UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the June 2004 question papers

9084 Law

9084/01	Paper 1, maximum mark 75
9084/02	Paper 2, maximum mark 25
9084/03	Paper 3, maximum mark 75
9084/04	Paper 4, maximum mark 75

These mark schemes are published as an aid to teachers and students, to indicate the requirements of the examination. They show the basis on which Examiners were initially instructed to award marks. They do 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 2004 question papers for most IGCSE and GCE Advanced Level syllabuses.

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

	maximum mark available	minimum mark required for grade:		
		A	B	E
Component 1	75	56	50	33
Component 2	25	20	18	12
Component 3	75	43	38	24
Component 4	75	43	37	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.

June 2004

ADVANCED LEVEL

MARK SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/01

LAW

UNIVERSITY of CAMBRIDGE
International Examinations

Question One

Suggested answer: selection of the jury. Procedure and excusals, exemptions and disqualifications. Some are ineligible to act e.g. members of the clergy and the legal profession.
Challenges to the jury: challenge for cause and challenges by the prosecution. Jury vetting.
Their role in the Crown Court in criminal cases. 1% of all criminal trials. Over 60% of defendants plead guilty so no jury is needed. The Roskill Committee examined the question of juries in fraud trials. They argued that juries should only be used in the simpler cases. The government has tried to make fraud trials more accessible for jurors.
Runciman recommendation. Withdrawal of the right to jury trial for `triable either way offences.'
Reference to the quotation may include matters such as the perverse verdicts in the past. The problems of the closed jury room and the question of whether the jury is appropriate in criminal trials at all. Alternatives. Trained jurors and the single judge.
Some reference to the quote is necessary to get into the top bands.
Max 18 where no reference to either relation or role of the jury.

Question Two

What is ambiguous legislation? Meaning unclear so this must be addressed. Words may have more than one meaning and the meaning can change in a particular context.
Words can be too broad and so have several different meanings e.g. The Dangerous Dogs Act 1991, it can also contain drafting errors or old legislation will not cover new developments. Different approaches to statutory interpretation. Literal v Purposive: The literal rule, London & North Eastern Railway Co v Berriman (1946) mischief and golden rule Re Sigsworth (1935) Heydon's Case. RCN v DNSS (1981).
Rules of language. Eiusdem generis Powell v Kempton Park Racecourse (1899); Allen v Emmerson (1944). Noscitur a sociis, Expressio unius exclusion' alterius.
Aids to construction: intrinsic evidence the title, preamble section headings etc.
Extrinsic aids: dictionaries, textbooks. Hansard. Pepper v Hart and earlier case law.
Davis v Johnson Presumptions.
Max 13 for answers with no citation of cases at all.

Question Three

The question expects a comparison between the ways the courts deal with civil cases and the way that tribunals deal with civil cases. The main courts should be identified: the county court, the High Court and some may refer to the limited jurisdiction of the magistrates. The advantages are mainly associated with the use of professional judges although this is untrue in the mgs court, the court system, which allows appeals, and the system of precedent, which enables professionals to predict the outcome of cases. The disadvantages of the tribunal system are the lack of expert knowledge, and the cost and the possible delays and the lack of opportunities to appeal.
The tribunals have a more flexible approach using experts and not sticking strictly to precedent. In theory this will free up the courts allowing more cases to be heard in the courts using the court system.
Extra credit for the candidate who discusses tribunals in a contemporary context.

Question Four

The background to the Human Rights Act. Why was it necessary to incorporate the ECHR into English Law? UK one of the early signatories to the ECHR in 1950. The problems with relying on the Court of Human Rights in Strasbourg E.g. delay, cost and difficulties of taking a case in a foreign court, must exhaust the domestic judicial procedure before they can gain access to the court. Not appropriate for actions unless they are substantial.
Likely examples of use of the HRA : defendants in criminal cases, cases based on privacy or the fundamental freedoms including freedom to practice a religion of choice.
ECHR now incorporated into the UK law by the HRA. Some rights are absolute and cannot be interfered with by the state, others are subject to limitations. The Act needs to be assessed and its impact.
Credit will be given to candidates who see the impact of the Act in constitutional terms e.g. the effect of the HRA on the doctrine of Parliamentary Sovereignty. The move towards entrenchment of rights.
How great is the impact? Perhaps without a Human Rights Commission to publicise and facilitate the procedures the impact is less significant as the average person does not fully understand its value.

