



GCE

Law

Unit **G157**: Law of Torts

Advanced GCE

Mark Scheme for June 2015

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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These are the annotations, (including abbreviations), including those used in scoris, which are used when marking

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 G153 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		Indicative Content	Mark	Guidance												
1*		<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Explain that both causation and remoteness must be proved for a claim in negligence to succeed</p> <p>Explain that there are two types of causation: causation in fact and causation in law (remoteness of damage)</p> <p>Explain factual causation:</p> <p>Explain the 'but for' test – but for the defendant's breach of duty, would the claimant have suffered damage? <i>Barnett v Chelsea and Kensington HMC, Chester v Afsar</i></p> <p>Explain that the 'but for' test is not always straightforward to apply and show causation is dealt with where there are:</p> <ul style="list-style-type: none"> • multiple causes • successive causes <p>On the issue of multiple causes, explain how liability is established:</p> <ul style="list-style-type: none"> • pre-existing condition – <i>Cutler v Vauxhall Motors</i> • concurrent causes – <i>Wilsher v Essex AHA</i> • material increase in the risk of harm – <i>McGhee v NCB, Fairchild</i> • the reasoning on apportionment of blame following <i>Barker v Corus</i> and the subsequent position set out in the Compensation Act 2006 – <i>Wright v Cambridge Medical Group, Sienkiewicz v Greif</i> • consecutive causes – <i>Performance Cars v Abraham, Jobling v Associated Dairies, Baker v Willoughby</i> 	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>Level 5 – 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>Level 4 – 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>Level 3 – 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>Level 2 – 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>Level 1 – 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>Explain loss of chance – <i>Gregg v Scott, Hotson v East Berkshire HA</i></p> <p>Explain the concept of a <i>novus actus interveniens</i> and how it can break the chain of causation</p> <ul style="list-style-type: none"> act of the claimant – <i>Wieland v Cyril Lord Carpets, McKew v Holland and Hannon and Cubitts</i> act of nature – <i>Carslogie Steamship v Royal Norwegian Navy</i> act of a third party – <i>Knightly v Johns</i> <p>Explain the issue of remoteness</p> <p>Explain that the claimant can only claim for loss which is of a type that is foreseeable <i>The Wagon Mound (No1)</i></p> <p>Explain that the principle may be applied broadly where there is personal injury – <i>Bradford v Robinson Rental</i> or narrowly where there is property – <i>The Wagon Mound (No 2)</i></p> <p>Explain the relevance/effect of the thin skull rule – <i>Smith v Leech Brain</i></p> <p>Credit the distinction between contributory negligence and intervening acts</p> <p>Credit the use of any other cases</p> <p>Credit any other relevant points</p>														
		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Discuss whether the rules are unfair:</p> <ul style="list-style-type: none"> The fact that the principles of causation are aimed at compensating the claimant for loss which is foreseeable and attributable to the defendant is generally fair 	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</p>	AO2 Levels	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"> The 'but for' test provide a test that allows all claimants to be treated in the same way However, the 'but for' test is only appropriate where there is one defendant and one cause of damage – the claimant may not receive compensation despite a duty having been breached The difficulties faced by a claimant in proving causation where there are multiple causes could result in the claimant not receiving compensation, which is unfair Where consecutive causes are present, a defendant may escape liability despite being at fault The rules concerning <i>novus actus interveniens</i> do not provide consistent outcomes The rules on remoteness of damage can be unfair to a claimant as they are a means of limiting the defendant's liability The arbitrary approach taken by the courts in determining what 'type' of damage may be foreseeable may not be fair – the narrow v wide approach <p>Discuss whether the rules provide justice:</p> <ul style="list-style-type: none"> Application of the 'but for' test can create injustice Development of 'material contribution' and 'material increase of risk of harm' tests can be used to provide justice in specific instances e.g. mesothelioma cases Justice can be done where the courts use policy reasons to avoid the 'but for' test The approach in <i>Fairchild</i> provides justice for the claimant but can be unfair to a defendant who may actually not be to blame The Compensation Act 2006 provides justice for the claimant as that person will receive compensation in full 		<p>without:</p> <p>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – 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>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p>

