



**GCE**

**Law**

Unit **G157**: Law of Torts

Advanced GCE

**Mark Scheme for June 2016**

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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 \*<sub>1</sub> (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column\*<sub>2</sub>
- question specific guidance given in 'Guidance' column\*<sub>3</sub>
- the 'practice' scripts\*<sub>4</sub> provided in Scoris and accompanying commentaries

- \*<sub>1</sub> The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- \*<sub>2</sub> 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.
- \*<sub>3</sub> 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.
- \*<sub>4</sub> 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.

Question			Answer/Indicative content	Mark	Guidance												
1			<p><b>Section A</b></p> <p>Potential answers <b>may</b>:</p> <p><b>Assessment objective 1 – Knowledge and understanding</b></p> <p><b>Trespass to Land</b></p> <p>Define the tort of trespass to land – an intentional and direct entry onto land in another person’s possession</p> <p>Explain that there only needs to be intention as to the defendant’s act and not the trespass itself – <i>Basely v Clarkson</i></p> <p>Explain that the tort is actionable per se (without proof of damage)</p> <p>Explain the need to show an interest in the land to bring a claim – <i>Hunter v Canary Wharf</i></p> <p>Explain the ways in which the tort can be committed:</p> <ul style="list-style-type: none"><li>• Entering land voluntarily and intentionally – <i>League against Cruel Sports v Scott</i></li><li>• Placing things on land – <i>Smith v Stone</i></li><li>• Taking things away from the land – <i>Basely v Clarkson</i></li><li>• Going beyond what has been permitted- <i>Robinson v Hallet</i></li></ul> <p>Explain how land includes the land itself, airspace to a reasonable height - <i>Bernstein v Skyways</i> and the subsoil - <i>Harrison v Duke of Rutland</i></p>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> 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 <b>5</b> 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 <b>3</b> 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 <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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Question	Answer/Indicative content	Mark	Guidance
	<p>Explain defences:</p> <ul style="list-style-type: none"> <li>• Consent</li> <li>• Lawful authority under PACE 1984</li> <li>• Credit any other relevant defence</li> </ul> <p>Credit any other relevant defence</p> <p>Explain available remedies:</p> <ul style="list-style-type: none"> <li>• Re-entry</li> <li>• Action for the recovery of land</li> <li>• Mesne profits</li> <li>• Distress damage feasant</li> </ul> <p><b>Private Nuisance</b></p> <p>Define the tort of private nuisance – an unlawful, indirect interference with another person’s use or enjoyment of land in which they have an interest</p> <p>Explain that the interference must involve unlawful use of land</p> <p>Explain that only indirect interference gives rise to liability e.g. noise, smoke and fumes – <i>Sturges v Bridgman</i>, <i>St Helen’s Smelting &amp; Co v Tipping</i></p> <p>Explain that interference must be unreasonable, taking into account:</p> <ul style="list-style-type: none"> <li>• Sensitivity- <i>Robinson v Kilvert</i></li> <li>• Locality- <i>St Helens Smelting &amp; Co v Tipping</i></li> <li>• Duration- <i>Crown river cruises v Kimbolton Fireworks</i></li> <li>• Malice- <i>Hollywood Silver Fox Farm v Emmet</i></li> </ul> <p>Explain the need for the claimant to have an interest in the land affected by the nuisance – <i>Malone v Laskey</i>, <i>Hunter v Canary Wharf</i></p>		

Question	Answer/Indicative content	Mark	Guidance
	<p>Explain the need for the claimant to suffer damage - <i>Cambridge Water co v Eastern Counties leather</i></p> <p>Explain that potential defendants include:</p> <ul style="list-style-type: none"> <li>• The occupier of the land – <i>Tetley v Chitty</i></li> <li>• The creator of the nuisance – <i>Southport Corporation v Esso Petroleum</i></li> <li>• Independent contractors</li> <li>• Landlords</li> </ul> <p>Explain the potential defences:</p> <ul style="list-style-type: none"> <li>• 20 years' prescription – <i>Sturges v Bridgman</i></li> <li>• Statutory authority – <i>Allen v Gulf Oil</i></li> <li>• Consent/common benefit</li> <li>• Act of a stranger – <i>Sedleigh Denfield v O'Callaghan</i></li> <li>• Credit any other relevant defence</li> </ul> <p>Credit any other relevant defence</p> <p>Explain the available remedies:</p> <ul style="list-style-type: none"> <li>• Injunctions – <i>Kennaway v Thompson</i></li> <li>• Damages</li> <li>• Abatement</li> </ul> <p>Credit reference to any other relevant cases</p> <p>Credit any other relevant points</p>		