Question Five

Candidates will be expected to analyse this quotation in detail so the main points must be highlighted. E.g. positions of central importance, completely impartial manner, strict application of the law, personal preferences, fear or favour of any parties to the action affecting their decisions. All or at least some of these descriptions must be discussed.
The role of the judge today. Who are the judges today? Their jurisdiction in each court e.g. the county court/the High Court. The powers of the judge either or both civil and criminal courts.
Better candidates will look at the controls that prevent the judge from exercising personal preferences as mentioned in the quotation. E.g. what prevents partiality? The possibility of removing judges and the difficulty in relation to senior judges but the relative ease in relation to more inferior judges e.g. recorders.
Particular credit to candidates who focus on the wording of the quotation.
Max 19 for answers which concentrate solely on issues of precedent.
Max 15 for answers which concentrate solely on statutory interpretation.

Question Six

Candidates should assess the nature of the offence, i.e. summary or triable either way and conclude that if it is a summary offence, there would be no right of appeal. Candidates will only achieve the higher markbands if they understand that there are two routes of appeal from the Magistrates Court and these should be described in some detail. Automatic right of appeal. Judge and new magistrates.

1. Crown Court.
   Grounds : against conviction (only if the defendant pleaded not guilty) on points of law; or against sentence. This will be in the form of a new trial. This may not be available to Lenny if he pleaded guilty. ~1
   Heard by a judge and two or more magistrates.
   Max 4

2. High Court (Divisional Court of the Queens Bench Division)
   Two or more judges, one will be a Lord Justice of Appeal.
   Both the defendant and the prosecution can appeal. Grounds are limited.
   (a) point of law
   (b) that the magistrates acted beyond their jurisdiction. If the prosecution succeeds on appeal the court can direct the magistrates to convict and pass the appropriate sentence. There is also an appeal by way of case stated from the Crown Court to the Divisional Court when the Crown Court has heard an appeal from the Magistrates Court.

There can be a further appeal to the House of Lords. Either side can appeal but only on a point of law and only if the Divisional Court certifies the point to be one of general public importance. Leave to appeal must also be granted by the Divisional Court or the House of Lords.

Points of criticism may be that it is very difficult to successfully appeal to the Divisional Court. The rehearing at the Crown court is heard in front of four new magistrates and a judge. To be successful must now convince three rather than two of the tribunal.
Relatively speedy and cheap.

Where the candidate has discussed a possible trial in the Crown Court credit should be given for discussion of any appeal from that trial. Max 13.

June 2004

ADVANCED LEVEL

MARKING SCHEME

MAXIMUM MARK: 25

SYLLABUS/COMPONENT: 9084/02

LAW

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International Examinations

Mark Bands

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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**	**1**	**1**	**1**	**2**	**2**	**2**	**2**	**2**
	a	**b**	**c**	**d**	**a**	**b**	**c**	**d**	**e**
Band I	0	0	0	0	0	0	0	0	0
Band 2	1-2	1	1	1	1	1	1	1	1
Band 3	3-4	2	2	2	2	2	2	2	2
Band 4	5-7	3-4	3-4	3-4	3-4	3-4	3-4	3-4	3-4
Band 5	8-10	5	5	5	5	5	5	5	5

Question One

1 (a) The candidates must distinguish between the different aspects of sentencing. Firstly the aims of sentencing must be given e.g. retribution, denunciation, incapacitation, deterrence, rehabilitation and reparation. It is important that examples of appropriate sentences are given to illustrate the aims of each sentence.

1 (b) Careful construction of the question will show that the offence was essentially one involving violence but in terms of theft it was relatively minor. The better candidates will look at the way the courts deal with violent offences. They will look at the offence objectively and its effect on the victim.

