

## MARK SCHEME for the May/June 2007 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 2007 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



|               |                                    |                 |              |
|---------------|------------------------------------|-----------------|--------------|
| <b>Page 2</b> | <b>Mark Scheme</b>                 | <b>Syllabus</b> | <b>Paper</b> |
|               | <b>GCE A LEVEL – May/June 2007</b> | <b>9084</b>     | <b>04</b>    |

### **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 | <b>Paper 4</b> | Advanced Level |
|---------------------------------|---------|---------|---------|----------------|----------------|
| Knowledge/Understanding         | 50      | 50      | 50      | <b>50</b>      | 50             |
| Analysis/Evaluation/Application | 40      | 40      | 40      | <b>40</b>      | 40             |
| Communication/Presentation      | 10      | 10      | 10      | <b>10</b>      | 10             |

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|---------------|------------------------------------|-----------------|--------------|
| <b>Page 3</b> | <b>Mark Scheme</b>                 | <b>Syllabus</b> | <b>Paper</b> |
|               | <b>GCE A LEVEL – May/June 2007</b> | <b>9084</b>     | <b>04</b>    |

### **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:**

| <b>Question</b> | <b>1</b> | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> | <b>6</b> |
|-----------------|----------|----------|----------|----------|----------|----------|
| 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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|---------------|------------------------------------|-----------------|--------------|
| <b>Page 4</b> | <b>Mark Scheme</b>                 | <b>Syllabus</b> | <b>Paper</b> |
|               | <b>GCE A LEVEL – May/June 2007</b> | <b>9084</b>     | <b>04</b>    |

## Section A

- 1 ‘The Occupiers’ Liability Act 1984 states that an occupier has a duty to persons other than visitors to take such care as is reasonable in the circumstances to see that they do not suffer injury on the premises.’**

**Examine the circumstances that led to this legislation and critically assess whether the liability imposed on occupiers by this Act is fair.**

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 critically assess 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.

- 2 ‘The test for remoteness is essential, but its application is too uncertain in an action in negligence.’**

**Critically evaluate the truth of this statement.**

Candidates should identify that the remoteness test is a legal one, rather than a factual one and forms one of the ways in which a line can be drawn between damage that can be compensated and that which cannot.

The traditional test for remoteness in negligence was laid down in *Re Polemis* – known as the direct consequence test, because recoverable losses are limited to direct consequences of the tort. This test proved somewhat harsh, so eventually, it was superseded by the test laid down in *The Wagon Mound No 1*, which required reasonable foresight of the loss, which is claimed by the complainant. This remains the standard test today.

Candidates are required to evaluate whether or not the test is sufficiently certain to be fair. Analysis should be undertaken of case law which addresses issues of foresight of the type of damage suffered (*Doughty v Turner Manufacturing Co*, *Hughes v Lord Advocate*, *Margereson v J W Roberts Ltd*, *Brown v Lewisham & N. Southwark Health Authority*) and of the extent of the damage (*Smith v Leech Brain & Co Ltd*, *Dodd Properties (Kent) v Canterbury City Council*, *Alcoa Minerals of Jamaica v Broderick*).

It does not matter what final conclusion is drawn as long as candidates attempt to critically analyse the rules. Responses limited to factual recall will be restricted to maximum marks within band 3.

|               |                                    |                 |              |
|---------------|------------------------------------|-----------------|--------------|
| <b>Page 5</b> | <b>Mark Scheme</b>                 | <b>Syllabus</b> | <b>Paper</b> |
|               | <b>GCE A LEVEL – May/June 2007</b> | <b>9084</b>     | <b>04</b>    |

**3 The courts use different approaches when assessing pecuniary and non-pecuniary losses suffered by claimants in tort. Discuss these various approaches.**

Candidates might preface responses by explaining that when making awards of damages in tort, the courts may have aims other than the general one of compensating victims. In addition, candidates should introduce and explain the concept of pecuniary and non-pecuniary losses and provide suitable examples of each.

Case law should be investigated to demonstrate how judicial approaches differ when losses are pecuniary or non-pecuniary. The method of calculating pecuniary losses could be explored and contrasted with the guidelines produced by the Judicial Studies Board for the calculation of non-pecuniary losses.

Candidates might go on to explore awards of non-compensatory damages and explore the circumstances under which nominal, contemptuous, aggravated or exemplary damages might be awarded in tort.

**Section B**

**4 Greg now wishes to seek compensation for his injuries and financial losses. Advise him whether he has grounds for any claim in tort and assess the likelihood of the success of his claims.**

This scenario addresses the tort of trespass to the person with marginal implications in negligence.

Assault and battery should be defined as TORTS. No credit for definitions as crimes. Assault, reasonable apprehension of immediate violence, followed by battery, the direct, intentional and hostile application of unlawful force. Battery to be emphasised here. Merest touch sufficient (ref Nash v Sheen); no need for intent; lack of consent (ref Wilson v Pringle).

Assault to be treated in more detail. Must induce fear of immediate violence (Thomas v NUM); should involve some physical movement; should amount to more than words. However, can words modify actions as in Turbervell v Savage?

Focus required here whether the loss of income was foreseeable. Remoteness of loss needs to be discussed in the light of the cases of re Polemis and The Wagon Mound and a conclusion re possible liability drawn.

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

|               |                                    |                 |              |
|---------------|------------------------------------|-----------------|--------------|
| <b>Page 6</b> | <b>Mark Scheme</b>                 | <b>Syllabus</b> | <b>Paper</b> |
|               | <b>GCE A LEVEL – May/June 2007</b> | <b>9084</b>     | <b>04</b>    |

**5 Consider the potential liability in tort for the financial loss sustained by Rohan 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.

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

**6 Consider the potential liability in tort of Jones and Evans for their respective actions and the likely success of any defences that might be raised against any claim brought by Meredith.**

The scenario suggests that Jones may have committed the tort of private nuisance by unreasonably and indirectly interfering with the use or enjoyment of Meredith's land. However Jones's responses to Meredith's complaints also render him liable to trespass to the person.

Jones's threat to hit Meredith would amount to trespass in the form of assault if the threat involved physical movement and if Meredith was put in reasonable fear that he was about to suffer a battery (*Thomas v NUM*). Threatening words alone would not impose liability in tort. Meredith may also be deemed a trespasser himself if he outstays any implied permission to remain on Jones's premises, in which case a defence of the exercise of reasonable force to eject a trespasser may counter any action brought by Meredith.

Jones and Evans would appear to have caused a battery to Meredith. They have intentionally and unlawfully applied physical force to his person. They would be considered joint tortfeasors. Additionally, in unlawfully depriving him of his personal liberty by locking him in the garage, they are liable for trespass by false imprisonment. All ways out of the garage would have to have been barred for any such action to succeed.

Candidates should draw clear, concise and compelling conclusions.