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		<ul style="list-style-type: none"> The role of policy and the aim of judges to neither under or over-compensate following <i>Baker v Willoughby and Jobling</i> – this might provide arbitrary justice for the claimant on the facts of the case Credit any other relevant point(s). Reach a sensible 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.	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>37–50</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	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
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2*		<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Explain section 6(3) – definition of a keeper:</p> <ul style="list-style-type: none"> • Owner, possessor or head of the household where a person under 16 owns the animal <p>Explain that non dangerous animals are distinct from dangerous animals.</p> <p>Explain section 2(2) liability for non-dangerous species – keeper will be liable if:</p> <ul style="list-style-type: none"> • (a) Damage is 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> • (b) Likelihood or severity of damage was due to the characteristics of individual animal or common in species at a particular time – <i>Jaundrill v Gillett, Gloster v CC of Greater Manchester Police</i> • (c) Keeper knows of those characteristics – <i>Draper v Hodder, McKenny v Foster</i> • Explain that in section 2(2)(a) 'likely' means "such as might well happen" rather than probable – <i>Smith v Ainger</i>, • Explain that 'severe' is a question of fact – <i>Curtis v Betts</i> • Explain that in section 2(2)(b) a characteristic is abnormal if not common in other animals – <i>Cummings v Grainger, Kite v Napp</i> but can include unforeseen circumstances where the keeper is not at fault – <i>Mirvahedy v Henley</i> 	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>Level 5 – 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>Level 4 – 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>Level 3 – 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>Level 2 – 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>Level 1 – 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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		<ul style="list-style-type: none"> Explain that the characteristic must be the same for both s2(2)(a) and (b) – <i>Clark v Bowlt</i> <p>Explain the defences which may be available:</p> <ul style="list-style-type: none"> Section 5(1) – keeper may not be liable if the harm is wholly the fault of the victim – <i>Nelmes v CC of Avon and Somerset</i> Section 5(2) – keeper not liable if the victim voluntarily accepts the risk of harm – <i>Turnbull v Warrener, Goldsmith v Patchcott, Dhesi v CC of West Midlands Police</i> Section 5(3) – keeper not liable to a trespasser if the animal is not kept for protection, or if it was to protect, it is reasonable to do so - <i>Cummings v Grainger</i> Section 10 – the keeper may reduce liability if there is contributory negligence -<i>Cummings v Grainger</i> Credit any other relevant case(s). Credit any other relevant point(s). 														
		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>A response may include the following:</p> <ul style="list-style-type: none"> The purpose of the Act was to simplify the law but arguably it has not achieved this aim The Animals Act 1971 has been described by Jackson LJ as 'oracular' and its interpretation has been subject to much dispute Different rules apply to dangerous and non-dangerous species yet animals are classified due to species and not necessarily the dangerousness of that particular animal. 	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>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in</p>	AO2 Levels	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"> Section 2.2 has led to difficulties in interpretation with each subsection having to be considered separately The courts have given different interpretations of section 2.2 as shown in the contrasting approaches taken to dog bites and injuries caused by horses. The words 'was likely' in section 2.2(a) have been interpreted to have a wide meaning. <i>Gloster</i> and <i>Mirvahedy</i> dealt with the issue of characteristics, the latter case interpreting the law to make it more likely for the claimant to be able to receive compensation. Section 2.2(b) has been interpreted to the effect that normal behaviour that occurs in particular circumstances is treated as an abnormal characteristic The courts have sought to limit liability through interpreting the Act to require that the characteristics in section 2.2(a) are the same characteristics for the purposes of section 2.2(b) Numerous defences may limit the effect of the Act Credit any other relevant point(s). Reach a sensible conclusion. 		<p>these cases.</p> <p>Level 3 – 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>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p>												
