

## **Mark Scheme for June 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
	AO2+
	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	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 commentaries

\*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 in point 10 of the above marking instructions, 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.

**\* Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.**

### 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.

This will demonstrate that every page of a script has been checked.



You must also check any additional pages eg A, A1 etc, which the candidate has chosen to use. Before you begin marking, use the Linking Tool to 'link' any additional page(s) to the relevant question(s) and mark the response as normal.

## SECTION A

Question		Answer	Marks	Guidance												
1*		<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain concept of duty of care as part of negligence:</p> <ul style="list-style-type: none"> <li>• Existence of a duty of care</li> <li>• Breach of duty based on an objective test</li> <li>• Damage caused by breach based on 'but for' test</li> <li>• Damage not too remote a consequence.</li> </ul> <p>Explain evolution:</p> <ul style="list-style-type: none"> <li>• Neighbour principle – <i>Donoghue v Stevenson</i></li> <li>• Two part test in <i>Anns v Merton LBC</i> – proximity between the parties and impact of policy when deciding if duty exists</li> <li>• Criticism of test – <i>Governors of the Peabody Donation Fund v Sir Lindsay Parkinson and Co Ltd, Murphy v Brentwood DC</i>.</li> </ul> <p>Explain test in <i>Caparo v Dickman</i></p> <ul style="list-style-type: none"> <li>• Foresight of damage – <i>Topp v London Country Bus (SW) Lt, Gunn v Wallsend Slipway and Engineering Co, Margerson v JW Roberts Ltd, Bourhill v Young, Jolley v London Borough of Sutton</i></li> <li>• Proximity – <i>Hill v CC of West Yorkshire, Dorset Yacht v Home Office</i></li> <li>• Whether just and reasonable to impose duty – <i>Hemmens v Wilson Browne, Ephraim v Newham LBC</i>.</li> </ul> <p>Explain current law and policy for certain groups:</p> <ul style="list-style-type: none"> <li>• Lawyers – <i>Rondel v Worsley, Hall v Simons</i></li> <li>• Police – <i>Hill v CC of West Yorkshire, Reeves v MPC</i></li> <li>• Coastguards – <i>OLL Ltd</i></li> <li>• Judges – <i>Sirros v Moore</i></li> <li>• Firefighters – <i>Capital and Counties v Hampshire CC</i></li> <li>• Public bodies – <i>Clunnis v Camden and Islington HA, Z v UK</i>.</li> <li>• Credit any other relevant point(s).</li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Level</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>To achieve credit cases must be used in relation</p>	AO1 Level	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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2*		<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define assault - defendant directly and intentionally causes claimant to apprehend imminent battery.</p> <p>Explain key elements:</p> <ul style="list-style-type: none"> <li>• Need for threatening behaviour – <i>Read v Coker</i></li> <li>• Need for real and imminent threat – <i>Thomas v NUM</i></li> <li>• Need for claimant to feel threatened – <i>Stephens v Myers</i></li> <li>• Acknowledge that words can negative assault and traditionally in civil law needed to be accompanied by action, unlike in criminal law – <i>Turberville v Savage, Read v Coker</i></li> <li>• Defences may apply such as consent and self defence.</li> </ul> <p>Define battery – direct and intentional application of force.</p> <p>Explain the key elements:</p> <ul style="list-style-type: none"> <li>• Breadth of definition of 'direct' – <i>Scott v Shepherd, Nash v Sheen</i></li> <li>• Application of force cannot be negligent or careless - <i>Letang v Cooper</i></li> <li>• Need for hostility now gone – <i>Re F</i></li> <li>• Victim may be fearful but not essential</li> <li>• Defences may apply such as consent, lawful arrest and self-defence.</li> </ul> <p>Define false imprisonment – direct and intentional total bodily restraint.</p> <p>Explain the key elements:</p> <ul style="list-style-type: none"> <li>• Requires a positive act – <i>Sayers v Harlow</i></li> <li>• Restraint must be total – <i>Bird v Jones</i></li> <li>• Restraint does not need to be physical – <i>Meering v Graham White Aviation</i></li> <li>• Claimant need not be aware of restraint – <i>Murray v MOD</i></li> <li>• Tort of strict liability – <i>Brockhill v Evans</i></li> <li>• May be justification based on contractual relationship or reasonable expectation of employer – <i>Robinson v Balmain Ferry, Herd v Weardale Steel</i></li> <li>• Defences can apply such as lawful arrest and consent.</li> </ul> <p>Define harassment – Protection from Harassment Act 1997 – <i>Singh v Bhakar, Trimingham v Associated Newspapers</i></p>	25	<table border="1"> <thead> <tr> <th>AO1 Level</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 Level	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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3*		<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define keeper under section 6 (3) Animals Act 1971:</p> <ul style="list-style-type: none"> <li>Owner of animal or head of household in which a person under 16 is owner.</li> </ul> <p>Define liability for dangerousness:</p> <ul style="list-style-type: none"> <li>By section 6(2) – animal not commonly domesticated in UK with characteristics that, unless restricted, are likely to cause severe damage or any damage caused likely to be severe - <i>Tutin v Chipperfields</i></li> <li>Dangerous question of fact in each case - <i>Behrens v Bertram Mills Circus</i></li> <li>Section 2 (1) makes keeper strictly liable for an animal defined as dangerous</li> <li>Section 5 - only defences are <i>volenti</i> or where damage caused by claimant's own fault.</li> </ul> <p>Define liability for non-dangerous species:</p> <ul style="list-style-type: none"> <li>Section 2 (2) - keeper liable if damage of kind animal likely to cause unless restrained or if caused by animal is likely to be severe; likelihood or severity of damage is due to abnormal characteristics of individual animal or species or of species at specific times and keeper knows of these characteristics</li> <li>Section 2 (2)(a) - 'likely' means possible not probable - <i>Smith v Ainger</i>; 'severe' is factual question - <i>Curtis v Betts</i></li> <li>Section 2 (2)(b) - characteristic abnormal if not common in other animals - <i>Cummings v Grainger</i>; can include unforeseeable circumstances where keeper not at fault - <i>Mirhavedy v Henley</i></li> <li>Section 2(2)(c) – characteristics were known to the keeper or a person who had charge of the animal – <i>Welsh v Stokes</i></li> </ul> <p>Explain available defences:</p> <ul style="list-style-type: none"> <li>Section 5 (1) - Damage due entirely to fault of victim - <i>Sylvester v Chapman</i></li> <li>Section 5 (2) - Victim voluntarily accepted risk - <i>Turnbull v Warrener</i></li> <li>Section 5 (3) – Animal was either not kept for protection or was reasonable to do so - <i>Cummings v Grainger</i></li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Level</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 Level	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<ul style="list-style-type: none"> <li>• Section 10 – Contributory negligence - <i>Cummings v Grainger</i></li> <li>• Any other relevant cases</li> <li>• Credit reference to Animals Bill in House of Lords.</li> <li>• Credit any other relevant point(s).</li> <li>• Credit any other relevant case(s).</li> </ul> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following areas:</p> <ul style="list-style-type: none"> <li>• For 'dangerous' animals liability is strict, making keeper liable for any damage, and so tort effective in this respect</li> <li>• Problems caused by strictly liable nature of section 2(2)(b)</li> <li>• More restrictive rules on non-dangerous species but dependent on characteristics and knowledge of those characteristics making tort generally less effective</li> <li>• Broad definition of keeper makes tort effective</li> <li>• No need for link between characteristics and damage helps to protect</li> <li>• However difficult to distinguish between permanent and temporary characteristics</li> <li>• Problems in relation to animals used for guarding</li> <li>• Problems as defences can reduce chance of successful claim even though animal has caused damage.</li> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul>	20	<table border="1" data-bbox="1414 362 1864 571"> <thead> <tr> <th>AO2 Level</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 Level	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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## SECTION B

