

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

9084 LAW

9084/43

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 A judge may only award an injunction as a remedy in the law of torts when it is considered just and convenient to do so. Using appropriate case law, critically analyse 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.

Candidate responses that are limited to factual recall without reference to requisite case law examples will be restricted to band 3 marks.

- 2 The distinction drawn between pure economic loss and other kinds of loss is one that is difficult to justify.**

Briefly explain why purely economic loss is treated differently in the tort of negligence and, with reference to case law, critically assess the extent to which this statement is true.

Candidates should define economic loss (a financial loss by a claimant that results from neither personal injury nor damage to property) and offer an explanation for the courts' reluctance to compensate such losses (e.g. floodgates fears).

Candidates are expected to discuss the *Spartan Steel* case in which the defendants' negligence caused a power cut that resulted in three types of loss, all of which were easily foreseeable. They were found liable for two types of loss, but not the third; this was declared to be a purely economic loss and therefore not recoverable.

It is anticipated that candidates will trace the developments of the issue of economic loss through key case law such as:

Candler v Crane, Christmas & Co – responsibility to contractual client only and not to third party who suffered loss.

Hedley Byrne v Heller & Partners – economic loss recoverable in cases of negligent misstatements in 'special relationships'.

Anns v London Borough of Merton – defective premises considered property damage and thus allowed claim on that basis.

Henderson v Merrett Syndicates Ltd, *Williams and Reid v Natural Life Health Foods Ltd* and *Mistin and Londonwaste v AMEC Civil Engineering* evidence the extension of *Hedley Byrne* principles to the negligent provision of services as well as advice, but not to other negligent acts.

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Candidates must approach this issue with a critical eye if marks in band 5 are to be awarded.

An explanation of the legal rules without any evaluation will be maximum band 3.

3 The rights that exist between neighbours are satisfactorily protected by the tort of private nuisance.

With reference to decided case law, critically assess the extent to which you agree with this statement.

The tort of private nuisance arises from the fact that wherever we live, work or play, we have neighbours and the way that we behave on our land may affect them when using theirs and vice versa.

Candidates are expected to analyse the elements of the tort, namely indirect interference, reasonableness of actions and the extent to which interests are balanced by taking into account the complainant's sensitivity, locality and duration of the alleged tort, and the extent to which some sort of damage needs to be caused.

Candidates might also consider the extent to which available defences (such as prescription and consent) and remedies (such as damages, injunction and abatement) enable the aim of balance to be achieved.

Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

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Section B

- 4 Advise the ship's captain and Worldwide Shipping Lines of their potential liability in tort towards Ginnie regarding her husband's death and towards her father for the mental anguish caused.**

The emphasis of responses to this question should be on the tort of negligence, contributory negligence and nervous shock. Credit will be given for discussion of the vicarious liability of the shipping line for the master and crew's torts. Negligence occurs whenever a person does or fails to do whatever the reasonable man would not or would have done in the circumstances of the case. As a tort, negligence comprises a duty of care owed by defendant to plaintiff, a breach of duty and resultant damage suffered by the plaintiff. So were the captain and crew negligent? Would liability exist for John's death and the anguish suffered by Ginnie's father?

The burden of proof would rest with any plaintiff.

Was a duty of care owed to them? Developments in *Donoghue, Anns, Murphy, Junior Books* and *Caparo* should be discussed and conclusions drawn. Proximity needs detailed analysis.

Was there a breach of the standard of care required?

Was there a resultant loss? Were the respective losses suffered too remote to be recoverable? Particular discussion is needed of the potential contributory negligence of John and whether any compensation awarded to Ginnie might be correspondingly reduced. The nature of the 'nervous shock' of the secondary victim, Ginnie's father, needs to be explored and proximity principles developed in *Bourhill, McCloughlin* and *Hillsborough* cases need to be discussed and conclusions drawn.

- 5 Advise Cantab Fitness of their liability in tort for the injuries to Samana and Amira and for the damage to Amira's watch.**

The focus of this question is occupiers' liability as regards Samana and Amira.

Candidates should identify Cantab Fitness as the occupier of premises and that liability for injury to people entering their premises is governed by either the Occupiers' Liability Act 1957 in the case of visitors or the Occupiers' Liability Act 1984 in the case of trespassers.

When Samana and Amira enter the club as members, they clearly enter under licence, so would be termed visitors for those purposes. S2(2) of the 1957 Act imposes a duty to take such care as is reasonable to see that visitors are reasonably safe for the purpose for which they are invited or permitted to be there.

Cantab Fitness must expect members to use both gym equipment and showering facilities so a duty is owed to ensure that such equipment is properly installed, serviced and checked for safety. Has that duty been discharged by Cantab Fitness when getting Madeley Plumbers to install the showers, given that they appear to be independent contractors and outside their control? Was this company competent? Did the club take even basic steps to check that they had done what they were supposed to do?

Have the same duties been discharged as regards the safety of gym equipment to be used by members when Amira is injured? Can duties imposed by the Act be excluded – UCTA 1977 suggests not as regards personal injury.

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Then there is the question of the valuable watch which is damaged when Amira has her accident. Candidates should consider the issue of remoteness of damage and the question of contributory negligence due to Amira's failure to remove the watch while working out.

An alternative approach would be to consider a possible claim in negligence, in which case candidates would be required to present a detailed account of the Duty of Care, Breach of Duty and Damage.

Clear, concise and compelling conclusions should be drawn by candidates.

6 Advise Bobby, Owen and Marcus as to their respective liability, if any, in trespass to the person following this incident.

Candidates could set their response in context by explaining that the tort of trespass has three forms: to land, to the person and to goods. This problem concerns trespass to the person, which also takes three forms: assault, battery and false imprisonment. Candidates should offer clear, concise definitions and brief explanations of each.

Candidates should then address the four potential issues arising from the facts of the scenario.

Could Bobby's verbal abuse amount to an assault? In general, words alone will not amount to an assault unless accompanied by threatening actions as they should not create reasonable fear that a battery is imminent (*Thomas v National Union of Mineworkers*). Consequently, could Owen's menacing action in facing up to Bobby amount to an assault? Quite probably, but for the words used in conjunction with the menacing movement (*Turbervell v Savage*); however, he then pushes Bobby's shoulder, albeit lightly – could this amount to a battery as it is deliberate, illegal and 'forceful'?

What about Bobby's act of hitting Owen with a chair – was this mere retaliation or self-defence, given what Bobby thought that Owen was going to do? If it is considered that his act was one of self-defence this might prove an adequate defence to any action taken by Owen against Bobby for battery.

Did Marcus then falsely imprison Bobby, when he locked him in the toilet – or could this merely amount to a citizen's arrest? This would appear to have been his intent, but was there any reasonable means by which Bobby could have escaped from the toilets had he so wished?

The principles must be applied to the scenario and clear, compelling conclusions drawn.