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3*		<p>Potential answers may include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Explain that a claimant must have an interest in land to pursue a claim as in the case of nuisance – <i>Transco, Hunter v Canary Wharf</i></p> <p>Explain that a defendant needs to be either the accumulator or the occupier of the land accumulated – <i>Read v Lyons</i></p> <p>Explain that for a claim in <i>Rylands v Fletcher</i> a claimant will have to show that:</p> <ul style="list-style-type: none"> • The thing was brought and accumulated on the defendant's land – <i>Charing Cross</i> case, <i>Giles v Walker</i> • The thing will be likely to cause mischief if it escapes, <i>Rylands v Fletcher, Hale v Jennings</i> although the thing itself need not be inherently dangerous – <i>Shiffman v Order of St Johns</i> • There must be an escape but this can be either from the land over which the defendant has control <i>Read v Lyons</i> or from circumstances over which the defendant has control – <i>Transco, British Celanese v Hunt, Hale v Jennings</i> • The thing escaping must cause harm (damage) • The harm must be foreseeable – <i>Cambridge Water v Eastern Counties Leather, Transco</i> <p>Explain that the use of land must be non-natural (added by Lord Cairns in the HL):</p> <ul style="list-style-type: none"> • A potentially dangerous activity – <i>Cambridge Water v Eastern Counties Leather</i> 	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>Level 5 – 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>Level 4 – 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>Level 3 – 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>Level 2 – 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>Level 1 – 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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		<ul style="list-style-type: none"> Things stored in large quantities – <i>Mason v Levy Autoparts</i> A truly domestic use is a natural use If the public have a benefit from the use of land that is in question then the court may find the use to be natural <i>British Celanese v Hunt</i> Use of chemicals likely to always be non-natural <i>Cambridge Water v Eastern Counties Leather</i> <p>Explain that claims are unlikely to be permitted for personal injury – <i>Cambridge Water</i> and pure economic loss <i>Weller v Foot and Mouth Disease Research Unit</i></p> <p>Identify the available defences:</p> <ul style="list-style-type: none"> <i>Volenti non fit injuria</i> – <i>Peters v Prince of Wales Theatre</i> Common benefit – <i>Dunne v North West Gas Board, Cordin v Newport City Council</i> Act of God – <i>Nichols v Marsland</i> Act of a stranger – <i>Perry v Kendricks Transport</i> Statutory authority – <i>Green v Chelsea Waterworks, Charing Cross case</i> Contributory negligence under the Law Reform (Contributory Negligence) Act 1945 which reduces damages Credit any other relevant case(s). Credit any other relevant point(s). 												
		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>A response may include the following:</p> <ul style="list-style-type: none"> The rule was introduced to deal with specific issues relating to pollution at a time when Parliament was slow to act 	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> </tbody> </table>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8
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	<ul style="list-style-type: none"> • The development of the tort of negligence means that because of the restrictive nature of <i>Rylands</i> it is easier to bring a claim in negligence • <i>Transco</i> – although there is an overlap with a claim in negligence the courts have stated that claims involving damage to the environment are better placed in <i>Rylands</i> claims • <i>Transco</i> - the HL made it clear that <i>Rylands</i> would be useful where damage has been caused to the environment where negligence cannot be proved • The shifting meaning of what is natural/non-natural use of land can mean that some industrial activity causing damage to the environment could not be dealt with under <i>Rylands v Fletcher</i> • Cases such as <i>British Celanese v Hunt</i> suggest that <i>Rylands</i> is of little use in relation to environmental protection but <i>Cambridge Water</i> seems to suggest otherwise as industrial processes can be a non-natural use of land even if they benefit the community as a whole • Environmental protection is now largely governed by statutory provision and EU legislation so there is little need for private actions • But, there is no specific statutory provision for civil liability for the escape of dangerous things and activities • The tort can be used instead of nuisance where the escape was an isolated incident causing harm to the environment • <i>Rylands</i> is likely to be used in relation to local or individual issues but Parliament will regulate wider issues. • Credit any other relevant point(s). • Reach a sensible conclusion. 		<table border="1" data-bbox="1275 208 1680 247"> <tr> <td data-bbox="1275 208 1500 247">1</td> <td data-bbox="1500 208 1680 247">1–4</td> </tr> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – 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>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p>	1	1–4
1	1–4				

