

## **Mark Scheme for January 2013**

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OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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 marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

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 should be read in conjunction with the published question papers and the report on the examination.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

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## Annotations

Annotation	Meaning
✓	AO1/Point 1 (Q7-8)
REP	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
AO	AO2
E	Expansion of developed point (replace WDP)
C	Case (Q1–6)/reference to statutory provision
2	Point 2 (Q7–8)/Q1-6 accurate facts of case but no name or incorrect name
3	Point 3 (Q7–8)
4	Point 4 (Q7–8)
5	Point 5 (Q7–8)
	Expandable vertical wavy line
+	AO2+
AR	Alternative reasoning (Q7–8)
CN	Case-name only
S	Sort of

## Subject-specific Marking Instructions

Before you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria \*1 (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column\*2
- question specific guidance given in 'Guidance' column\*3
- the 'practice' scripts\*4 provided in Scoris and accompanying comment (where provided)

\*1 The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.

\*2 The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.

\*3 Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.

\*4 The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

**may still** achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

### Awarding Assessment Objectives 1 and 2

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest\*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided below, with the key point being that you start at the **middle\*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, should receive no marks.

For answers marked by levels of response:

- To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- To determine the mark within the level**, consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

### Awarding Assessment Objective 3

AO3 marks are awarded based on the marks achieved for either AO1, AO2 or in some cases, the total of AO1 and AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

**Rubric****What to do for the questions the candidate has not answered?**

The rubric for G157 instructs candidates to answer **three** questions; one from Section A, one from Section B and one from Section C. For the questions the candidate has not answered you should record NR (no response) in the mark column on the right-hand side of the screen. Do **not** record a 0.

**What to do for the candidate who has not complied with the rubric either by answering more than three questions or by answering more or less Section A, B or C questions than is permitted?**

*This is a very rare occurrence.*

Mark all questions the candidate has answered. Scoris will work out what the overall highest mark the candidate can achieve whilst conforming to the rubric. It will **not** 'violate' the rubric.

**Blank pages and missed answers**

Sometimes candidates will skip a few pages in their answer booklet and then continue their answer. To be sure you have not missed any candidate response when you come to mark the last question in the script you must check every page of the script and annotate any blank pages with an annotation.

You must also check any additional items eg A, A1 etc. This will demonstrate that every page of a script has been checked.