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	<p><b>Assessment Objective 2 – Analysis, Evaluation and application</b></p> <p><b>Interests in land are more effectively protected by trespass to land</b></p> <ul style="list-style-type: none"><li>• Trespass to land requires possession which is a broader definition than interest in land which is required for nuisance</li><li>• Trespass to land is actionable per se, whereas damage needs to be proved in nuisance</li><li>• Both continuous and one off events are covered by trespass unlike private nuisance which usually deals with continuous events</li><li>• Onus on the defendant rather than the claimant to prove unreasonableness in nuisance</li><li>• Fewer defences to trespass means that the claimant is better protected as the defendant is less able to avoid liability</li><li>• Potentially a greater range of remedies for trespass than in nuisance</li></ul> <p><b>Interests in land are less effectively protected by trespass to land</b></p> <ul style="list-style-type: none"><li>• Private nuisance provides a wider range of defendants making trespass to land less effective</li><li>• The intrusion in nuisance can be the result of intentional, negligent or non-faulty conduct rather than intentional actions only in trespass</li><li>• A direct act is required for trespass but liability can attach to a consequential act in private nuisance</li><li>• Private nuisance interferes with the use of land rather than possession of it</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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2	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define occupiers' liability – damage arising from the state of the premises rather than things done or not done on it</p> <p>State that liability arises from OLA 1957 for lawful visitors and OLA 1984 for unlawful visitors</p> <p>Explain that:</p> <ul style="list-style-type: none"><li>• An occupier is someone in control of the premises – <i>Wheat v Lacon</i></li><li>• Premises include land, building, and fixed or movable structure and is broadly defined – <i>Wheeler v Copas</i>, <i>Jolley v Sutton LBC</i></li></ul> <p>Explain OLA 1957:</p> <ul style="list-style-type: none"><li>• Section 2(1) – common duty of care owed to all lawful visitors</li><li>• Scope is to keep the visitor reasonably safe for the purpose for which he is invited to be there under section 2(2)</li><li>• The extent of his duty depends on the nature of visitor e.g. children are owed a higher duty of care under section 2(3)(a) – <i>Glasgow Corporation v Taylor</i>, <i>Phipps v Rochester Corporation</i></li><li>• An occupier must be prepared for children to be less careful than adults. If the occupier allows a child to enter the premises then the premises must be reasonably safe for a child of that age – <i>Perry v Butlins Holiday World</i>, <i>Jolley</i></li><li>• An occupier is entitled to assume that very young children will be accompanied by someone looking after them – <i>Phipps v Rochester Corporation</i>, <i>Bourne Leisure v Marsden</i>, <i>Simkiss v Rhondda DC</i></li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> 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 <b>5</b> 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 <b>3</b> 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 <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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	<ul style="list-style-type: none"> <li>• Allurements – <i>Glasgow Corporation v Muir</i></li> <li>• Occupier can prevent breach of duty under section 2(4)(a) if a warning does enough in the circumstances to comply with the duty – <i>Rae v Mars, Cotton v Derbyshire Dales</i></li> <li>• Claimants can claim for death, personal injury and property damage under section 1(3)</li> <li>• Section 2(3)(b) – an occupier may expect a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so – <i>Roles v Nathan, Ogwo v Taylor</i></li> <li>• Where a risk normally arises in the course of a person's work, the occupier need not take special precautions to protect that person, as long as they allow the person to take their own precautions</li> </ul> <p>Explain OLA 1984:</p> <ul style="list-style-type: none"> <li>• Applies to unlawful visitors – usually a trespasser</li> <li>• Based on the duty of common humanity – <i>BRB v Herrington, Addie v Dumbreck</i></li> <li>• Duty arises under section 1(3) –             <ul style="list-style-type: none"> <li>• 1 (3) (a) Is aware of the danger or reasonably expects it exists</li> <li>• 1 (3)(b) Knows or has reasonable grounds to believe the trespasser is in the vicinity or may come in to the vicinity - <i>Swain v Natui Ram Puri</i></li> <li>• 1 (3) (c) The risk is one the occupier is reasonably expected to provide protection from - <i>Tomlinson v Congleton BC</i></li> </ul> </li> <li>• Lesser duty of care owed to keep the unlawful visitor free from injury under section 1(4)</li> </ul>		

