

Mark Scheme for January 2013

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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
	Repetition/or 'noted' where a case has already been used in the response
	Second applied point (Q1)/AO2 (Q2)
	Critical Point (Q1 & Q3)/Developed case (Q2)
	Level 1 (Q1, Q2)/Indicates point (Q3)
	Level 2 (Q1, Q2)/Indicates point (Q3)
	Level 3 (Q1, Q2)/Indicates point (Q3)
	Level 4 (Q1, Q2)/Indicates point (Q3)
	Level 5 (Q1, Q2)/Indicates point (Q3)
	Not relevant
	First applied point (Q1)/Synopticism (Q2)
	Link to Source
	Linked case (Q1)/Bald case (Q2)/Conclusion (Q3)
	Not correct / Page checked for response

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:

- a. **To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- b. **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.

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:



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>Assessment Objective 2 – Analysis, evaluation and application</p> <p>CP Identify that the main issue from the case: that the House of Lords approved the ‘close connection’ test for determining vicarious liability – former pupils sued for sexual abuse suffered at the hands of the first defendant at a residential home. The House of Lords said the question to be asked is whether the employee’s act was so closely connected with what he was employed to do that it would be fair and just to hold the employer liable. Credit use of the source eg a relevant quote like <i>‘the fundamental question is whether the wrongful act is sufficiently related to conduct authorized by the employer to justify the imposition of vicarious liability’</i> (Source 3).</p> <p>AP1 Although the case does not explicitly rule out the Salmond test, the close connection test is now the principal test for intentional torts and, it is submitted, other torts where the Salmond tests do not operate in an obvious way. The test has since been applied with different results – contrast <i>Gravill v Carroll</i> with <i>N v CC Merseyside</i>.</p> <p>LC Link <i>Lister</i> to any relevant case(s). In particular the two Canadian cases that Lord Steyn referred to – <i>Bazley v Curry</i> and <i>Jacobi v Griffiths</i> in which the close connection test had been enunciated. The close connection test has been followed in numerous cases but notably <i>Maga</i>, <i>Gravill</i>, <i>Mattis</i> and <i>Dubai Aluminium</i> and contrast with <i>N v Chief Constable Merseyside</i>. <i>Lister</i> also overruled <i>Trotman</i> which would be a relevant linked case if identified in that way. The House of Lords also referred to <i>Lloyd v Grace Smith</i> and the principle that vicarious liability is not defeated if an employee acts for his own benefit. Other leading cases linked to in the judgment include: <i>Photo Production v Securicor</i>, <i>Rose v Plenty</i>, <i>Jones v Tower Boot</i> and <i>Century Insurance v NI Transport</i>.</p> <p>AP2 Credit any (additional) relevant point(s) such as: it will lead to uncertainty in the law because it is vague and offers little guidance on the type or degree of connection needed. However, in <i>Lister</i> the motivations appear to be doing practical justice in the instant case and compensating deserving claimants. So, although the decision has widened this area of liability it is justified on moral and social policy grounds whilst remaining open to (mis)interpretation (<i>Maga</i>).</p>	12	<table><tr><th>AO2 Levels</th><th>AO2 marks</th></tr><tr><td>5</td><td>11–12</td></tr><tr><td>4</td><td>9–10</td></tr><tr><td>3</td><td>7–8</td></tr><tr><td>2</td><td>4–6</td></tr><tr><td>1</td><td>1–3</td></tr></table> <p>CP – Max 3 marks Linked to the material point/ratio – 1 mark is available for that facts of the case but these are not essential to get full marks. An accurate source and line reference is adequate for the facts of the case to receive the one mark. Where given, the ratio of the case needs to be given an AO2 slant to get a mark</p> <p>AP – Max 6 marks for any Applied Point(s) These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks</p> <p>LC – Max 3 marks for a relevant, linked case The case must be linked for a particular point. Marks can be achieved as follows, for example: 1 mark for the name of the case, 1 mark for some development and 1 mark for a link to the question</p>	AO2 Levels	AO2 marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3
AO2 Levels	AO2 marks														
5	11–12														
4	9–10														
3	7–8														
2	4–6														
1	1–3														

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Question			Answer	Marks	Guidance											
			AP3 Consider any other analytical comment.													
			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward spelling, punctuation and grammar.	4	<table><tr><th>AO2 marks</th><th>AO3 mark</th></tr><tr><td>10–12</td><td>4</td></tr><tr><td>7–9</td><td>3</td></tr><tr><td>4–6</td><td>2</td></tr><tr><td>1–3</td><td>1</td></tr></table>		AO2 marks	AO3 mark	10–12	4	7–9	3	4–6	2	1–3	1
AO2 marks	AO3 mark															
10–12	4															
7–9	3															
4–6	2															
1–3	1															