Question		Answer	Marks	Guidance												
4*		<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b> Define nervous shock (psychiatric injury) – recognised psychiatric injury caused by defendant's negligence - <i>Alcock, Reilly v Merseyside HA, Vernon v Boseley</i>.</p> <p>Explain types of victims:</p> <ul style="list-style-type: none"> <li>Primary victim - present at scene and at risk of injury or someone present at the scene who not physically injured but at risk of harm and suffers foreseeable harm - <i>Dulieu v White, Page v Smith</i></li> <li>Secondary victim - witnesses single shocking event causing risk of injury or injury to a related primary victim - <i>Hambrook v Stokes</i>.</li> </ul> <p>Explain <i>Alcock</i> test for secondary victims:</p> <ul style="list-style-type: none"> <li>Close tie of love and affection to primary victim - presumed for husbands and wives, parents and children - otherwise must prove close enough tie</li> <li>Sufficient proximity in time and space to the event or its immediate aftermath - <i>McLoughlin v O'Brien</i></li> <li>Claimant witnessed accident or immediate aftermath with own unaided senses</li> <li>Claimant of reasonable phlegm and fortitude.</li> </ul> <p>Explain that injury must be sustained as a result of single shocking event - <i>Sion v Hampstead</i>.</p> <p>Explain that injury must be directly caused by witnessing single shocking event - <i>Calascione v Dixon</i>.</p> <p>Explain position relating to bystanders:</p> <ul style="list-style-type: none"> <li>Unable to claim even if suffer psychiatric harm and are close friends of primary victim - <i>McFarlane v E E Caledonia, Rough &amp; Robertson v Forth Road Bridge, Duncan v British Coal</i>.</li> </ul> <p>Explain position relating to rescuers:</p>	25	<table border="1"> <thead> <tr> <th>AO1 Level</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 Level	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<ul style="list-style-type: none"> <li>Can claim only if genuine primary or secondary victim - <i>White v CC of South Yorkshire, Greatorex v Greatorex, Chadwick</i>.</li> <li>Credit any other relevant point(s).</li> <li>Credit any other relevant case(s).</li> </ul> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify that there is negligence by Astoria Cinema as fire exit locked, leading to a single traumatic event;</p> <p>In the case of <b>Jasmine</b>:</p> <ul style="list-style-type: none"> <li>She suffers a recognised psychiatric injury caused by single traumatic event</li> <li>As Jasmine is outside when the fire started and so not at risk of foreseeable harm she is unable to claim as primary victim</li> <li>Identify that Jasmine will need to claim as a secondary victim according to the criteria in <i>McLoughlin and Alcock</i></li> <li>As a potential secondary victim Jasmine does have proximity in time and space and she witnesses or hears the event with her own unaided senses;</li> <li>Jasmine will need to prove a close tie of love and affection to Craig – boyfriend and girlfriend unlikely to be enough but could depend on length and nature of relationship</li> <li>Consider whether Jasmine could be a bystander.</li> </ul> <p>In the case of <b>Martin</b>:</p> <ul style="list-style-type: none"> <li>Martin is a professional rescuer</li> <li>Martin might be a primary victim as the fire is burning when he rescues Craig</li> <li>Martin could be a secondary victim as he is Craig's father and satisfies other two <i>Alcock</i> criteria</li> <li>Problem that Martin does not suffer a recognised psychiatric injury since grief needs to be pathological and linked to severe depression.</li> </ul> <p>In the case of <b>Pat</b>:</p> <ul style="list-style-type: none"> <li>Pat suffers recognised psychiatric injury</li> <li>Pat could be a secondary victim</li> <li>Pat has a close tie of love and affection as Craig's mother</li> </ul>	20	<table border="1"> <thead> <tr> <th>AO2 Level</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 Level	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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		<ul style="list-style-type: none"> <li>• Time frame such that this is likely to be seen as immediate aftermath test</li> <li>• Pat does see with own unaided senses but is this considered the immediate aftermath?</li> <li>• Credit any other relevant point(s).</li> <li>• Reach a sensible conclusion.</li> </ul> <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 Marks</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 Marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1	
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5*		<p>Potential answers <b>may</b>:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain that liability in Occupiers' Liability Act 1957 for lawful visitors and Occupiers' Liability Act 1984 for trespassers.</p> <p>Define occupier – person in control of premises - <i>Wheat v Lacon</i>.</p> <p>Define premises under section 1(3) OLA 1957 – <i>Wheeler v Copas</i>.</p> <p>Define duty under OLA 1957:</p> <ul style="list-style-type: none"> <li>• Lawful visitor can be invitee, licensee, or person with contractual or legal right to enter</li> <li>• Common duty of care under section 2 (1)</li> <li>• Scope of duty under section 2 (2) – to keep visitor safe for purposes for which invited to enter</li> <li>• Occupier can exclude or modify duty subject to UCTA implications</li> <li>• Section 2(4)(a) – occupier will not be liable if they have given a visitor sufficient warning of a danger</li> <li>• Section 2 (4) (b) can relieve occupier of duty if independent contractor at fault for the damage – but must be reasonable to hire one, competent contractor must be chosen and work inspected if possible - <i>Haseldine v Daw</i>, <i>Ferguson v Welsh</i>, <i>Woodward v Mayor of Hastings</i>.