1 (c) The offender's background is given in some detail and there are conclusions to be drawn here about the way the courts will deal with a drug addict on a course of rehabilitation.

1 (d) Other matters will include the age of the offenders.

Some reference should be made to Lord Woolf's judgement. In particular the fact that he regarded burglary as a very serious offence. However there are also factors that may be considered to either aggravate or reduce the sentence imposed by the courts and he cites these factors. The candidate will be expected to link these to the question. So the fact that Shabana suffers trauma as a result of the burglary will be an aggravating factor but the fact that it appeared to be unplanned and not professionally organised will effect the level of sentence.
Marks can be transferred from subsection to subsection but cannot be credited twice.

Question 2

2 (a) Initially this part of the question is a question of identifying the cause of action and then distinguishing what constitutes the legal decision in Lord Reid's judgement. The candidate who shows that they can adequately identify legal principles should get into the higher markbands. It is expected that candidates will define the difference between obiter dicta and ratio decidendi. The significant part of the judgement lies in the distinction between an innocent and negligent misstatement. Candidates will be expected to look at the three courses open to the `reasonable man' who knows that their skill and judgement is being relied on (pg 2 of the judgement).

2 (b) Clearly the fact that they are decisions from another jurisdiction give them some weight but they will only be persuasive and not binding. Better candidates may refer back to part (a) and discuss the difference between the ratio and obiter parts of a judgement.

2 (c) (i) Judges of the High Court do not have to follow each other's decisions but they will usually do so. Judgements from the Divisional Court will be binding.

(ii) Judicial notice can be taken of the Law Commission report. (Black Clawson 1975)

(iii) The views of a text book writer may be cited in court but will not bind the court however eminent they are.

2 (d) Candidates must identify the principle here. They must show that they understand that the House of Lords are not bound by previous decisions since the Practice Statement of 1966. They may trace the development of this principle from the London Street Tramways Decision 1898. They may consider the restricted way that the House of Lords have used this power, citing cases such as Jones v Secretary of State for Social Services (1972) and Herrington v BRB (1972).

2 (e) In this part of the answer candidates will discuss the fact that the Judges of the Court of Appeal are bound by their previous decisions and cannot overrule earlier decisions of the Court of Appeal unless they come within the principles of Young v Bristol Aeroplane. In both (a) and (b) the candidates should be well rewarded if they apply the answers to the decision of Hedley Byrne.
Cannot gain marks at higher level without mentioning Young’s case.

June 2004

ADVANCED LEVEL

MARKING SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/03

LAW

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Band 5:
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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

Question 1.

It has been suggested that the decision in Williams v Roffey Bros marked a new and more realistic approach to contracts, especially in the commercial world.

Evaluate the impact that this decision has had on the development of the doctrine of consideration.

Candidates are expected to set the question in context by defining consideration and by explaining its significance as a doctrine of English Law.

The case of Williams v Roffey Bros should be outlined and a summary of the findings given. Candidates should show awareness that, as it is still a relatively recent case, its boundaries are still to be established.

What is clear is that it redefines consideration as a much wider concept and reduces barriers to making modifications to commercial contracts binding. It would also seem to allow courts more discretion than previous, tighter definitions as practical benefits may well be found in situations where traditional consideration would not have been found.

Hugh Collins argues that traditional consideration sees parties diametrically opposed whereas in reality there are often good reasons for accepting what appears to be less than had been promised. Candidates should offer examples of such reasons.

Candidates are also expected to consider the potential impact of the decision in Williams v Roffey on the rules of waiver and promissory estoppel. Comparison with High Trees would also be beneficial.

Question 2.

Mistakes do not invalidate contracts. Critically assess the extent to which this statement may be considered to be true.

Candidates should contextualise responses by reference to the need for true consensus ad idem at the time that contracts are formed. Mistake should then be identified as one of the factors sometimes recognized as sufficient to vitiate or undermine that consent so as to invalidate the contract in some way.