Question	Answer	Marks	Guidance												
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Definition: One party (usually an employer) is liable for the torts (and, in some cases, crimes) of another party (usually the employee)</p> <p>Liability based on three conditions being met: <u>There must be an employer – employee relationship</u> Who is an employee? Explain the traditional master and servant approach Control test – <i>Cassidy v Ministry of Health; Honeywill and Stein Ltd v Larkin Brothers Ltd; Performing Right Society Ltd v Mitchell & Booker (Palais de Danse) Ltd; Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd</i> (credit also the ‘ordinary person’ test [<i>Cassidy</i>]) Integration test – <i>Stevenson Jordan & Harrison v MacDonald & Evans</i> Economic Reality test – <i>Ready Mixed Concrete (SE) Ltd v Minister of Pensions; Market Investigations Ltd v Minister of Social Security; Ferguson v John Dawson & Partners (Contractors) Ltd</i> No single test – <i>Market Investigations Ltd v Minister of Social Security</i> (Also credit references to: the ‘multiple’ test; the ‘entrepreneurial’ test; ‘four indicia’ test; ‘principal obligation’ test or the ‘independence’ test) Loaned or ‘borrowed’ employees <i>Mersey Docks and harbour Board v Coggins and Griffiths (Liverpool) Ltd</i> <i>Viasystems Ltd v Thermal transfer Ltd</i> <i>Hawley v Luminar Leisure Ltd</i> <i>Biffa Waste Services Ltd v Maschineenfabrik</i></p> <p><u>Employee must have committed a tort</u> There must be a tort <i>Poland v Parr & Sons</i> <i>Morris v CW Martin</i></p>	16	<table><tr><th>AO1 Levels</th><th>AO1 marks</th></tr><tr><td>5</td><td>14–16</td></tr><tr><td>4</td><td>11–13</td></tr><tr><td>3</td><td>8–10</td></tr><tr><td>2</td><td>5–7</td></tr><tr><td>1</td><td>1–4</td></tr></table> <p>Level 5 Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed*. Responses are likely to use material both from within the pre-release materials (LNK) and from beyond the pre-release materials which have a specific link to the area of law.</p> <p>Level 4 Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed*.</p>	AO1 Levels	AO1 marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4
AO1 Levels	AO1 marks														
5	14–16														
4	11–13														
3	8–10														
2	5–7														
1	1–4														

Question	Answer	Marks	Guidance
	<p><u>The tort must be committed whilst in the course of employment</u> Two tests – traditional Salmond test and the ‘close connection’ (<i>Lister</i>) test. Where the tort is intentional use <i>Lister</i> but for other torts apply Salmond first and, if it is not met, then apply <i>Lister</i>. Traditional (Salmond) test Not in the course of employment – express prohibition Benefit to employer (will be VL) <i>Rose v Plenty</i> – where employer benefits <i>Century Insurance Co Ltd v Northern Ireland Road Transport</i> – where employee acts in recklessly careless manner <i>Limpus v London General Omnibus Co Ltd</i> – acting in unauthorised manner <i>Poland v John Parr & Sons</i> – authorised acts as in employer’s No benefit to employer (will not be VL) <i>Twine v Bean’s Express</i> – against express instructions but with no benefit to employer <i>Beard v London General Omnibus Co</i> – against express instructions and not qualified to do so <i>Keppel Bus Co v Sa’ ad bin Ahmed</i> – similar to <i>Poland</i> but reaction disproportionate and completely outside scope of employment On a frolic/Travelling <i>Joel v Morrison</i>; <i>Harvey v RG O’Dell Ltd</i>; <i>Hilton v Thomas Burton</i>; <i>Storey v Ashton</i>; <i>Smith v Stages</i>; <i>Warren v Henlys</i> <i>Heasmans v Clarity Cleaning</i> A new approach – the close connection test (McBride suggests: use both tests in combination or, in the case of intentional torts, only use <i>Lister</i>) <i>Bazley v Curry</i> – Canadian Supreme Court – sets the scene for <i>Lister</i> in HL <i>Trotman v North Yorkshire County Council</i> (since overruled by the HL) <i>Lister v Hesley Hall Ltd</i> – overruling <i>Trotman</i> which had applied the Salmond test and setting out new approach (but this was in the context of criminal acts) <i>Dubai Aluminium v Salaam & Others</i>; <i>Jacobi v Griffiths</i>; <i>New South Wales v Lepore</i>; <i>Fennelly v Connex South Eastern Ltd</i>; <i>Bernard v Attorney General of Jamaica</i>; <i>Brown v Robinson</i>; <i>Maga v Trustees of the Birmingham Archdiocese</i>; <i>Weir v Chief Constable of Merseyside Polic</i>; <i>Attorney General v Hartwell</i>; <i>Mattis v Pollock</i>;</p>		<p>Level 3 Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed*.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without 2 relevant cases, neither of which are required to be developed.</p> <p>Level 1 Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p> <p>*Developed = case name + facts (minimal) or ratio (minimal)</p>