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			<ul style="list-style-type: none"><li>An occupier is liable for foreseeable harm even if the precise damage or circumstances in which the harm occurs are not foreseeable</li><li>Warning signs might be effective – section 1(5)</li><li>Property damage is not recoverable</li></ul> <p>Credit reference to any other relevant cases Credit any other relevant points</p>														
			<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p><b>Children</b></p> <ul style="list-style-type: none"><li>The rule relating to allurements was decided before OLAs but is still used to effectively protect children as it lowers the threshold required for a breach which means occupiers must provide greater protection</li><li>Cases like <i>Glasgow Corporation</i> likely to be decided under OLA 1984 – same outcome (greater protection) given the level of protection under that Act</li><li>Children being accompanied – may reduce the level of protection as onus for the child’s care may pass to the parent/carer</li><li>Protection depends on the age of the child – distinction between ‘little children’ and ‘bigger children’</li><li>Key issue is whether the child realised the risk. Protection will depend on the individual child – taking into account age, experience and knowledge of the risk</li><li>OLA 1984 – duty of care pitched at a similar level to common law duty which is less onerous than the duty owed to a lawful visitor. This offers less protection</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			<ul style="list-style-type: none"><li>1984 Act – allowances made for children as what may be safe for an adult may not be for a child. This offers more protection</li><li>Broad interpretation of foreseeability of risk offers greater protection to children</li></ul> <p><b>Professional visitors</b></p> <ul style="list-style-type: none"><li>Only a risk relevant to the trade in question can allow the occupier to escape liability. This means a lack of protection</li><li>But, there is some protection – <i>Ogwo v Taylor</i> – blaze was so bad in this case that claimant could not have protected himself</li><li>Section 2(4)(a) - a warning will be sufficient to avoid liability. This means a lack of protection</li><li>Whilst a warning can discharge a duty of care, it must enable the visitor to be reasonably safe – better protection</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, spelling and punctuation.</p>	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><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></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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3	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define nervous shock (psychiatric damage) as a recognised psychiatric condition caused by a single traumatic event- <i>Reilly v Merseyside HA</i>, <i>Sion v Hampstead HA</i></p> <p>Explain that recognised psychiatric conditions include PTSD and depression –<i>Vernon v Bosley</i>, <i>Page v Smith</i>, <i>Hinz v Berry</i></p> <p>Explain that emotional reactions such as grief and sorrow, claustrophobia and insomnia are not recognised – <i>Reilly v Merseyside HA</i>, <i>Hinz v Berry</i></p> <p>Distinguish between primary and secondary victims:</p> <ul style="list-style-type: none"><li>• A primary victim is one who is present at the scene and directly involved in the incident – <i>Page v Smith</i>, <i>Dulieu v White</i></li><li>• A secondary victim is one who witnesses a single shocking event causing risk of injury or injury to a primary victim – <i>Hambrook v Stokes</i></li></ul> <p>Explain how the thin skull rule applies to a primary victim as decided in the case of <i>Page v Smith</i> – as long as the physical injury is foreseeable, any psychiatric injury which arises can also be claimed for and the normal rules of negligence apply</p> <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>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> 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 <b>5</b> 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 <b>3</b> 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 <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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	<ul style="list-style-type: none"> <li>• Close tie of love and affection to a primary victim – <i>Hambrook v Stokes</i>,</li> <li>• Sufficient proximity in time and space to the event or its immediate aftermath <i>McLoughlin v O'Brian</i>, <i>Taylor v Somerset, NE Glamorgan NHS Trust v Walters</i>, <i>W v Essex CC</i>, <i>Taylor v A Novo Ltd</i></li> <li>• Witnessing the traumatic event or its immediate aftermath with own unaided senses through either sight or hearing – <i>Alcock</i></li> </ul> <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>Hale v London Underground</i>, <i>Chadwick v BRB</i>, <i>McFarlane v EE Caledonia</i> or must fulfill the criteria as a secondary victim – <i>Greatorex v Greatorex</i>, <i>White v Chief Constable of South Yorkshire Police</i></p> <p>Explain that bystanders cannot recover damages if they have no relationship with the primary victim</p> <p>Credit reference to any other relevant cases Credit any other relevant points</p>		