Question		Answer	Marks	Guidance												
1*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define the tort:</p> <ul style="list-style-type: none"> <li>• A bringing onto and accumulation on the defendant's land – <i>Charing Cross Case, Giles v Walker</i></li> <li>• Of a thing likely to cause 'mischief' if it escapes although thing need not be inherently dangerous <i>Shiffman v Order of the Hospital of St John of Jerusalem</i></li> <li>• Escape – <i>Read v Lyons, Hale v Jennings, British Celanese v AH Hunt, Transco v Stockport</i></li> <li>• Thing escaping causes damage</li> <li>• Non-natural use of land – <i>Mason v Levy Autoparts, Rickards v Lothian, Cambridge Water v Eastern Counties Leather, Musgrove v Pandelis</i>.</li> </ul> <p>Identify the available defences:</p> <ul style="list-style-type: none"> <li>• <i>Volenti non fit injuria</i> – <i>Petters v Prince of Wales Theatre</i></li> <li>• Common benefit – <i>Dunne v North West Gas Board</i></li> <li>• Act of God – <i>Nicholls v Marsland</i></li> <li>• Act of a stranger – <i>Perry v Kendricks Transport</i></li> <li>• Statutory authority – <i>Green v Chelsea Waterworks</i></li> <li>• Damage caused through claimant's fault – <i>Eastern &amp; South African Telegraph v Cape Town Tramways</i></li> <li>• Contributory negligence under Law Reform (Contributory Negligence) Act 1945.</li> </ul> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following:</p> <ul style="list-style-type: none"> <li>• Originally intended to create general head of liability for accumulations of hazardous things that did damage tort has not developed this way</li> <li>• Originally intended as strict liability if person brings dangerous things onto premises but quickly limited – additional requirement of non-natural use of land</li> <li>• Problems of showing non-natural use in a technological age</li> <li>• Shifting nature of non-natural use</li> <li>• Meaning given to accumulation – not unlike fault liability</li> <li>• Problems of defining escape</li> <li>• Complexity due to unusually wide range of defences available</li> <li>• Impact of requirement of foreseeability</li> <li>• Suggestion that subsumed by other torts and therefore ineffective</li> <li>• Very few modern actions under the tort but possible role in environmental issues so not completely ineffective</li> <li>• Very few successful actions and therefore perhaps ineffective</li> <li>• Experience of other common law jurisdictions</li> <li>• Any other relevant point.</li> </ul> <p>Reach a sensible conclusion.</p>	20	<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>												
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2*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define and explain law before 1984:</p> <ul style="list-style-type: none"> <li>Section 1 (2) – concept of lawful visitor; occupier – person with control – <i>Wheat v Lacon</i>; premises – wide ranging <i>London Graving Dock v Horton, Hartwell v Grayson, Haseldine v Daw, Fosbroke – Hobbes v Airwork Ltd</i></li> <li>Section 2 (2) – duty that visitors reasonably safe for purpose for which invited or permitted to be there and need to pay particular attention to children – <i>Tomlinson v Congleton BC, Glasgow Corp v Taylor, Phipps v Rochester</i></li> <li>Section 2 (4) – position relating to independent contractors – <i>Haseldine v Daw</i></li> <li>Section 2 (4)(a) – lawful visitor can become trespasser – <i>The Calgarth</i></li> <li>Section 2 (3)(b) – limitations on those entering in exercise of calling – <i>General Cleaning Contractors v Christmas, Roles v Nathan</i>.</li> </ul> <p>Development made by the OLA 1984 to cover trespassers:</p> <ul style="list-style-type: none"> <li>Section 1 (1) – covers people other than visitors, provides compensation for injury</li> <li>Section 1 (3) – duty when aware of the danger or reasonable grounds to believe it exists, know or believe trespasser in vicinity of danger and risk one against which occupier may be expected to offer some protection – <i>Donoghue v Folkstone Properties</i></li> <li>Section 1 (4) – duty to take reasonable care to prevent injury to the non visitor</li> <li>Standard of care objective and influenced by circumstances but greater degree of risk more precautions must be taken</li> <li>Factors taken into account – nature of premises <i>Rhind v Astbury Water Park</i>, degree of danger, practicality of precautions, age of trespasser – <i>Tomlinson v Congleton BC</i>,</li> <li>Section 1 (5) – warnings – <i>Westwood v The Post Office</i></li> <li>Section 1 (6) – volenti – <i>Ratcliffe v McConnell</i>.</li> </ul>	25	AO1 Levels	AO1 Marks
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following:</p> <ul style="list-style-type: none"> <li>Evolution of law from no real duty at common law to OLA 1957</li> <li>Restricted in application to lawful visitors</li> <li>Harshness, especially on children, led to duty of common humanity</li> <li>Acceptance of shortcomings led to OLA 1984 with aim of deterrence</li> <li>Problematic whether easy for occupiers to avoid liability and therefore law not fit for purpose</li> <li>Justice issues related to restrictions and policy issues which struggle to make law fit for purpose</li> <li>How far should people take responsibility for themselves?</li> <li>How much should occupiers need to second guess what people will do?</li> <li>Reality of levels of protection</li> <li>Effect of warnings</li> <li>Comment on the influence of policy – can the law protect everyone from everything?</li> <li>Any other relevant point.</li> </ul> <p>Reach a sensible conclusion</p>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – A discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – An awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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3*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define and explain defence of consent or <i>volenti non fit injuria</i>:</p> <ul style="list-style-type: none"> <li>• Complete defence – although defendant been negligent and caused damage to claimant, claimant voluntarily exposed self to risk of harm</li> <li>• Claimant exercised free choice when accepting risk – <i>Smith v Baker</i></li> <li>• Claimant understood exact nature of risk – <i>Stermer v Lawson</i></li> <li>• Claimant voluntarily accepted risk – <i>ICI v Shatwell</i></li> <li>• Sporting context – injury to occur within rules of game – <i>Simms v Leigh RFC, Condon v Basi</i></li> <li>• Medical context – patient to consent to all treatment and must be aware of risk in broad terms but emergency treatment may be exception <i>Re T, Chatterton v Gerson, Leigh v Gladstone</i>.</li> </ul> <p>Define and explain defence of contributory negligence:</p> <ul style="list-style-type: none"> <li>• Partial defence under Law Reform (Contributory Negligence) Act 1945 reducing damages by extent to which claimant responsible for harm</li> <li>• Claimant failed to take reasonable care for own safety – <i>Jones v Livox Quarries</i></li> <li>• Failure was a cause of harm suffered – <i>Sayers v Harlow UDC</i></li> <li>• Different approach in emergencies – <i>Jones v Boyce</i></li> <li>• Road traffic accidents – <i>Froom v Butcher, Owens v Brimmell</i></li> <li>• Technical possibility of 100% reduction in damages – <i>Jayes v IMI (Kynoch)</i>.</li> </ul> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – Being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – Being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – Being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – Some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Need to consider both defences to reach Level 5 and unlikely to reach Level 4</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following:</p> <ul style="list-style-type: none"> <li>• Complete defence of consent can appear to favour defendant whereas contributory negligence encourages claimant to take personal responsibility</li> <li>• Pre-1945 both defences were complete so contributory negligence had been unfair</li> <li>• Strength of defences is aim of fairness</li> <li>• Problem in that can lead to allegations of those causing harm avoiding obligations and so can be ineffective</li> <li>• Potential confusion between defences which can make them ineffective</li> <li>• Difficulty of succeeding under consent</li> <li>• Perhaps apportionment policy as in contributory negligence fairer approach</li> <li>• However difficulties associated with apportioning blame lead to questions whether contributory negligence does produce fairness and so is ineffective</li> <li>• Influence of policy</li> <li>• Use of each defence</li> <li>• Any other relevant point.</li> </ul> <p>Reach a sensible conclusion.</p>	20	<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – A discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – A discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – A discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – A discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – An awareness of the area of law identified by the question.</p> <p>For L5 need to deal with both fairness and effectiveness</p>												

