

**MARK SCHEME for the October/November 2010 question paper
for the guidance of teachers**

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, 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.

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

CIE is publishing the mark schemes for the October/November 2010 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 The distinction made between primary and secondary victims who suffer nervous shock can no longer be justified.**

Critically analyse the rules that are applied in claims for nervous shock and assess the extent to which the view above can be substantiated.

The concepts of secondary victims and nervous shock should be explained and set briefly in the context of the tort of negligence.

The requirement that the psychiatric injury be caused by a sudden shock should be explained and an opinion expressed on the 1998 Law Commission report's view that the requirement be abolished.

The closeness of relationship rule should be explained and its operational effects illustrated by reference to case law such as *Alcock v Chief Constable of South Yorkshire*. Candidates should explain that the LC report considered this a justified and necessary requirement and then express their own opinion.

The Proximity requirement must also be explained and its operational effects illustrated with reference to case law such as *Alcock, McLoughlin v O'Brien, Sion v Hampstead Health Authority etc.* Candidates should explain that the LC report considered this an unjustifiable requirement and that it should be abolished and then express their own opinion.

Candidates must analyse the rules with a critical eye and express a clear, concise opinion. Responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

- 2 The Occupiers Liability Acts 1957 and 1984 impose an unfair burden on occupiers of land to ensure the safety of those, whether as visitors or trespassers, who enter that land. Critically analyse this view.**

The Occupiers Liability Act 1957 imposed a common duty of care towards those entering premises with either express or implied permission to do so; it did not impose any sort of duty towards trespassers. In 1972, the case of *British Rail Board v Herrington* caused the House of Lords to extend the duty of care imposed by the 1957 Act to trespassers, on the grounds of common humanity. The duty was, however, less demanding than for legitimate visitors. This was formalised by the 1984 Act.

Candidates are expected to outline the conditions on which duty is now imposed, as set out in S1(3) of the 1984 Act. An occupier must be aware of a danger (or have reasonable grounds to believe that one exists). The occupier must know (or have reasonable grounds to believe) that the trespasser is in the vicinity of the danger (or that he may come into the vicinity of it). The risk is one that the occupier may reasonably be expected to offer some protection from.

Candidates are then required to assess critically how fair the rules actually are. Cases such as *Swain v Natui Ram Puri* and *Scott v Associated British Ports* might be used to illustrate the sorts of issues that S1(3) does raise. The extent to which warnings of dangers are effective and the extent (if any) that liability can be excluded should be considered here.

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

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- 3 The law suggests that, unless a negligent act causes physical damage to something or someone, no compensation can be recovered.

With reference to decided cases, trace the development of legal principles relating to the recovery of pure economic loss and assess the extent to which the principles are fair to innocent victims.

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 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'.

Spartan Steel v Martin (1972) – pure economic loss not recoverable.

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 of 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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Section B

4 Consider the extent to which Mackenzie might be held liable in negligence for the injuries and losses sustained by Jack and Petunia.

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

As a result of Mackenzie's apparently negligent actions, Jack is injured and Petunia sustains financial loss because of the damage to her car.

Jack was clearly owed a duty of care and that duty was breached, but if Mackenzie is sued, could the partial defence of contributory negligence reduce Mackenzie's liability? Knowing that Mackenzie had been drinking, Jack 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, Petunia was clearly Mackenzie's neighbour and as long as her car was on the correct side of the road when the accident occurred, Mackenzie is likely to be held liable in negligence. Would he be liable for her loss of earnings or just for the damage to the car? This is a question of remoteness and candidates are expected to apply case law such as *Hadley and Victoria Laundries* and draw conclusions.

Legal principles must be discussed and directly applied to the scenario; whatever conclusions are reached, they should be clear, compelling and fully supported.

5 Consider the potential liability in tort for the financial loss sustained by Jeremy in the situation above. How successful might any defences be?

The principal focus anticipated is that of the liability for negligent misstatement leading to pure economic loss. The distinction between economic and pure economic losses and why the distinction is significant should be explained.

The basic elements of negligence, i.e. duty of care, breach of duty and resultant loss, should be identified, explained and illustrated, if only in outline, in order to set the context.

The question of economic loss should be raised and decisions in *Hedley Byrne, Anns, Junior Books* etc discussed. The relevance to the scenario of *Hedley Byrne* should be identified and its principles and effects discussed and analysed.

Application to the case in hand should lead to a detailed discussion of whether a special relationship existed or not. The decision in *Esso Petroleum v Mardon* should also be considered.

The principles must be applied to the scenario and whatever conclusions are reached should be clear, compelling and fully supported.

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6 Analyse the basis of any liability in tort for the loss sustained by Keegan in this situation. Are there any potential defences which might succeed?

The lack of indirect interference with the use or enjoyment of neighbouring land 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 the 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 God should be identified and discussed and whatever conclusions are reached should be clear, compelling and fully supported.