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			<p><b>Assessment Objective 2: Analysis, evaluation and application</b></p> <p>Discuss any or all of the following issues:</p> <p><b>For</b></p> <ul style="list-style-type: none"><li>Although there is a fairly clear definition of recognised psychiatric illness , the issue of excessive grief is unclear</li></ul> <p>here is no clear indication of a single traumatic event – this can extend from a one off incident to a series of incidents which the courts interpret as one long event</p> <ul style="list-style-type: none"><li>The Alcock criteria – close tie of love and affection requirement means that some relationships could be excluded. The Law Commission in its 1998 report has suggested a fixed list of relationships and those outside it need to prove their relationship</li><li>Unaided senses – Law Commission has suggested that Parliament gets rid of this element to update the law to include the issue of modern technology e.g witnessing traumatic events via Skype/Facetime</li><li>Time and space (the aftermath) – the courts have limited this to 2 hours initially but the time can be extended. The Law Commission has suggested that this element is not needed as long as foreseeability is proved</li><li>The definition of rescuer is clear but who actually qualifies as a primary victim in a rescue needs to be clarified.</li><li>The current law has been developed by judges in a piecemeal fashion which arguably has led to inconsistency and lack of clarity</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4	
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			<p><b>Against</b></p> <ul style="list-style-type: none"><li>• Close tie of love and affection - there is considered to already be a fixed list and any other person needs to prove the close tie. Therefore, reform is not needed.</li><li>• Judges are able to clarify the law at any point by using their powers to avoid judicial precedent</li><li>• If there was statute law it would still need to be interpreted and the current law would be used as a guide</li><li>• The courts have tried to provide fairness and justice to the parties concerned in the way that they have developed the law</li><li>• The courts are able to make decisions that reflect changes in society and technology</li></ul> <ul style="list-style-type: none"><li>• Credit any other issue</li><li>• Reach any sensible conclusion</li></ul>														
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4	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define the basic elements of negligence:</p> <ul style="list-style-type: none"><li>• Duty of care between claimant and defendant – <i>Caparo v Dickman</i></li><li>• Breach of duty – falling below the reasonable man test – <i>Blyth v Birmingham Waterworks</i></li><li>• Damage caused to the claimant by the defendant</li><li>• Damage must not be too remote</li><li>• There is no intervening act</li></ul> <p>Explain the factors to establish a duty of care</p> <ul style="list-style-type: none"><li>• Foresight of damage – <i>Topp v London Country Bus</i></li><li>• Proximity – <i>Hill v CC of West Yorkshire, Dorset Yacht v Home Office</i></li><li>• Whether it is just and reasonable to impose a duty – <i>Hemmens v Wilson Browne</i></li></ul> <p>Explain factors relating to breach</p> <ul style="list-style-type: none"><li>• Forseeability of harm – <i>Roe v Ministry of Health</i></li><li>• Likelihood of harm – <i>Haley v London Electricity Board</i></li><li>• Standard of care expected of Doctors - <i>Bolitho v C&amp;H HA, Bolam v Friern Barnet Hospital</i></li></ul> <p>Explain factors relating to causation</p> <ul style="list-style-type: none"><li>• ‘But for’ test – <i>Barnett v Chelsea and Kensington Hospital</i></li><li>• Remoteness of damage – <i>Wagon Mound (No 1)</i></li><li>• Break in the chain of causation – new intervening act <i>Knightley v Johns</i></li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> 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 <b>5</b> 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 <b>3</b> 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 <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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			<p>Explain potential defence:</p> <ul style="list-style-type: none"><li>Contributory negligence – Law Reform (Contributory Negligence) Act 1945 - has the effect of reduce the level of compensation</li><li>Credit reference to any other relevant cases</li><li>Credit any other relevant points</li></ul>														
			<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify the tort of negligence and relevant issues of duty of care, breach and causation</p> <p><b>In the claim against David for the head injury</b></p> <p><b>Duty of care:</b></p> <ul style="list-style-type: none"><li>Reasonable foreseeability of harm – a head injury is likely to occur in these circumstances</li><li>Proximity – Frank is a ‘neighbour’ as he should have been in David’s contemplation when he is using the harbour</li><li>Policy – It is just and reasonable to impose a duty of care in this situation</li></ul> <p><b>Breach</b></p> <ul style="list-style-type: none"><li>David fell below the standard of a reasonable jetski user – he was intentionally speeding and is well over the limit set in the harbour</li></ul> <p><b>Causation</b></p> <ul style="list-style-type: none"><li>But for the collision Frank would not have been injured</li><li>There is no intervening act between the collision and Frank hitting his head</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p><b>Remoteness</b></p> <ul style="list-style-type: none"> <li>Frank has suffered an injury that is likely to occur in such a situation.</li> </ul> <p><b>Defences</b></p> <ul style="list-style-type: none"> <li>Possibly contributory negligence if Frank failed to make himself completely safe on the boat.</li> <li>David is likely to be liable to Frank in negligence but he may be able to use the defence of contributory negligence to reduce the level of compensation.</li> </ul> <p><b>In the claim against Dr Smith for the blindness</b></p> <ul style="list-style-type: none"> <li>Reasonable foreseeability of harm – an injury is likely to occur when using a drug that has not been approved.</li> <li>Proximity – Frank is Dr Smith’s patient</li> <li>Policy – It is just and reasonable to impose a duty of care in this situation</li> </ul> <p><b>Breach</b></p> <ul style="list-style-type: none"> <li>Dr Smith fell below the standard of a reasonable doctor. It is extremely unlikely that his actions would be accepted as proper by a respectable body of medical opinion.</li> </ul> <p><b>Causation</b></p> <ul style="list-style-type: none"> <li>But for Dr Smith using an experimental drug Frank would not have had a bad reaction that left him blind. However, consider that if it was not for David’s actions, Frank would not have been in the hospital</li> <li>There is no intervening act between the hospital treatment and the blindness, although consider whether the treatment is an intervening act between the collision and Franks injuries.</li> </ul>		<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>

