

MARK SCHEME for the May/June 2008 question paper

9084 LAW
9084/04 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.

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 discussions or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the May/June 2008 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 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.

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

- 2 Damages in tort are intended to put the claimant in the position they would have enjoyed if the tort had never been committed; the aim of damages in tort is to compensate claimants rather than to punish defendants.

Candidates might start by discussing the principle of restitutio in integrum and then go on to discuss how damages in tort are calculated and awarded. Candidates ought to highlight decided cases that reveal problems associated with such calculations (e.g. *Gardner v Marsh*, *South Australia Management v York Montague Ltd*, *Doyle v Wallace*, *Langford v Hebran* etc.) and then go on to discuss the extent to which compensation takes or fails to take account of degrees of fault involved in defendants' actions. Astute candidates will identify the fact that those who make momentary slips commonly end up paying the same damages as those showing gross carelessness, for instance.

Candidates must attempt to critically evaluate the statement. Responses limited to factual recall of principle will be restricted to maximum marks within band 3.

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- 3 Candidates must explain the maxim, identify the circumstances under which it may be used and clearly explain the effect of it in proceedings in negligence.

Literally translated, it means ‘the thing speaks for itself’. It is a maxim that may be applied in circumstances when the facts of the case are such that injuries complained of could not have happened unless there had been negligence. In *Scott v St Katherine’s Docks* and other cases, negligence has simply been inferred from the circumstances without actual evidence of negligence.

In such cases, the courts treat the facts themselves as rebuttable evidence provided that two conditions are fulfilled: the events are under the defendant’s control and there is no direct evidence of negligence. Candidates are expected to discuss these conditions in full and illustrate them with reference to case law (e.g. *Gee v Metropolitan Railway*, *Easson v LNE Railway*, *Barkway v South Wales Transport Co Ltd*).

Candidates should then show how *res ipsa loquitur* is operated. Defendants can prevent judges from inferring negligence either by showing that reasonable care was taken or by supplying another plausible explanation of events. In the latter case, it is then up to the claimant to prove that negligence rather than the alternative explanation had caused the injury.

Candidates must then assess the actual value of the maxim to defendants and responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

Section B

- 4 Candidates should identify that the only grounds for any action against Denzil would be for negligent mis-statement resulting in economic loss. Negligent mis-statement must be defined, explained and discussed with reference to the decision in *Hedley Byrne v Heller & Partners*.

Candidates should explore the extent to which a duty of care is owed in such situations and the requirements of a proximate relationship between the parties as emphasised in *Caparo Industries v Dickman* and extended in *James McNaughten Paper Group v Hicks Anderson & Co* should be identified and explored.

In this case, the ‘advice’ offered by Denzil was at a dinner party, so are the tests of proximity satisfied? The decision in *Chaudry v Prabhaver* might be considered to have a bearing in this context.

Candidates should also consider whether Denzil would actually be liable for the loss suffered by Marlene even if he was to be found in breach of a duty of care.

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

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- 5 The lack of indirect interference with the use or enjoyment of neighbouring land also seems to rule out private nuisance. The lack of direct human interference apparently rules out trespass. 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 RvF 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 RvF 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 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 and whatever conclusion is reached it should be clear, compelling and fully supported.

- 6 Candidates should recognise the tort of trespass as the focus of this question.

As a shopkeeper, Jahangir would grant customers access to his shop premises under licence, i.e. for the purpose of buying goods. When he bans the group of young people (Morris and Austin included) from entering his premises, he clearly withdraws permission for them to enter. Thus, when Morris and Austin enter the shop, they are trespassing. Candidates should define trespass to land, briefly outline its components for liability to exist and explain that it is actionable per se. The remedy that Jahangir would probably seek is an injunction, but would it be granted as it is a discretionary remedy?

Could Morris and Austin sue Jahangir for trespass to the person in the forms of assault and battery (candidates to define and explain both). Was there a threat of unlawful force and reasonable fear of the infliction of such force? Does grabbing an arm constitute a battery even if the claimant suffers no bodily harm?

When the two are locked in the office, could this amount to false imprisonment (to be defined and explained)? Or does this merely amount to lawful restraint?

And what of Jahangir's black eye? Could he successfully sue Morris for battery? Or might self-defence apply here?

Whatever conclusions are reached they should be clear, compelling and fully supported.