UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the June 2005 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 June 2005 question papers for most IGCSE and GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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International Examinations

Grade thresholds for Syllabus 9084 (Law) in the June 2005 examination.

	maximum mark available	minimum mark required for grade:		
		A	B	E
Component 4	75	44	39	27

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.

June 2005

GCE ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/04

LAW
(Law of Tort)

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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

Section A

1 Candidates should define trespass to the person and the three forms that it might take: assault, battery and false imprisonment. An explanation should follow that to amount to a trespass, any act must be direct and physical even though no actual loss or harm needs to be proved as the tort is actionable per se.

Candidates must then consider the extent to which the tort's significance has been lost. Today, the Criminal Injuries Compensation Scheme, the power that criminal courts have to award compensation and the development of the tort of negligence frequently remove the need for a suit based in trespass. Main area in which trespass to the person now arises is that of civil liberties especially associated with police misconduct.

Candidates are expected to express a substantiated view in their response; marks should be limited to a maximum of Band 3 where candidates fail to provide any sort of critical assessment as required by the question. **[25]**

2 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, which 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 1957 and 1984 provisions and draw conclusions in response to the question posed. Band 3 marks will be the maximum for those candidates failing to use material to actually answer the question posed. **[25]**

3 A strict liability tort is one that is committed by performing the relevant act or omission without anyone having to prove any additional state of mind at the time. The tort in *RvF* is an example of a tort of strict liability. Whilst liability might be strict, however, it is not necessarily absolute as defences may be available.

In the case of *RvF*, defences do exist. Candidates should define and explain the tort (briefly) and are then expected to identify the defences available and consider their limitations in the light of the tort itself. The following should be covered as a minimum: common benefit to the claimant, default of the claimant, act of a stranger and act of God. Additional recognition will be given to candidates who recognise the application of the more general defences of consent, contributory negligence and statutory authority. **[25]**

Section B

4 Focus of candidate attention should be on liability in negligence and in particular for nervous shock.

Liability in negligence results from the existence of a duty of care owed to the claimant, a breach of that duty and consequential loss or damage to the claimant. Candidates expected to give a brief discussion and illustration of these elements.

The trauma, which he suffers and which prevents him working, might be described as a case of nervous shock. He has sustained psychiatric injury as defined by Lord Bridge in *McLoughlin v O'Brien*.

The harm that Salvatore has suffered is sustained as a direct result of the act of negligence of the refinery owners. Would Salvatore be described as a primary or a secondary victim? As he was not actually at work when the explosion occurred and thus not in imminent danger, he would be classed a secondary victim.

A duty of care is only owed to secondary victims if very strict conditions are satisfied. The decisions in *White*, *McLoughlin* and *Alcock* need to be discussed and the tests of the nature of the injury, class of person and claimant proximity need to be applied.

Clear compelling conclusions are required. **[25]**

5 The three elements of negligence could be briefly explained in the context of Linford's actions, but the main focus of candidate response must be on liability for injury and loss sustained by the two victims of his actions.

As a result of Linford's apparently negligent actions, Leroy is injured and Sally-Ann sustains financial loss as a result of the damage to her van.

Leroy was clearly owed a duty of care and that duty was breached, but if Linford is sued, could the partial defence of contributory negligence reduce Linford's liability? Knowing that Linford had been drinking, he should never have accepted the offer of a lift in the first place. Having accepted the lift, he should also have worn his seat belt. On this basis any compensation that he might have obtained for his injuries is likely to be significantly reduced, if not lost altogether.

As another motorist, Sally-Ann was clearly Linford's neighbour and as long as her van was on the correct side of the road when the accident occurred, Linford is likely to be held liable in negligence. Would he be liable for her loss of earnings or just for the damage to the van? This is a question of remoteness and candidates are expected to apply case law such as The Wagon Mound and draw conclusions.

Clear compelling conclusions are required. **[25]**

6 Nuisance should be the focus of candidate responses.

The two types of nuisance, public and private should be identified and defined. Private nuisance - unlawful indirect interference with another's use or enjoyment of land in his possession - should be recognised as the issue as regards the noise and dust caused by the building works. The definition should be analysed and key elements explained. What sort of interference could constitute a private nuisance - noise, smoke, smell, vibration etc. When does it become unlawful, given our personal freedoms - duration, location, sensitivity etc? Conclusions anticipated.

No detailed analysis of the traffic congestion issue is required, but candidates should recognise that private nuisance is not an issue as does not interfere with use or enjoyment of a claimant's property per se.

The remedies of damages and injunction should be explored.

Clear compelling conclusions are required. **[25]**