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			<b>Remoteness</b> <ul style="list-style-type: none"><li>Consider whether blindness is likely to occur from using an experimental drug.</li></ul>														
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5	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain the basic principle of negligent misstatement – it is possible to claim for pure economic loss which arises as a result of negligent misstatements or advice</p> <p>Explain the criteria for a duty of care to arise under negligent misstatement arising under <i>Hedley Byrne v Heller</i>:</p> <ul style="list-style-type: none"><li>• There must be a special relationship – this is usually a business relationship - <i>Mutual Life v Evatt</i></li><li>• <i>Chaudry v Prabahkar</i> suggests it could be a social context</li><li>• Possession (or implication) of a special skill by the person giving the advice - <i>Esso Petroleum v Mardon</i>, <i>Hedley Byrne</i>, <i>Mutual Life v Evatt</i></li><li>• Reliance on the defendant’s skill and judgement - <i>JEB Fasteners</i></li></ul> <p>Reasonableness of the reliance considering factors such as:</p> <ul style="list-style-type: none"><li>• Knowledge of the purpose of the advice <i>Caparo v Dickman</i>, <i>Law Society v KPMG Peat Marwick</i></li><li>• Whether the advice was aimed at the claimant – <i>Harris v Wyre Forest DC</i>, <i>Smith v Bush</i></li><li>• Knowledge that the claimant would rely on the advice – <i>Smith v Bush</i>, <i>Yianni v Edwin Evans &amp; Sons</i></li></ul> <p>Explain the subsequent additional/alternative requirement for liability:</p> <ul style="list-style-type: none"><li>• Voluntary assumption of responsibility for advice by the defendant - <i>Henderson v Merritt Syndicates</i>, <i>Dean v</i></li></ul>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> 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 <b>5</b> 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 <b>3</b> 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 <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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			<p><i>Allin and Watts, Calvert v William Hill, Customs &amp; Excise Commissioners v Barclays Bank</i></p> <p>Explain the courts' reluctance to impose liability for claims of negligent misstatement – <i>Calvert v William Hill, McNaughten v Hicks Anderson</i></p> <p>Credit reference to any other relevant cases</p> <p>Credit any other relevant points</p>														
			<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p><b>In the claim against Oscar for Investment advice</b></p> <ul style="list-style-type: none"><li>• Rakesh must fulfill the factors for liability in negligent misstatement</li><li>• There must be a special relationship between Oscar and Rakesh. This usually will be a business relationship which is not present between Oscar and Rakesh.</li><li>• The advice has been given in an informal context but <i>Chaudry v Prabahkar</i> suggests that such a context can form a special relationship</li><li>• Oscar has the skills and knowledge – he holds himself out to be a business consultant</li><li>• Consider whether it is reasonable for Rakesh to rely on his advice as he does not appear to have paid for Oscar's services.</li><li>• Consider whether Oscar has accepted responsibility for the advice, as he knows it is going to be used by Rakesh to make a decision about investment.</li><li>• Reach any sensible conclusion</li></ul>	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			<p><b>Claim against Peter for the negligent survey</b></p> <ul style="list-style-type: none"><li>• Rakesh must fulfill all the criteria for a successful claim in negligent misstatement</li><li>• There is a special relationship between Rakesh and Peter as Peter is acting in his capacity as a qualified surveyor</li><li>• Peter has special skills and knowledge as he is a qualified surveyor</li><li>• Peter knew why the advice was required</li><li>• It is reasonable for Rakesh to rely on the advice as the survey was required when having a mortgage</li><li>• Peter has assumed responsibility for the advice – although Rakesh did not instruct him directly he would know that he is likely to rely on the content of the survey</li></ul> <p>Credit reference to any other relevant cases Credit any other relevant points.</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>												
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6	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Outline the requirements for a successful claim under the Animals Act 1971</p> <p>The keeper of an animal is defined in s6(3):</p> <ul style="list-style-type: none"><li>• Owner, possessor or head of the household where the person who possesses the animal is under 16</li><li>• Liability is strict for dangerous species.</li></ul> <p>Explain section 6(2) liability - definition of dangerous species:</p> <ul style="list-style-type: none"><li>• Under this section, an animal not normally domesticated in the UK with characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe</li><li>• Dangerous is a question of fact in each case – <i>Behrens v Bertram Mills Circus</i>, <i>Tutin v Chipperfield Promotions</i></li><li>• Section 2(1) – the keeper is strictly liable for any animal which is regarded as dangerous</li></ul> <p>Explain that liability for non-dangerous species is set out in section 2(2) – keeper liable if:</p> <p>(a) The damage is of a kind likely to be caused unless the animal is restrained or if caused likely to be severe – <i>Cummings v Grainger</i>, <i>Curtis v Betts</i></p> <p>(b) The likelihood or severity of damage due to characteristics of an individual animal or common in other animals of the species at a particular time – <i>Jaundrill v Gillett</i>, <i>Gloster v CC of Greater Manchester Police</i></p> <p>(c) The keeper knows of those characteristics – <i>Draper v Hodder</i>, <i>Mirvahedy v Henley</i></p>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><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></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least <b>8</b> 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 <b>5</b> 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 <b>3</b> 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 <b>1</b> relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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1	1–5														