G157

Mark Scheme

January 2013

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				1–9	1

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4*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define the tort of private nuisance – unlawful, indirect interference with another's use or enjoyment of land:</p> <ul style="list-style-type: none"> <li>• Claimant – holder of legal title or person with proprietary interest - <i>Hunter</i></li> <li>• Defendant – creator of nuisance.</li> </ul> <p>Explain unlawful unreasonable use of land:</p> <ul style="list-style-type: none"> <li>• Locality is important – nuisance in residential area may not be same in business or industrial area – <i>Sturges v Bridgman</i></li> <li>• Normally continuous interference but can be isolated incident arising from continuous state of affairs – <i>Bolton v Stone</i>, <i>Spicer v Smee</i></li> <li>• Locality unimportant if claimant suffers damage – <i>Halsey v Esso Petroleum</i></li> <li>• Claimant oversensitivity can defeat claim – <i>Robinson v Kilvert</i></li> <li>• Malice can make reasonable activity unreasonable, deliberate malice can be nuisance – <i>Christie v Davey</i>, <i>Emmett v Hollywood Silver Fox Farms</i>.</li> </ul> <p>Explain indirect interference:</p> <ul style="list-style-type: none"> <li>• Noise – <i>Sturges v Bridgman</i></li> <li>• Smell – <i>Bliss v Hall</i></li> <li>• Damage – <i>St Helens Smelting v Tipping</i></li> <li>• Hot air – <i>Robinson v Kilvert</i></li> <li>• no right to protect pure pleasure – <i>Bridlington Relay v YEB</i>.</li> </ul> <p>Defences – prescription, planning permission, public policy, volenti and statutory authority</p> <p>Remedies – damages, injunction and abatement.</p> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th><th>AO1 Marks</th></tr> </thead> <tbody> <tr> <td>5</td><td>21–25</td></tr> <tr> <td>4</td><td>16–20</td></tr> <tr> <td>3</td><td>11–15</td></tr> <tr> <td>2</td><td>6–10</td></tr> <tr> <td>1</td><td>1–5</td></tr> </tbody> </table>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5	<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – Being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – Being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – Being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – Some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Both nuisance and remedies needed to achieve Level 5.</p>
AO1 Levels	AO1 Marks																
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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify the tort of private nuisance  Identify Richard as claimant and Carole as defendant  In the case of the <b>noise and loss of atmosphere</b>:</p> <ul style="list-style-type: none"> <li>• A chicken farm is both indirect and continuous because it is there 24 hours a day</li> <li>• Traffic is an interference both day and night</li> <li>• Is it unreasonable for Carole to produce eggs?</li> <li>• Question of malice once Richard has complained forcefully as Carole has bought more chickens</li> <li>• Locality – rural area but Carole and Richard are both running businesses</li> <li>• Is the noise of chickens something to be expected in the country?</li> <li>• Defences – planning permission</li> <li>• Likely remedy – injunction.</li> </ul> <p>In the case of the <b>damage</b>:</p> <ul style="list-style-type: none"> <li>• Richard has lost business because of the noise from the chickens</li> <li>• Loss of rural atmosphere may be pleasure only</li> <li>• Could be financial loss if Richard's flowers win cash prizes but credit argument that they are abnormally sensitive</li> <li>• Likely remedy – damages.</li> </ul> <p>Reach a sensible conclusion.</p>	20	<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p><b>Level 4</b> – Identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p><b>Level 3</b> – Identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p><b>Level 2</b> – Identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p><b>Level 1</b> – Identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p> <p>Nuisance must be applied and remedies considered to achieve Level 5.</p>												