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		<p>Assessment Objective 3 - Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"><thead><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr></thead><tbody><tr><td>37–50</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	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1	
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SECTION B

Question		Indicative Content	Mark	Guidance												
4*		<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define assault – intentionally and directly causing a person to apprehend immediate battery</p> <p>Explain the elements of the tort:</p> <ul style="list-style-type: none"> • Intention concerns the effect produced (and intended to be produced) in the claimant – <i>Blake v Barnard, R v St George</i> • Traditionally, an active threat was required – <i>Read v Coker</i> • Words alone were insufficient and can negate an assault (<i>Tuberville v Savage</i>) but see also the criminal cases <i>R v Ireland, R v Burstow</i> where silence and words only were accepted <p>Explain the fact that there can still be an assault where the claimant reasonably apprehends violence, which is then prevented from occurring – <i>Stephens v Myers</i></p> <p>Explain that if it is impossible to carry out the battery then there is no assault - <i>Thomas v NUM</i></p> <p>Define battery – the direct and intentional application of physical force to the person of another without lawful justification</p> <p>Explain the elements of a battery:</p> <ul style="list-style-type: none"> • Must involve intention not carelessness – <i>Letang v Cooper</i> 	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>Level 5 – 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>Level 4 – 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>Level 3 – 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>Level 2 – 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>Level 1 – 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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	<ul style="list-style-type: none"> Requires direct contact – <i>Scott v Shepherd, Nash v Sheen</i> Explain whether there is an extra requirement of hostility – <i>Wilson v Pringle, Re F</i> <p>Explain the defence of <i>volenti</i> – a person who expressly or impliedly agrees with another to run the risk of harm created by another cannot sue regarding damage when the risk occurs</p> <p>Define false imprisonment: an act which directly and intentionally places a total restraint upon the claimant's freedom of movement without lawful justification</p> <p>Explain the elements of false imprisonment:</p> <ul style="list-style-type: none"> Requires total bodily restraint – <i>Bird v Jones</i> Can be for a short period – <i>White v WP Brown, Walker v Police Commissioner</i> Will not matter if the claimant is unaware of the false imprisonment – <i>Meering v Grahame-White Aviation</i> Will not matter that the defendant is unaware that the imprisonment is unlawful – <i>R v Governor of Brockhill Prison</i> <p>Explain the defences to false imprisonment which include lawful arrest under PACE 1984 and consent</p> <ul style="list-style-type: none"> Credit any other relevant case(s). Credit any other relevant point(s). 		