Question			Answer	Marks	Guidance												
			<i>Gravil v Carroll; MOD v Radclyffe</i> contrast with <i>N v Chief Constable Merseyside</i> Credit principal – agent cases <i>Ormrod v Crossville Motors; Morgans v Launchbury</i> (drivers) Credit reference to the role of indemnity insurance <i>Lister v Romford Ice</i>														
			Assessment Objective 2 – Analysis, evaluation and application Discussion of: Fair The typical individual defendant is often a man of straw which means the rule is fair as it ensures that claimants get compensated. Compulsory insurance should ease the burden but are these costs simply passed on to customers/the public? The ‘benefit and burden’ principle (the employer benefits from the employees work so it should bear the costs of damages arising from the employees torts) The person with the power of control and direction over the defendant should be responsible because: <ul style="list-style-type: none">• He is in control of D• He is best placed to know the characteristics of the employee, train (or re-train) him, move the employee to other duties or ultimately dismiss the employee• He is in the best position to know (or to find out) the risks associated with his business, the cost of any potential accidents and the cost of insuring against them• He benefits from D’s activity• He can pass on costs to customers/the public sector• He can pass on costs to shareholders in reduced dividends• He is best placed or legally obliged to be insured• He is often bound by compulsory Employer’s Liability Insurance which means he only pays the premiums not the whole damages	14	<table><tr><th>AO2 Levels</th><th>AO2 marks</th></tr><tr><td>5</td><td>13–14</td></tr><tr><td>4</td><td>10–12</td></tr><tr><td>3</td><td>7–9</td></tr><tr><td>2</td><td>4–6</td></tr><tr><td>1</td><td>1–3</td></tr></table> Level 5 Responses are unlikely to achieve level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion* with some synoptic content. Level 4 Responses are unlikely to achieve level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote. Level 3 Responses are unlikely to achieve level 3 without adequate analytical evaluation of the relevant areas of law and limited focus on the quote.	AO2 Levels	AO2 marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
AO2 Levels	AO2 marks																
5	13–14																
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Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> • He is in the best position to determine the risk attached to employee activities (often cited as a response to the question as to why organisations with greater resources (eg the banks and government) are not fixed with greater responsibility?) <p>Loss can be re-distributed through indemnity insurance – at least theoretically – <i>Lister</i></p> <p>Increased insurance premiums through frequent claims would/should encourage higher standards of instruction and training – raising standards for all</p> <p>Vicarious liability raises standards because employers are more likely to take care in employing appropriate employees and take their training seriously</p> <p>Some decisions show that the courts are conscious of imposing undue legal burdens on business</p> <p>The courts limit the scope of vicarious liability by requiring three conditions to be satisfied</p> <p>Unfair</p> <p>It is liability without fault!</p> <p>Problem of blameless defendants</p> <p>Suggesting that VL encourages employers to supervise employees and maintain high standards should mean VL is only imposed where the employer could have prevented the tort but this doesn't happen</p> <p>Making a system of law based on personal responsibilities doesn't fit a world dominated by impersonal organisations</p> <p>Employer is still liable even where he has expressly forbidden a practice</p> <p>Case law has been inconsistent and arbitrary</p> <p>Recent cases (<i>Lister/Maga</i>) have widened the scope of potential claimants too far</p> <p>Changes in the law of limitation of actions have changed to favour potential claimants raising issues of seemingly endless liability – does this lead to restrictive practices or discourage business?</p> <p>Lacks natural justice to hold employer liable before he has realised a practice is happening and been given an opportunity to address it</p> <p>Employer may be liable for nothing more than mere 'blink of an eye' carelessness</p>		<p>Level 2</p> <p>Responses are unlikely to achieve level 2 without at least some limited analytical evaluation of the relevant areas of law.</p> <p>Responses are unlikely to discuss the quote.</p> <p>Level 1</p> <p>Responses are unlikely to achieve level 1 without at least some very limited analytical evaluation of the relevant areas of law.</p> <p>Responses are unlikely to discuss the quote.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).</p>