The general common law view that parties to a contract should not be able to escape liability by reason of mistake, but in particular and special circumstances should be explained. Those circumstances of common mistake and cross-purposes (or mutual) mistake should be identified and briefly described. In addition, the more general rules applicable to both should be explained and illustrated: mistake to precede contract, induce the contract and be of fact.

The view that common mistakes render contracts void should be questioned as case law points very largely to circumstances involving res extincta and res sua, both of which lead many to believe that the contract is not void because mistake induced the contract, but that there was no subject matter on which to base the contract in the first place, so no contract was ever formed. The issue of qualitative mistakes (cf mistakes regarding identity) and the approach of equity in granting relief where common law principles would not should also be explored.

The question of mistaken identity of the other contracting party and the intention to deal with someone else should give candidates the opportunity to assess whether, again, mistakes alone negate consent or whether something more, such as fraudulent intent, is also required.

Coverage of mistakenly signed documents and the effect of a plea of non est factum will also be given appropriate credit.

Question 3.

The *contra proferentem* rule provides a useful tool for the interpretation of exemption clauses in contracts. Discuss.

Once it has been established that an exemption clause has been incorporated into a contract, the scope of the clause needs to be established. Does it cover the sort of and extent of the breach that has occurred? The courts use the contra proferentem rule when trying to reach such decisions. Candidates are expected to provide a rudimentary explanation of the Latin to the effect that if the wording of an exemption clause is in any way ambiguous, it will be interpreted in the least profitable way for the party seeking to rely upon it to limit or exclude liability. The extent to which this interpretation tool is "useful" must be debated. Given that exemption clauses are commonly constructed in vague and unclear language so as to conceal their true purpose, however, the probable conclusion that needs be drawn is that it is a very useful tool indeed. Candidates might give example cases such as Houghton v Trafalgar Insurance Co (1954) or Middleton v Wiggins (1995) to support this view. Better candidates will also point out that whilst applicable to all types of exemption clause, rigorous application is commonly reserved for attempts to exclude rather than just limit liability.

Section B

Question 4.

DVD for sale.

An **outline** of the essentials of a valid contract; emphasis expected on offers, invitations to treat, counter offers and acceptance. Credit for possible reference to consideration, but nothing for other essentials.

Binding contract requires definite offer and corresponding, unconditional acceptance. Counter offer operates as a rejection and terminates offer (Hyde v Wrench). Was there an offer made? Advertisement is an invitation to treat, not a firm offer to sell (Partridge v Crittenden). Does Ronaldo offer to sell for £200? Does Eduardo make a counter offer when he asks about payment later that afternoon? Probably not as a mere enquiry for information (Stevenson v McLean). Candidates might also consider whether a contract actually resulted from Eduardo's reactuion to Roanaldo's query re time of collection. If there has been an offer and corresponding unconditional acceptance, a contract has been made, the promise to pay on return from the bank acting as supporting consideration, sale to Juninho is tantamount to a breach of that contract. Neither specific performance nor recission could be sought, but unlikely to be granted (the DVD is hardly unique and third party rights have accrued); damages the only likely remedy available.

Question 5.

Valid minors' contracts.

Discussion of contractual capacity as an essential of a valid simple contract. Particular attention to be paid to the capacity of minors (those under 18 years of age) to make valid simple contracts. Distinction to be drawn between valid contracts (executed contracts for necessaries – Nash v Inman, and beneficial employment contracts – Doyle v White City Stadium), voidable contracts (eg contracts of a continuing nature such as partnerships – Corpe v Overton) which can be avoided before or within a reasonable time after the 18th birthday and those unenforceable (Minors Contracts Act 1987).

Katherine would be liable to pay a reasonable price (SOGA 1979) for any goods deemed necessary to her in terms of actual need. Did she need either the books or the dresses or was she adequately supplied already (Nash v Inman)? Assuming that she hadn't got copies of the books and that they were required for her course, she would be liable to pay whatever the court thinks a reasonable price for them. Likewise the two dresses. If the dresses are deemed not to be necessaries, then no action for the price is possible, but the equitable remedy of specific restitution may be awarded to enforce the return of the dresses.

Question 6.

Contract induced by misrepresentation.