Question		Indicative Content	Mark	Guidance												
		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p><u>Joe hitting Kerry with the ruler</u></p> <ul style="list-style-type: none"> Identify that this may be a battery There is a direct and intentional application of force by Joe on Kerry Current law suggests that any unwanted intentional contact could amount to battery and there is no requirement of hostility (anger) Reach any sensible conclusion <p><u>Kerry's threat to Joe</u></p> <ul style="list-style-type: none"> Identify that words could amount to an assault But, the threat is conditional (<i>Tuberville v Savage</i>) and negates an assault There is no liability for Kerry <p><u>Kerry's battery on Lydia</u></p> <ul style="list-style-type: none"> Identify that this could amount to a battery It is a direct and intentional application of force by Kerry on Lydia even though a ball was used to make contact Alternatively consider that application of force was not intentional Additionally, the contact was made in a sporting context and within the rules of the game. Lydia would have consented to any risk of harm as long as the rules of the game were complied with There is no liability. 	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>Level 5 – 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>Level 4 – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>Level 3 – 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>Level 2 – 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>Level 1 – 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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		<p><u>Lydia's assault on Kerry</u></p> <ul style="list-style-type: none"> Identify that this may be an assault Lydia is intentionally and directly causing Kerry to fear an immediate battery Words alone may not be enough to constitute an assault but the throwing of the racket accompanies the words Words on their own may be accepted in a sporting context but the throwing of a racket at someone is not There is liability <p><u>Lydia's false imprisonment</u></p> <ul style="list-style-type: none"> Identify that there is a potential claim for false imprisonment if there is no means for Lydia to escape There is a total restraint as the door has been locked There can be false imprisonment even if Lydia is unaware that she has been locked in It does not matter how long the restraint lasts Mr Morris cannot successfully plead the defence of lawful arrest as this is not an indictable offence. Liability is likely to be proved. <ul style="list-style-type: none"> Credit any other relevant point(s). Reach a sensible conclusion. 														
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5*		<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define psychiatric injury (nervous shock) as a recognised psychiatric condition caused by a sudden single traumatic event</p> <p>Explain that the injury can be physical injury bought on by the shock - <i>Page v Smith</i></p> <p>Explain that if physical injury is not caused then the injury must be a recognised psychiatric condition, which include PTSD and depression – <i>Vernon v Bosley</i>, <i>Page v Smith</i></p> <p>Explain that ordinary emotional responses such as grief and sorrow, claustrophobia and insomnia are not recognised psychiatric injuries – <i>Reilly v Merseyside HA</i>, <i>Hinz v Berry</i></p> <p>The injury sustained must be as a result of a single shocking event – <i>Sion v Hampstead HA</i></p> <p>Explain that there must be some basis for the claimants fear of physical danger – <i>McFarlane v Wilkinson</i></p> <p>Explain that as long as physical injury is foreseeable, any psychiatric injury which occurs can also be claimed for and the usual rules of negligence apply – <i>Simmons v British Steel</i></p> <p>Distinguish between primary and secondary victims:</p> <ul style="list-style-type: none"> Primary victim – a person who is present at the scene and is directly involved in the incident – <i>Page v Smith</i>, <i>Dulieu v White</i> 	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>Level 5 – 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>Level 4 – 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>Level 3 – 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>Level 2 – 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>Level 1 – 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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	<ul style="list-style-type: none"> Secondary victim – a person witnessing a single shocking event causing risk of injury or actual injury to a primary victim – <i>Hambrook v Stokes</i> <p>Explain the requirements for a successful claim by a secondary victim as set out in <i>Alcock v Chief Constable of South Yorkshire Police</i></p> <ul style="list-style-type: none"> Close tie of love and affection to a primary victim – <i>Hambrook v Stokes</i> Sufficient proximity in time and space to the event or its immediate aftermath – <i>McLoughlin v O'Brian</i> (2 hours) but consider also <i>Taylor v Somerset HA, NE Glamorgan NHS Trust, W v Essex CC</i> Witnessing the traumatic event or its immediate aftermath with his/her own unaided senses either sight or hearing – <i>Alcock</i> <p>Explain that for secondary victims, psychiatric damage must be foreseen in a person of normal fortitude.</p> <p>Explain that for a rescuer to claim, they must either be a genuine primary victim and at risk of physical injury (<i>Chadwick v BRB, MacFarlane</i>) or must fulfil the criteria for a secondary victim – <i>Greatorex v Greatorex, White v Chief Constable of South Yorks Police</i></p> <p>Explain that a mere bystander cannot claim as s/he is unlikely to fulfil the <i>Alcock</i> criteria – <i>Bourhill v Young</i></p> <ul style="list-style-type: none"> Credit any other relevant case(s). Credit any other relevant point(s). 		