</li> </ul> <p>Define duty under OLA 1984:</p> <ul style="list-style-type: none"> <li>• Visitor going beyond terms of entry may become trespasser - <i>The Calgarth</i></li> <li>• Lesser duty owed covering injury but not property - <i>Tomlinson v Congleton BC</i>, <i>BRB v Herrington</i>)</li> <li>• Section 1 (3)(a) – the occupier is aware of the danger or has reasonable grounds to believe it exists</li> <li>• Section 1(3)(b) – the occupier knows or has reasonable grounds to believe the trespasser is in the vicinity of the danger or can come into the vicinity</li> <li>• Section 1(3)(c) – the risk is one which in all the circumstances the occupier may reasonably be expected to offer some protection from – <i>Tomlinson</i>, <i>Higgs v Foster</i></li> <li>• Section 1 (5) – deals with warnings - <i>Westwood v Post Office</i></li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Level</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 Level	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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		<ul style="list-style-type: none"> <li>Section 1 (6) - possibility of <i>volenti</i> - <i>Ratcliffe v McConnell</i>. Explain position relating to children:           <ul style="list-style-type: none"> <li>Higher standard of care owed – <i>Moloney v Lambeth LBC</i></li> <li>Occupier must protect children from any allurements - <i>Glasgow Corporation v Taylor</i></li> <li>Occupier might expect parent to take responsibility for young children - <i>Phipps v Rochester Corporation</i></li> <li>Occupier liable for foreseeable harm even if precise damage or precise circumstances in which harm occurs not foreseeable - <i>Jolley v London Borough of Sutton</i>.</li> <li>Credit any other relevant point(s).</li> <li>Credit any other relevant case(s).</li> </ul> </li> </ul> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify OLA 1957 and OLA 1984</p> <p>In the case of <b>Andrei</b>:</p> <ul style="list-style-type: none"> <li>Explain that Andrei is a lawful visitor – he is a member of Better Bodies Gym and so has a contractual right to be there</li> <li>Explain that Better Bodies has control and can be seen as an occupier</li> <li>Explain that the gym and changing room constitute premises so there is a duty to keep Andrei safe for the purpose of his visit</li> <li>Can Better Bodies avoid liability if Andrei's injury is the fault of Sparks Electrics?</li> <li>Likely to be reasonable to hire independent contractor for a skilled task but are they competent and could staff at Better Bodies have checked the wiring to the shower before a customer used it?</li> <li>Likely that Better Bodies will be liable but credit alternative that Sparks Electrics could be liable.</li> </ul> <p>In the case of <b>Maxim</b>:</p> <ul style="list-style-type: none"> <li>Maxim is lawful visitor until he exceeds his permission by entering the staff area</li> <li>Consider whether the sign is an effective warning but unlikely to be so as it does not identify dangers</li> <li>Does Better Bodies come within section 1 (3) – likely that it does</li> <li>Consider possibility of a defence by Better Bodies of contributory</li> </ul>	20	<table border="1"> <thead> <tr> <th>AO2 Level</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>	AO2 Level	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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		<p>negligence</p> <ul style="list-style-type: none"> <li>Consider possibility of <i>volenti</i> but Maxim is unaware of risk so no free acceptance</li> <li>Consider possibility of Maxim's action being considered as an emergency which would relieve Better Bodies of liability.</li> </ul> <p>In the case of <b>Gleb</b>:</p> <ul style="list-style-type: none"> <li>Gleb entered the gym as a lawful visitor with his father</li> <li>Consider that if Gleb is allowed to be at Better Bodies they may have assumed responsibility for him by providing a 'wet floor' sign</li> <li>However it could also be that Gleb should have been supervised by Maxim</li> <li>Consider that there would be liability for Gleb's broken watch.</li> <li>Credit any other relevant point(s).</li> <li>Reach a sensible conclusion</li> </ul> <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	<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> <table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</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 Marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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6*		<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 defendant's land - <i>Charing Cross Case</i> , <i>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</i>, <i>Hale v Jennings</i>, <i>British Celanese v AH Hunt</i>, <i>Transco v Stockport</i></li> <li>• Thing escaping causes damage</li> <li>• Non-natural use of land - <i>Mason v Levy Autoparts</i>, <i>Rickards v Lothian</i>, <i>Cambridge Water v Eastern Counties Leather</i>, <i>Musgrove v Pandelis</i></li> <li>• Harm must be foreseeable – <i>Transco</i>.</li> </ul> <p>Identify the available defences:</p> <ul style="list-style-type: none"> <li>• Volenti non fit injuria – <i>Peters 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>• Damage caused through claimant's fault- <i>Eastern &amp; South African Telegraph v Cape Town Tramways</i></li> <li>• Credit any other relevant point(s).</li> <li>• Credit any other relevant case(s).</li> </ul>	25	<table border="1"> <thead> <tr> <th>AO1 Level</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 Level	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>In the case of Phil's liability when beer barrels explode:</p> <ul style="list-style-type: none"> <li>Bringing beer onto land is accumulation of a thing likely to do mischief if it escapes</li> <li>Consider whether Phil's use of premises is non-natural because it is a commercial business</li> <li>Consider whether Sophie can make a claim since the cupcakes were ruined by rain</li> <li>Consider whether harm was foreseeable</li> <li>Phil likely to use defence of Act of God.</li> </ul> <p>In the case of the death of Quentin's fish:</p> <ul style="list-style-type: none"> <li>Bringing beer onto land is accumulation of a thing likely to do mischief if it escapes</li> <li>Consider whether Quentin will be able to claim for act of a stranger and was harm reasonably foreseeable?</li> </ul> <p>In the case of Phil's ruined beer:</p> <ul style="list-style-type: none"> <li>Was this a non-natural use?</li> <li>Consider whether cleaner's failure could be act of a stranger.</li> <li>Credit any other relevant point(s).</li> <li>Credit any other relevant case(s).</li> </ul> <p>Reach a sensible conclusion.</p>	20	<table border="1"> <thead> <tr> <th>AO2 Level</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> <p>To achieve Level 5 responses must cover all aspects of the scenario.</p>	AO2 Level	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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## SECTION C