Candidates should explain that when statements are made in order to persuade the other party to enter into a contract, those statements are called representations, but if they turn out to be untrue they are known as misrepresentations. Given the maxim, caveat emptor or let the buyer beware, the onus is on buyers to make sure, as far they possibly can, that they are very careful when entering contracts. However, active misrepresentations of fact are recognized as vitiating factors undermining the consensus ad idem required and thus render a contract voidable at the innocent party's option.

Key points to be emphasized: statement should be of fact (Bisset v Wilkinson); made before the contract was made and did not become a term of the contract; one of the causes to induce the contract (Redgrave v Hurd). Conclusions should then be drawn re the case in question. Were Ahmed's statements factual? Were they made with the intention that Mahmoud should rely upon them? Did Mahmoud rely upon them when entering the contract?

If so, the contract is voidable, so provided that an unreasonable amount of time has not elapsed, Mahmoud would be free to avoid the contract at least and possibly sue for recission if Ahmed refuses to co-operate. He might also be able to obtain compensation too, but that would depend on whether the misrepresentaion was made innocently, negligently or fraudulently. Definition, discussion and conclusion is expected for each possibility.

Candidates may argue the case on the basis of terms alone. Credit will be given, but limited to a maximum mark within mark band 3.

June 2004

ADVANCED LEVEL

MARKING SCHEME

MAXIMUM MARK: 75

SYLLABUS/COMPONENT: 9084/04

LAW

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Band 5	25	25	25	25	25	25

Section A

Question 1.

"Considering that compensation is generally seen to be its most important function, the law of negligence is remarkably inefficient in this area and, in practice, only a small proportion of victims of harm get compensation for it." (Elliott and Quinn: Tort Law 1999.)

Critically assess the extent to which this view can be substantiated.

Negligence in the UK is a fault-based tort. Hence, if no fault can be proved, no remedy is possible. In addition, victims of even fault-based psychiatric harm and economic loss will not generally be compensated. In addition those suing in respect of medical negligence have but slim chance of success.

Survey findings suggest that even amongst those who suffer fault-based harm for which compensation might be granted, only a small proportion (c12%) take legal action , either because people are ignorant of the possibility or are put off by elaborate procedure or cost. If legal proceedings are commenced, the majority are "settled" out of court, thus saving costs, but often only in return for a much reduced level of agreed compensation for the victim. Those cases that do arrive in court are frequently long, complicated and costly and as a consequence only a fraction of the money spent on the case ever goes to the victim.

Candidates are expected then to focus on the different types of remedy in negligence, i.e. damages, and injunctions, and to assess their fairness in given situations. Kinds of and measure of damages should be included in the analysis, as should the fairness of limitations on awards of injunctions.

Question 2

A Law Commission report published in 1998 argued that the current rules on compensation for secondary victims suffering nervous shock are too restrictive.

Outline the current rules relating to secondary victims and evaluate their usefulness in the light of case law decisions.

The Law Commission considers it justified that there should be a close tie between primary and secondary victim and that this should remain. However, the belief of the Commission is that this should suffice and that the proximity in time, space and method of perception requirements be abolished. Candidates should express their views on this matter.

Candidates should define and explain the meaning of key terminology: nervous shock, primary and secondary victims, etc. The generally accepted requirements for liability to exist should be detailed and explored: reasonable foresight, nature of psychiatric injury, relationship with primary victim and proximity.

Each test should be explored, analysing decided cases in each area and drawing conclusions. Key cases such as White and Others (1998), Alcock v Chief Constable of Yorkshire Police (1997), McLoughlin v O'Brian (1982), Chadwick v British Railways Board (1967), Sion v Hampstead Health Authority (1994) should all be analysed.

This question could be approached from various angles and appropriate credit should be awarded whichever angle it is tackled from. Would ordinarily expect emphasis placed on problems relating to the position of rescuers, closeness of relationship, proximity and or sudden shock requirements.

Question 3.

'To one who is willing, no (actionable) harm can be done'.

Consider the extent to which this is a defence to actions based in the law of tort.