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		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p><u>In relation to Kamal</u></p> <ul style="list-style-type: none"> Identify that Kamal is a primary victim as he is present at the scene and involved in the incident It is foreseeable that some harm could occur from the fire Identify that clinical depression could be regarded as a recognised psychiatric condition Identify that the depression has arisen from the single shocking event of the fire The depression appears to be the result of the incident Kamal will be successful in his claim <p><u>In relation to Lisa</u></p> <ul style="list-style-type: none"> Identify that Lisa could claim as either a primary or secondary victim She can be regarded as a rescuer but will have to show that she is a genuine primary victim or secondary victim Lisa is at the scene and directly involved As a primary victim she was in fear for her own safety It is foreseeable that some harm would occur, however, Lisa does not have a recognised psychiatric condition Lisa is unlikely to be successful in her claim <p>Consider also:</p> <ul style="list-style-type: none"> As a secondary victim Lisa will have to fulfil the <i>Alcock</i> criteria 	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>Level 5 – 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>Level 4 – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>Level 3 – 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>Level 2 – 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>Level 1 – 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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		<ul style="list-style-type: none"> As a secondary victim, she is present at the scene and witnesses the immediate aftermath She does not appear to have a close tie of love or affection to any of the primary victims Lisa is unlikely to succeed on this basis <p><u>In relation to Moheen</u></p> <ul style="list-style-type: none"> Identify that Moheen's claim would be as a secondary victim This means that he has to fulfil the <i>Alcock</i> criteria Post-traumatic stress disorder is a recognised psychiatric condition It appears that it is the result of the incident He will have to establish a close tie of love and affection as Kamal's brother He was not present at the scene and did not witness the scene with his own unaided senses He did, however, potentially witness the immediate aftermath at the hospital He is likely to succeed with his claim Credit any other relevant point(s). 														
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6*		<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define vicarious liability – imposing liability on a person other than the tortfeasor (usually an employee)</p> <p>Explain that for the employer to be liable the tortfeasor must:</p> <ul style="list-style-type: none"> • Be an employee of the defendant • Be acting in the course of employment when the tort occurs • Have committed a tort <p>Explain the tests of employment:</p> <ul style="list-style-type: none"> • Control test – <i>Mersey Docks and Harbour Board v Coggins and Griffiths</i> • Integration test – <i>Stevenson, Jordan and Harrison v Macdonald and Evans</i> • Economic reality (multiple) test – <i>Ready Mixed Concrete</i> <p>Explain that there are also limited circumstances where there can be liability for the crimes of employees:</p> <ul style="list-style-type: none"> • Where the tort/crime is closely connected with the nature of the employment – <i>Trotman, Lister v Hesley Hall, Mattis v Pollock, MAGA v Trustees of the Birmingham Archdiocese of the Roman Catholic Church, JGE v Diocese of Portsmouth</i> <p>Explain the circumstances where the tort falls within the course of employment:</p> <ul style="list-style-type: none"> • Authorised acts – <i>Poland v Parr</i> 	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>Level 5 – 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>Level 4 – 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>Level 3 – 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>Level 2 – 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>Level 1 – 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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		<ul style="list-style-type: none"> Doing an authorised act in an unauthorised way – <i>Limpus v London General Omnibus</i> Doing an act in a careless manner – <i>Century Insurance v Northern Ireland Transport</i> Carrying out a tort which occurs during paid travelling time – <i>Smith v Stages</i> <p>Explain the circumstances that are not within the course of employment:</p> <ul style="list-style-type: none"> A 'frolic of his own' – <i>Hilton v Thomas Burton</i>, <i>Whatman v Pearson</i>, <i>Storey v Ashton</i> Giving unauthorised lifts which do not benefit the employer – <i>Twine v Beans Express</i> Credit any other relevant case(s). Credit any other relevant point(s). 														
		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Identify that Jakob is an employee rather than an independent contractor</p> <ul style="list-style-type: none"> The economic reality test is likely to be the most appropriate test. Jakob is paid a wage Saverz Supermarket pays his tax and national insurance Credit accurate application of the other employment tests Jakob uses a van owned by Saverz Supermarket Conclude that he is an employee 	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>Level 5 – 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>Level 4 – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>For all claimants consider whether the act is a tort and whether Jakob commits it during the course of his employment:</p> <p><u>In the case of Kevin</u></p> <ul style="list-style-type: none"> Identify that a crime (assault) has been committed as well as a tort Consider the possibility that as a crime has been committed the close connection could be used to impose vicarious liability. The tort of trespass to the person has been committed as Jakob made unlawful contact with Kevin Using the Salmond test, Jakob was doing his authorised job He would be responsible for the safety of the goods on the van – <i>Poland v Parr</i> Jakob is acting in the course of his employment Saverz will be liable to Kevin. <p><u>In the case of Irena</u></p> <ul style="list-style-type: none"> Identify that the tort of negligence has been committed As a driver, Jakob owes a duty of care which he breached and Irena's injuries are a result of the accident Jakob is doing an authorised act in an unauthorised way – <i>Twine v Beans Express</i> – no liability as there is no benefit to Saverz Consider also the possibility of Jakob being on a frolic of his own – he is travelling in the opposite direction from the supermarket – <i>Hilton, Storey</i> Conclude that Saverz will most likely be liable 		<p>Level 3 – 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>Level 2 – 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>Level 1 – 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>Candidates must consider both primary and secondary victim status in relation to Lisa</p>