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7		<b>Assessment Objective 2 – Analysis, evaluation and application</b>														
	(a)	P1 Reason that a professional or business relationship has the potential to be a special relationship P2 Reason that Kevin is a qualified architect so this suggests that there is a special relationship P3 Reason that a qualified architect is expected to give advice of a professional standard P4 Reason that Kevin has fallen below the professional standard expected of a qualified architect because he should know the type of planning permission needed P5 Conclude that the statement is inaccurate.	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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1	1															
	(b)	P1 Reason that generally there is no liability for pure economic loss P2 Reason that Jason has suffered economic loss due to Kevin saying he had planning permission P3 Reason that a negligent misstatement must lead to the loss P4 Reason that Kevin has made a negligent misstatement by telling Jason he has planning permission P5 Conclude that the statement is inaccurate.	5													
	(c)	P1 Reason that there is a need to distinguish between a negligent act and a negligent misstatement P2 Reason that Nigel using the wrong wood is a negligent act P3 Reason that for Nigel to be liable he needs to have a duty of care which he has breached P4 Reason that Nigel is a professional builder and has breached his duty by using the wrong type of timber P5 Conclude that the statement is inaccurate. <b>OR</b> P4a Reason that Nigel is not liable as there is no damage P5a Conclude that the statement is accurate.	5													

