impossible, that the auctioneers would be compensated.

Clear compelling conclusions are required.

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Question 6

Discuss Albert's potential liability as occupier of the premises for the two injuries received by Henri.

The Occupier's Liability Act 1957 imposes a common duty of care upon the occupier of premises to ensure the reasonable safety of visitors.

S2(2) of the 1957 Act provides that 'The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted to be there.'

Henri sustained two injuries as an apparent result of the condition of the premises, so is Albert liable under the terms of the legislation?

Henri was invited to the premises to carry out electrical repair work, so S2(3) is also relevant. This provides that 'an occupier may expect that a person in the exercise of his calling will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do it'. As a qualified electrician, Henri should appreciate the risk of shocks when working with electricity, so is perhaps liable for his own injury as a result of the electric shock because he has apparently failed to take even the most basic steps to avoid such injury, i.e. he did not switch off the power!

As far as the injury to Henri's back is concerned, liability is less than clear. Should Albert have known that the steps were liable to break at any time? Should a warning have been given to Henri about the state of the steps so as to enable him to take greater care for his own safety?

Clear compelling conclusions are required.