Question		Answer	Marks	Guidance	
		<b>Assessment Objective 3 – Communication and presentation</b>	5	<b>AO1 + AO2 Marks</b>	<b>AO3 Mark</b>
		Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.		37–50	5
				28–36	4
				19–27	3
				10–18	2
				1–9	1

Question		Answer	Marks	Guidance	
5*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define basic elements of negligence:</p> <ul style="list-style-type: none"> <li>• Duty of care between defendant and claimant – <i>Donoghue v Stevenson, Caparo</i></li> <li>• Breach of the duty – falling below the reasonable man test – <i>Blyth v Birmingham Waterworks</i></li> <li>• Damage caused to claimant by defendant</li> <li>• Damage must not be too remote</li> <li>• There is no intervening act.</li> </ul> <p>Explain situation relating to motorists:</p> <ul style="list-style-type: none"> <li>• Duty owed to other road users</li> <li>• Standard expected is that of reasonable driver – <i>Nettleship v Weston</i></li> <li>• Personal injury to be within reasonable contemplation if driver fails to take necessary care – <i>Hotson v East Berkshire AHA, McGhee v NCB</i>.</li> </ul> <p>Explain situation relating to doctors:</p> <ul style="list-style-type: none"> <li>• Liability based on body of competent professional opinion – <i>Bolam v Friern HMC, Wilshire v Essex HA, Fairchild v Glenhaven Funeral Services, Bolitho, Defreitas v O'Brien</i>.</li> </ul> <p>Explain factors relating to breach:</p> <ul style="list-style-type: none"> <li>• Foreseeability of harm – <i>Roe v MOH</i></li> <li>• Likelihood of harm – <i>Haley v LEB</i></li> <li>• Practicability of precautions</li> <li>• Social utility.</li> </ul> <p>Explain factor relating to causation:</p> <ul style="list-style-type: none"> <li>• But for test – <i>Barnett</i></li> <li>• Break in chain of causation – new intervening act.</li> </ul> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>	25	AO1 Levels	AO1 Marks
				5	21–25
				4	16–20
				3	11–15
				2	6–10
				1	1–5
		<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – Being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – Being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – Being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – Some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Restriction to duty and its historical development unlikely to achieve beyond Level 3.</p>			

Question		Answer	Marks	Guidance												
		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify the tort of negligence and relevant issues of causation and foreseeability.</p> <p>In relation to <b>Boris</b>:</p> <ul style="list-style-type: none"> <li>• Boris owes Ashia a duty of care</li> <li>• Boris breached duty by driving fast and close to Ashia</li> <li>• Boris has caused harm</li> <li>• Question whether Ashia's death reasonably foreseeable consequence of Boris's negligence</li> <li>• Question whether injury within Boris's reasonable contemplation.</li> </ul> <p>In relation to <b>Dr. Crane</b>:</p> <ul style="list-style-type: none"> <li>• Dr Crane owes Ashia a duty</li> <li>• Possibly breached duty by giving wrong diagnosis initially because he was very busy</li> <li>• Any reasonably competent doctor may have reached the same conclusion</li> <li>• Question whether this is enough to break chain of causation</li> <li>• Although waiting time and the staff shortage could contribute to Ashia's death question whether other factors more significant.</li> </ul> <p>Reach a sensible conclusion.</p>	20	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p><b>Level 4</b> – Identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p><b>Level 3</b> – Identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p><b>Level 2</b> – Identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p><b>Level 1</b> – Identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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G157