Question		Answer	Marks	Guidance
(d)		P1 Reason that to be liable it must be reasonable to rely on the advice given P2 Reason that it was reasonable for Jason to rely on Kevin's advice as Kevin has been paid for his advice P3 Reason that to be liable the claimant must rely on the advice P4 Reason that Jason has relied on this advice by buying the school P5 Conclude that statement is inaccurate.	5	

Question		Answer	Marks	Guidance												
8		<b>Assessment Objective 2 – Analysis, evaluation and application</b>														
	(a)	<p>P1 Reason that Quickdrop Parcels will be liable if Amir was acting in the course of his employment</p> <p>P2 Reason that Amir is in the course of his employment when he is driving the van doing his job even if improperly</p> <p>P3 Reason that doing a prohibited/unauthorised act can still lead to vicarious liability</p> <p>P4 Reason that Quickdrop Parcels will be liable because Amir is negligent and breaking company rules when he throws the cigarette out of the window</p> <p>P5 Conclude that the statement is accurate.</p> <p><b>OR</b></p> <p>P4a Reason that Quickdrop Parcels will not be liable as they have expressly prohibited smoking</p> <p>P5a Conclude that the 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
AO2 Level	AO2 Mark															
5	5															
4	4															
3	3															
2	2															
1	1															
	(b)	<p>P1 Reason that Quickdrop Parcels will be liable if Amir was acting in the course of his employment</p> <p>P2 Reason that Amir is in the course of his employment because he is protecting the boxes he is responsible for</p> <p>P3 Reason that Quickdrop Parcels will not be liable if the response is excessive</p> <p>P4 Reason that Amir's punch is not excessive because he is acting in Quickdrop's interests/for their benefit</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	P3 and P4 are related to the level of force												

Question		Answer	Marks	Guidance
(d)		<p>P1 Reason that Quickdrop Parcels is not liable if Amir is acting outside the course of his employment (on a frolic)</p> <p>P2 Reason that driving to a darts match is a 'frolic of his own'</p> <p>P3 Reason that Quickdrop Parcels could be liable for a tortious act if a crime is closely connected with employment</p> <p>P4 Reason that Amir has committed the crime of speeding which is not connected to his employment</p> <p>P5 Conclude that the statement is accurate.</p>	5	P3 and P4 are related to close connection

## APPENDIX 1

## Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AO1 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 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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