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Question			Answer	Marks	Guidance											
			Recent cases using the close connection test have blurred the line between what is connected to the employers business and the behaviour complained of – <i>Mattis, Dubai & Gravill</i> The requirement of a nexus between the employer's business and the tort justifies VL Socially desirable and/or morally just outcomes – <i>Jones v Tower Boot Company</i> The suggestion that the greater the fault of the servant, the less the liability of the master reflects the wrong approach (R Coe) Draw any sensible, logical, reasoned and supported conclusion													
			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.	4	<table><tr><th>AO1 + AO2 marks</th><th>AO3 mark</th></tr><tr><td>24–30</td><td>4</td></tr><tr><td>17–23</td><td>3</td></tr><tr><td>9–16</td><td>2</td></tr><tr><td>1–8</td><td>1</td></tr></table>		AO1 + AO2 marks	AO3 mark	24–30	4	17–23	3	9–16	2	1–8	1
AO1 + AO2 marks	AO3 mark															
24–30	4															
17–23	3															
9–16	2															
1–8	1															

Question			Answer	Marks	Guidance																		
3			<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Use any relevant cases as illustration when applying the law to the problems.</p>	10	<table><tr><th>Level</th><th>AO1 marks</th><th>AO2 marks</th></tr><tr><td>5</td><td>9–10</td><td>17–20</td></tr><tr><td>4</td><td>7–8</td><td>13–16</td></tr><tr><td>3</td><td>5–6</td><td>9–12</td></tr><tr><td>2</td><td>3–4</td><td>5–8</td></tr><tr><td>1</td><td>1–2</td><td>1–4</td></tr></table>	Level	AO1 marks	AO2 marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4
Level	AO1 marks	AO2 marks																					
5	9–10	17–20																					
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2	3–4	5–8																					
1	1–2	1–4																					
			<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of (a):</p> <p>AP1 In order for CL to be vicariously liable for Alice’s negligence, three requirements will need to be satisfied. First, Alice must be in an employer/employee relationship with CL. Second, it must be established that Alice has committed a tort. The third requirement is that it must be shown that Alice’s tort was committed whilst she was in the course of her employment with CL.</p> <p>AP2 The first requirement would appear to be met. Alice’s situation is similar to the case of <i>Nethermere v Gardiner</i> and it would be most unlikely any tribunal would find Alice ‘in business on her own account’. Indeed, any of the tests of employment are likely to find that Alice is under such a degree of control that she is, effectively, employed – even if she had a contract stating the opposite (<i>Ferguson v John Dawson</i>)</p> <p>AP3 The second requirement has been met as there is a clear statement in the question that Alice has been ‘negligent’. She owes a duty of care (<i>Caparo</i>), she has, it is submitted, fallen below the standard of the reasonable cracker assembler (<i>Nettleship</i>) and her negligence has led to foreseeable harm (<i>Wagon Mound</i>).</p> <p>CP The third requirement has also been met as the tort has arisen ‘in the course of employment’. This is because Alice is carrying out an authorised act in a negligent way as seen in the case of <i>Century Insurance</i>. This complies with the Salmond test which would be a conclusive test in a case like this involving an unintentional tort.</p> <p>AP4 Reason that CL will be vicariously liable for Alice’s negligence.</p>	20	<p>Marks should be awarded as follows (per part question):</p> <table><tr><th>Level</th><th>(a), (b) or (c)</th></tr><tr><td>5</td><td>9–10</td></tr><tr><td>4</td><td>7–8</td></tr><tr><td>3</td><td>5–6</td></tr><tr><td>2</td><td>3–4</td></tr><tr><td>1</td><td>1–2</td></tr></table> <p>NB A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none">• Max 3 marks for the critical point (CP)• Max 6 marks for applied points (AP)• Max 1 mark for a logical conclusion*/assessment of the most likely outcome in terms of liability (CON) <p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a conclusion*.</p> <p>Responses are unlikely to achieve level 5 if the conclusion* is incorrect <u>and</u> contradicted by the reason offered.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).</p>	Level	(a), (b) or (c)	5	9–10	4	7–8	3	5–6	2	3–4	1	1–2						
Level	(a), (b) or (c)																						
5	9–10																						
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Question	Answer	Marks	Guidance
(b)	<p>In the case of (b):</p> <p>AP1 In order for SC to be vicariously liable for Barrinder's negligence, three requirements will need to be satisfied. First, Barrinder must be in an employer/employee relationship with SC. Second, it must be established that Barrinder has committed a tort. The third requirement is that it must be shown that Barrinder's tort was committed whilst he was in the course of her employment with SC.</p> <p>AP2 The first requirement would appear to be met. Since there is a clear statement that Barrinder is a full-time 'employed' cab driver he would meet the most basic (but perfectly valid) test of employment – the 'control test' <i>Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd</i> and is almost certain to be found to be an employee under any of the tests.</p> <p>AP3 The second requirement is also met (that there is a tort) as there is clear evidence of negligence when he damages the other car. He owes a duty of care (<i>Caparo</i>), he has, it is submitted, fallen below the standard of the reasonable cab driver (<i>Nettleship</i>) and his negligence has led to foreseeable harm (<i>Wagon Mound</i>).</p> <p>CP The third requirement has also been met as the tort has arisen 'in the course of employment'. This is because case law under the Salmond test has confirmed that even where an employee is carrying out an expressly forbidden act, he will still be liable where the act is done in the employer's benefit.</p> <p>Barrinder is carrying out such an unauthorised act for the benefit of Speedi-Cabz and as 'part of his employment' and this is similar to the case of <i>Limpus v London Omnibus Co</i>. Furthermore, since this is an unintentional tort, the Salmond test will prove conclusive and there is no need to consider the close connection test.</p> <p>AP4 Reason that SC will be vicariously liable for Barrinder's negligence.</p>		<p>(a),(b),(c) Responses which approach the question based on the close connection test should also be credited where the reasoning is sound.</p>