Mark Scheme

January 2013

Question		Answer	Marks	Guidance													
		<p><b>Assessment Objective 3 – Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>37–45</td> <td>5</td> </tr> <tr> <td>28–36</td> <td>4</td> </tr> <tr> <td>19–27</td> <td>3</td> </tr> <tr> <td>10–18</td> <td>2</td> </tr> <tr> <td>1–9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1	
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Question		Answer	Marks	Guidance	
6*		<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain section 6 (2) liability definition of dangerous species:</p> <ul style="list-style-type: none"> <li>• Animal not commonly domesticated UK – <i>Behrens v Bertram Mills Circus, Tutin v Chipperfields</i></li> <li>• Animal with characteristics likely, unless restricted, to cause severe damage or any harm caused is likely to be severe.</li> </ul> <p>Explain section 2 (2) liability for non-dangerous species -- keeper liable if:</p> <ul style="list-style-type: none"> <li>• Damage of a kind likely to be caused unless the animal restrained or if caused likely to be severe – <i>Cummings v Grainger, Curtis v Betts</i></li> <li>• Likelihood or severity of damage due to characteristics of individual animal or common in species at a particular time – <i>Jaundrill v Gillett, Gloster v CC of Greater Manchester Police</i></li> <li>• Keeper knows of those characteristics – <i>Draper v Hodder, Mirvahedy v Henley</i>.</li> </ul> <p>Explain section 6 (3) – a keeper:</p> <ul style="list-style-type: none"> <li>• Owner, possessor or head of household where person under 16 possesses animal</li> <li>• Liability strict for dangerous species.</li> </ul> <p>Explain law under s4 when animals stray and damage done to land or property.</p> <p>Explain defences which may be available:</p> <ul style="list-style-type: none"> <li>• Section 5(1) – keeper not liable if harm wholly fault of victim – <i>Sylvester v Chapman</i></li> <li>• Section 5(2) – keeper not liable if victim voluntarily accepts risk of harm – <i>Cummings v Grainger, Dhesi v CC of West Midlands Police</i></li> <li>• Section 5(3) – keeper not liable to trespasser if animal not kept for protection or, if was to protect, reasonable to do so</li> <li>• Section 10 – keeper may avoid liability if there is contributory negligence.</li> </ul> <p>Credit reference to the Guard Dogs Act 1975.</p> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>	25	AO1 Levels	AO1 Marks
				5	21–25
				4	16–20
				3	11–15
				2	6–10
				1	1–5
		<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>			

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		<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>In the case of <b>Marsha</b>:</p> <p>Identify dangerous animal under section 6 (2):</p> <ul style="list-style-type: none"> <li>• A camel is not normally domesticated</li> <li>• It has characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe</li> <li>• Although dangerousness is a question of fact a camel is a dangerous animal</li> <li>• Although Marsha is 6 sign is very small and not multiple signs</li> <li>• Clive might argue that parents should have controlled Marsha</li> <li>• Clive is likely to be strictly liable as he is the owner of the camel</li> </ul> <p>In the case of <b>Nina</b>:</p> <p>Identify non-dangerous animal under section 2 (2):</p> <ul style="list-style-type: none"> <li>• Consider whether broken arm likely kind of damage</li> <li>• Did Clive know ponies likely to be scared?</li> <li>• Is breaking out of a field a normal characteristic of ponies when frightened?</li> <li>• Does not matter that the damage is not caused in a way which is likely</li> <li>• As Clive knows gate broken he could be negligent.</li> </ul> <p>In the case of <b>Peter</b>:</p> <p>Identify non-dangerous species under section 2 (2)</p> <ul style="list-style-type: none"> <li>• A guard dog may be expected to be fierce</li> <li>• Clive will be liable if damage of a kind animal likely to cause unless restrained, likelihood or severity of damage due to characteristics of individual animal and keeper knows of characteristics</li> <li>• Consider fact that dog is on a chain</li> <li>• Clive may run defence under section 5 (3) that guard dog necessary</li> <li>• Clive may run defence under section 10 of contributory negligence</li> </ul> <p>Reach a sensible conclusion.</p>	20	<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p><b>Level 4</b> – Identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p><b>Level 3</b> – Identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p><b>Level 2</b> – Identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p><b>Level 1</b> – Identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p>												