Candidates are expected to identify the question as relating to a defence in tort known as volenti non fit injuria. Better candidates will translate the Latin as meaning " to one who is willing (volenti), actionable harm (injuria) is not done (non fit)". Commonly known as the defence of consent, which is of general application within the law of tort. Thus if it can be established that the complainant consented, the defendant will not be liable.

Objective test established: was the outward behaviour of the complainant such that it is reasonable for the defendant to conclude that he consented to the risk that he undertook? Difficulty arises, however, because it is frequently clear that a person knows of a risk, but there is not conclusive proof that consent was actually given. Cases such as Smith v Baker (1891), ICI v Shatwell (1965) and Kirkham v Chief Constable of Greater Manchester (1990) should be referenced as examples.

Special cases such as sporting activity and rescue cases in the tort of negligence should also be explored and better candidates might also be expected to reference S1(6) Occupiers Liability Act (1984).

Section B

Question 4.

Occupiers liability issue.

Candidates should set the problem in context by stating that liability is imposed upon occupiers of land by the Occupiers Liability Acts 1957 and 1984.

Amir should be recognized as a lawful visitor to the site and candidates should state clearly that liability towards him is thus governed by the 1957 Act. Likewise, Billy should be identified as an unlawful visitor or trespasser and thus governed by the 1984 Act.

With regard to Amir's injury, the duty of care imposed by the Occupiers Liability Act 1957 to ensure the reasonable safety of lawful visitors should be discussed. Consideration should also be given to whether frequent visits to the site and the warning notices should have prompted Amir to take additional care. Was he partly to blame or contributorily negligent. Could the warning notices absolve the depot owners from liability?

The Occupiers Liability Act 1984 imposes a duty towards Billy, even though he is a trespasser. Discussion of duty required and of whether Billy's presence was 'known', of whether the danger was one against which protection should have been afforded and of whether the posting of a warning sign was sufficient to discharge liability. Reference ought to be made to British Railways Board v Herrington and Glasgow Corporation v Taylor (or similar case law) to support statutory stance.
In both instances, a clear, compelling conclusion is expected.

Responses based entirely in the tort of negligence should receive a maximum mark within mark band 3.

Question 5.

Consent to negligent harm?

Candidates should set this case in context. Ordinarily, it could be argued that footballers participate in their sport in full knowledge that it is a contact sport and that injuries can result from such contact: the participants frequently make contact with one another by the very nature of the game. Hence, in most circumstances consent is seen to be given to the tort trespass to the person that would otherwise be actionable as a result of the unlawful physical force imposed on one another during the game. Debate is called for to distinguish mere knowledge of risk from consent to risk (Bowater v Rowley Regis Corporation 1944).

Debate should then follow as to whether the fierce tackle in question was undertaken in a deliberate attempt to harm or whether it was indeed of itself an act of negligence giving rise to harm (Condon v Basi 1985). In either event it would seem unlikely that Wang Lin could be said to have consented to such harm by simply taking part in the game.

If Wang Lin is thus able to refute a defence of consent, would he be able to recover his loss of earnings? Candidates should discuss the concept of compensation and in particular whether the loss suffered is likely to be compensated in the event of a court case.

A clear, compelling conclusion is expected.

Question 6.

Abatement of a nuisance?

If there is an indirect and unlawful interference with a person's use or enjoyment of his land, then an act of private nuisance has occurred.

The tree growing in Jean-Paul's garden and casting a shadow over the neighbouring garden, thus preventing sun-bathing is an interference and is indirect, but is it unlawful? Factors to be taken into account such as reasonableness of act, duration, locality, common benefit etc should be discussed and conclusions drawn.

If a private nuisance occurs what are the remedies? One remedy is abatement or self-help – a right to take reasonable steps to put an end to the nuisance. Is this what Pierre did when he chopped off branches to let sunlight into his garden? Candidates to discuss and draw conclusion. In returning the branches did Pierre commit an act of trespass? Not when returning the branches as he was only returning something to its owner (theft otherwise), but he did commit a trespass when other rubbish was also tipped over the fence.

A clear, compelling conclusion is expected.