

MARK SCHEME for the May/June 2006 question paper

9084 LAW

9084/04

Paper 4

Maximum raw 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*.

The minimum marks in these components needed for various grades were previously published with these mark schemes, but are now instead included in the Report on the Examination for this session.

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

CIE is publishing the mark schemes for the May/June 2006 question papers for most IGCSE and 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.

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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1 ‘Torts generally require an element of fault to be present before liability is established.’ Evaluate the arguments for and against this principle of English Law.

Candidates should commence by elaborating on the principle, albeit briefly: some torts require not only the commission of a particular act or omission, but also an element of fault in the form of intention (e.g. trespass), carelessness (e.g. negligence) or malice (e.g. malicious prosecution).

Traditional reasons for this approach include: control of tort actions (do not wish to open floodgates), deterrence (to promote careful behaviour), accountability (a way of making people pay for wrongdoing).

Traditional arguments against: unjust distinctions (two parties suffering precisely same injuries may receive differing compensation), illogical distinctions (does failure to prove fault actually mean that there was no fault?), lack of deterrence (practical effect debatable), expense (need to prove fault increases length and cost of cases), objective standard (fault judged by objective standard of behaviour regardless of knowledge, capacity or experience).

Candidates will only receive marks in Band 3 if attempts are made to evaluate and not merely list the arguments for and against.

2 “The case of Spartan Steel v Martin (1972 All ER 557) illustrates that the distinction between pure economic loss and other kinds of loss can be a very fine one – and one that.....is difficult to justify.” (Elliott & Quinn: Tort Law, 2003)

With reference to case law, critically assess the extent to which this statement is true of the tort of negligence.

In the Spartan Steel case, 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.

Candidates should define economic loss (a financial loss by a claimant that results from neither personal injury or damage to property) and offer an explanation for the courts’ reluctance to compensate such losses (e.g. floodgates fears).

Candidates are then expected to trace the developments of the issue of economic loss through key case law that ought to include the majority of:

Candler v Crane, Christmas & Co (1951) – responsibility to contractual client only and not to third party who suffered loss.

Hedley Byrne v Heller & Partners (1963) – economic loss recoverable in cases of negligent misstatements in ‘special relationships’.

Anns v London Borough of Merton (1978) – defective premises considered property damage and thus allowed claim on that basis.

Henderson v Merrett Syndicates Ltd (1995), Williams and Reid v Natural Life Health Foods Ltd and Mistin (1998) and Londonwaste v AMEC Civil Engineering (1997) evidence the extension of Hedley Byrne principles to the negligent provision of services as well as advice, but not to other negligent acts.

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

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- 3 **‘An award of damages in tort is based on the principle of *restitutio in integrum*.’ Discuss the extent to which courts in England & Wales achieve this aim of restitution in full, the main remedy in tort.**

An award of damages in tort aims to compensate claimants for actual losses suffered; *restitutio in integrum* means restoration in full and the aim is to put a claimant in the position (s)he would have been in had the tort not been committed. Restoration in full may necessitate awards of general damages for losses arising naturally from the tort and special damages which have been claimed in particular because the loss is not a natural result of the tort in question.

Pecuniary and non-pecuniary losses may be subject to an award of damages. The former, which are financial, are easier to calculate than the latter, but even when losses are purely financial, the issue of what amounts to *restitutio in integrum* is not always straightforward; disagreements between first instance and appeal decisions were very evident in *Gardner v Marsh & Parsons* and *South Australia Asset Management Corporation v York Montague Ltd*. Issues of over-compensation also arise (*Parry v Cleaver*; *Longden v British Coal*) as do the issue of lump sum payments in cases where the true effects of a loss are not felt until after an award has been made (Pearson Commission (1978) recommendations might be referred to here).

Fault ought also be discussed. Compensation by way of damages does not take degree of fault into account.

Candidates are expected to draw clear conclusions, summing up by saying how far they feel that the aim of *restitutio in integrum* is achieved.