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			5	AO1 + AO2 Marks	AO3 Mark
		<b>Assessment Objective 3 – Communication and presentation</b>  Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.		37–45	5
				28–36	4
				19–27	3
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Question		Answer	Marks	Guidance													
7	(a)	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>P1 Reason that assault requires a threatening act  P2 Reason that this occurs when Tomos shakes his fist at Stefan  P3 Reason that the act should directly cause fear of an imminent battery  P4 Reason that Tomos's act and Stefan's response appear to cause fear  P5 Conclude that statement is accurate.</p>	5	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Mark</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>		AO2 Level	AO2 Mark	5	5	4	4	3	3	2	2	1	1
AO2 Level	AO2 Mark																
5	5																
4	4																
3	3																
2	2																
1	1																
	(b)	<p>P1 Reason that assault requires an intentional threatening act which causes fear  P2 Reason that Stefan's act does appear to intentionally place Tomos in fear  P3 Reason that the use of words can negative an assault  P4 Reason that the assault is likely to be negated by Stefan referring to 'after the game'  P5 Conclude that statement is accurate.</p>	5														
	(c)	<p>P1 Reason that false imprisonment requires intentional and direct restraint  P2 Reason that this would appear to be the case since several people deliberately grab hold of Stefan which is a direct act  P3 Reason that restraint needs to be total  P4 Reason that there is total restraint when Stefan is held by Tomos and his friends  P5 Conclude that statement is accurate.</p> <p><b>OR</b></p> <p>P4a Reason that Stefan is not totally restrained as he struggles and breaks free  P5a Conclude that the statement is inaccurate.</p>	5														

Question		Answer	Marks	Guidance
(d)		<p>P1 Reason that battery requires direct and unlawful physical contact</p> <p>P2 Reason that kicking Tomos is battery as it is direct and unlawful physical contact</p> <p>P3 Reason that the force should be applied intentionally</p> <p>P4 Reason that Stefan applies force intentionally when he deliberately kicks Tomos</p> <p>P5 Conclude that statement is accurate.</p> <p><b>OR</b></p> <p>P4a Reason that Stefan may feel the need to defend himself</p> <p>P5a Conclude that the statement is inaccurate.</p>	5	

Question		Answer	Marks	Guidance													
8	(a)	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>P1 Reason that an assault can also be a criminal act  P2 Reason that Pablo slapping Florence is an assault and a criminal act  P3 Reason that Workalot School will only be liable for Pablo's criminal act if it is closely connected to his employment  P4 Reason that although Pablo may suggest his act was necessary there is no close connection between Pablo's crime and his employment  P5 Conclude that statement is inaccurate.</p>	5	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Mark</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>		AO2 Level	AO2 Mark	5	5	4	4	3	3	2	2	1	1
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	(b)	<p>P1 Reason that for vicarious liability an employee must be driving in the course of their employment  P2 Reason that Pablo is driving in course of his employment when the pupil is injured because he is driving the hockey team  P3 Reason that injury should be the result of an authorised act being carried out in a careless manner  P4 Reason that braking hard to avoid a cat means that Pablo is driving carelessly  P5 Conclude that statement is accurate.</p>	5														
	(c)	<p>P1 Reason that for vicarious liability an employee must be driving in the course of their employment  P2 Reason that because Pablo is driving back from the hockey match this is in the course of his employment  P3 Reason that an employer is not liable for authorised acts committed in an unauthorised manner by an employee  P4 Reason that when Pablo's picks up Dennis he is doing an authorised act in an unauthorised manner  P5 Conclude that the statement is inaccurate.</p>	5														

Question		Answer	Marks	Guidance
(d)		<p>P1 Reason that for vicarious liability an employee must be driving in the course of their employment</p> <p>P2 Reason that Pablo is not acting in course of his employment when he drives to a concert as he is on a 'frolic'</p> <p>P3 Reason that Workalot School would generally only be liable for tortious acts and Pablo has committed a crime</p> <p>P4 Reason that Workalot School could be liable if the crime was closely connected with his employment but that is not the case here</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	

## APPENDIX 1

## Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism, showing good understanding of current debate and proposals for reform, <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question <b>or</b> identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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