Question		Indicative Content	Mark	Guidance												
		<p><u>In the case of Simon</u></p> <ul style="list-style-type: none"> • A crime has been committed so the close connection test will be appropriate. • Saverz will be liable for Jakob's criminal action if it was closely connected to his employment, so that vicarious liability is justified – refer to <i>Lister</i> • Consider whether <i>Mattis v Pollock</i> applies – Jakob is not expressly authorised to be violent in the same way that a bouncer might be so vicarious liability would not be justified • Reach any sensible conclusion • Credit any other relevant point(s). • Reach a sensible conclusion. 														
		<p>Assessment Objective 3 - Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>37–50</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	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark															
37–50	5															
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19–27	3															
10–18	2															
1–9	1															

SECTION C

Question		Indicative Content	Mark	Guidance	
7		Assessment Objective 2 - Analysis, evaluation and application		AO2 Levels	AO2 Marks
				5	5
				4	4
				3	3
				2	2
				1	1
(a)		P1 Trespass to land concerns the direct interference to land P2 Smoke damage to her plants is indirect P3 The interference needs to be done intentionally P4 Alan has intentionally had a barbecue P5 Conclude that the statement is inaccurate .	5		
(b)		P1 Trespass to land concerns the direct interference to land P2 Placing fence panels onto Belinda's property is regarded as a direct interference P3 The interference needs to be done intentionally P4 Alan has exceeded his consent by placing the fence panels on the lawn and his interference is intentional P5 Conclude that the statement is inaccurate .	5		
(c)		P1 Trespass to land concerns the direct interference to land P2 Flying the plane 3 metres over Belinda's property is a direct interference and trespass to her land. P3 The interference needs to be done intentionally P4 Alan has intentionally flown his plane P5 Conclude that the statement is accurate .	5		

Question		Indicative Content	Mark	Guidance
(d)		<p>P1 The overhanging branches are on Alan's land P2 Alan is entitled to remove the overhanging branches P3 The fruit belongs to Belinda P4 Alan is not entitled to keep the fruit</p> <p>P5a Conclude that the statement is accurate in relation to the fruit OR</p> <p>P5b Conclude that the statement is inaccurate in relation to cutting the overhanging branches</p>	5	

Question		Indicative Content	Mark	Guidance	
8		Assessment Objective 2 - Analysis, evaluation and application		AO2 Levels	AO2 Marks
				5	5
				4	4
				3	3
				2	2
				1	1
	(a)	<p>P1 The defence of contributory negligence applies where the claimant is partly responsible for the harm suffered</p> <p>P2 Elena is partly responsible by not wearing a seatbelt</p> <p>P3 A reasonable person would have worn a seatbelt</p> <p>P4 But Elena is 8 years old and would not reasonably be expected to know the dangers of not wearing a seat belt</p> <p>P5 The statement is accurate.</p>	5		
	(b)	<p>P1 <i>Volenti</i> is where the claimant has consented to what was done by the defendant</p> <p>P2 By getting in the car Elena has impliedly consented to be driven, but not necessarily to David driving fast</p> <p>P3 The claimant must be capable of giving consent</p> <p>P4 Elena is an 8 year old girl so she unable to consent to the risk</p> <p>P3a <i>Volenti</i> is not available under the Traffic Act 1988</p> <p>P4a David cannot use the defence as this is a driving offence</p> <p>P5 The statement is inaccurate.</p>	5		

Question		Indicative Content	Mark	Guidance
	(c)	<p>P1 A successful contributory negligence defence will reduce the defendant's damages</p> <p>P2 Frank has contributed to his injuries as he took a risk overtaking</p> <p>P3 The reduction will depend on the proportion that the claimant contributed to his own loss</p> <p>P4 Frank is only partly at fault for his injuries so the reduction will not be 100%</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	
	(d)	<p>P1 A <i>novus actus interveniens</i> can arise from the claimant's or a third party's actions, which can break the chain of causation and relieve the defendant of liability</p> <p>P2 Frank has chosen to go ahead with the risky operation</p> <p>P3 A <i>novus actus interveniens</i> occurs when the claimant or third party acts unreasonably</p> <p>P4 Neither Frank or the doctors have acted unreasonably because when Frank undergoes the operation he is trying to prevent further harm to himself</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	

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