Section B

- 4 **Discuss any legal liability Madeleine might have, as occupier of the premises, for each of the injuries sustained by Ghislaine.**

The focus of this question is occupiers' liability. **Responses based solely in negligence will be restricted to a maximum mark within Mark Band 3.**

Candidates should identify Madeleine as the occupier of premises and that her liability for injury to people entering her 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 Ghislaine enters Madeleine's house to do the cleaning, she clearly enters under licence, so would be termed a visitor 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. Madeleine must expect a cleaner to use a vacuum cleaner, so a duty is owed to ensure that such equipment is properly serviced and checked for safety. Has that duty been discharged by Madeleine getting the Ace Electrical Co to service it, given that they appear to be independent contractors and outside her control? Was this company competent? Did she take even basic steps to check that they had done what they were supposed to do?

Given that Ghislaine is a cleaner, S2(3) is also relevant, in that an occupier can expect that a person who enters in the exercise of his/her calling will appreciate and guard against any special risks ordinarily incident to it. Did she check the cleaner was working properly? Is that within her expertise?

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Discussion is needed and conclusions need to be drawn by candidates, but it would seem likely that Madeleine has discharged her duty under the 1957 Act and would not be liable for Ghislaine's burns.

When she stayed behind in the house to use the computer, she became a trespasser on the premises as she no longer had justification to be there and the 1984 Act applies. This imposes a duty to take reasonable care to see that trespassers do not suffer injury, but only on the basis of the conditions set out in S1(3). Is the dangerous step something that Madeleine is aware of? Does she know that Ghislaine, as a trespasser, is likely to come into the vicinity of the broken step? Is the broken step a danger against which she could reasonably offer some protection? If the answer to all three conditions is affirmative, then Madeleine would be liable? Discussion is called for.

Even if Madeleine is liable, did Ghislaine contribute to her injuries through her own carelessness? If so, any damages payable will be reduced in accordance with Ghislaine's own degree of fault.

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

5 Consider what liability in tort, if any, Lord Dunsden would have towards Bessy.

This question raises the issues of trespass to land and trespass to the person.

Candidates should recognise that while Bessy walks quietly along the road that crosses Lord Dunsden's land she commits no tort. As a local resident, she has been given express permission to be there.

However, as soon as she starts to abuse her right of entry by disturbing Lord Dunsden, she becomes a trespasser. Candidates are expected to define trespass to land: a direct, unlawful interference with land in the possession of another. Lord Dunsden then gave her the opportunity to cease her antics and had she done so and gone on her way, although trespass to land is actionable per se, Lord Dunsden would probably have left it at that.

However, her remonstrations became even more demonstrative and it was at this point that she was man-handled by Lord Dunsden. Candidates will need to address the question as to whether his actions amounted to the reasonable physical force permitted to abate a trespass (the remedy of self-help) or whether he went too far and actually committed an act of trespass to Bessy's person (*Harrison v Duke of Rutland*). He would clearly raise this as a defence to any action brought against him by Bessy.

Candidates will need to define assault and battery as torts and consider whether either or both may have been committed by Lord Dunsden. Did his physical movements put her in reasonable knowledge that she was about to suffer the unlawful, physical contact required of a battery (*Collins v Wilcock*)? The placing of a hand over her mouth was sufficient to amount to the latter.

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

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6 Consider the possible liability in tort for Khalid’s death.

The focus of this question is straightforward negligence set in a medical context.

Candidates should define negligence and **briefly** outline and illustrate the three elements: a duty of care between defendant and claimant, a breach of that duty and damage to the claimant as a result of chain of causation flowing from the breach of duty to the loss suffered.

Candidates are told that Ahmed drove his lorry carelessly, thus indicating that he was in breach of his duty of care towards Khalid, a fellow road-user, when he knocked him off his bicycle. Was his death a reasonably foreseeable consequence of Ahmed’s carelessness? On the face of it, it would appear so, but could the failings at the hospital be seen as an intervening act which broke the necessary chain of causation? Could the failure to attend to Khalid for six hours and the failure to take a skull X-ray during that first visit be a contributing factor here? It would appear not, as we are told that medical evidence suggests that death was almost certain in any event.

It would seem, therefore, that the chain of causation was not broken. But was death a reasonably foreseeable result of Ahmed’s negligence? As a driver of a lorry, personal injury to other road-users must be within his reasonable contemplation, should he fail to take the necessary care when on the road. Candidates may use the illustrative cases of *Hotson v East Berkshire Health Authority* and *McGhee v National Coal Board* to support this view.

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