G158

Mark Scheme

January 2013

Question	Answer	Marks	Guidance
(c)	<p>In the case of (c):</p> <p>AP1 In order for TrimPrice and/or TuffGuyz to be vicariously liable for Craig's intentional tort/crime, three requirements will need to be satisfied. First, Craig must be in an employer/employee relationship with either of the potential second defendants. Second, it must be established that Craig has committed a tort. The third requirement is that it must be shown that Craig's tort was committed whilst he was in the course of his employment with either of the potential second defendants.</p> <p>AP2 The first requirement is met to the extent that Craig is clearly an employee but under whose control? <i>Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd.</i> Since the case of <i>Viasystems v Thermal Transfer</i> it is clear that employers can be jointly liable so we may proceed on the basis that one or other or both of the second defendants will be viewed as the employer (most likely TrimPrice as they have the greater immediate control). Credit arguments that Craig is not under sufficient 'control' to necessarily be an obvious employee but the scenario does state clearly that he is 'employed'.</p> <p>AP3 The second requirement is that Craig has committed a tort. In this instance he has committed a clearly intentional tort (trespass to the person) and a crime (<i>Letang v Cooper</i>). He has directly and intentionally inflicted harm and cannot, in the circumstances described, claim self-defence (<i>Lane v Holloway</i>).</p> <p>CP The third requirement has also been met as the tort has arisen 'in the course of employment'. In this instance we are dealing with an intentional tort and, whilst the Salmond test might reach a similar conclusion (that Craig was doing an authorised act in an unauthorised way) it will struggle to establish that stabbing would ever be an authorised act. Therefore, the preferred test is the <i>Lister</i> 'close connection' test. This case can be compared to <i>Mattis v Pollock</i>. Craig's employer (whether it is TrimPrice, TuffGuyz or both) will be vicariously liable as there would be a close connection between the tort and Craig's employment. This would certainly be the case as in <i>Mattis</i> the bouncer went home to get the knife and the stabbing took place over 100 ms from the place of employment some time later whereas here the events are more contemporaneous, closer and clearly connected to the employment circumstances.</p>		(c) Responses which approach the question based on the Salmond tests should also be credited where the reasoning is sound although the CP of this question is awareness of the role of the <i>Lister</i> test. In this instance responses would be unable to achieve level 4.

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Mark Scheme

January 2013

Question			Answer	Marks	Guidance
			AP4 Reason that TrimPrice, TuffGuyz or both will be vicariously liable for Craig's intentional tort.		

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 (<i>includes QWC</i>)
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 or identify all of the relevant points of law in issue. A high level of ability to develop arguments or 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 or identify most of the relevant points of law in issue. Ability to develop clear arguments or 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 or identify the main points of law in issue. Ability to develop arguments or 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 or identify some of the points of law in issue. A limited ability to produce arguments based on their material or 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 or 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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