Question			Answer/Indicative content	Mark	Guidance												
			<p>Explain that in section 2(2)(a) ‘likely’ means possible rather than probable <i>Smith v Ainger, Gloster v CC of Greater Manchester Police</i></p> <p>Explain that ‘severe’ is a question of fact – <i>Curtis v Betts</i></p> <p>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></p> <p>Explain that the characteristic has to be the same for section 2(2)(a) and (b) - <i>Clark v Bowl</i></p> <p>Explain which defences may be available:</p> <ul style="list-style-type: none"><li>• Section 5(1) – keeper is not liable if harm wholly the fault of the victim – <i>Sylvester v Chapman, Nelmes v Chief Constable of Avon and Somerset</i></li><li>• Section 5(2) – keeper is not liable if the victim voluntarily accepts the risk of harm - <i>Cummings v Grainger, Dhesi v CC of West Midlands Police</i></li><li>• Section 10 – the keeper may avoid liability if there is contributory negligence <i>Cummings v Grainger</i></li></ul> <p>Credit reference to any other relevant cases</p> <p>Credit any other relevant points.</p>														
			<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>In the case of <b>Katherine’s injury from the kitten</b></p> <ul style="list-style-type: none"><li>• Charlotte is under 16 so she is unable to be a keeper</li><li>• Marcus would be sued as head of the household</li><li>• Identify that the cat is a non-dangerous animal under section 2(2)</li></ul>		<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks																
5	17–20																
4	13–16																
3	9–12																
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Question	Answer/Indicative content	Mark	Guidance
	<ul style="list-style-type: none"> <li>Being badly scratched is the kind of damage likely to be caused by the animal</li> <li>The cat has reacted in a way that is common in the species when cats have given birth</li> <li>Marcus knows of these characteristics as he has told Katherine the mother cat is very protective</li> <li>Marcus is possibly not liable as he has warned Katherine and she has voluntarily accepted the risk of harm</li> <li>Reach any sensible conclusion</li> </ul> <p>In the case of <b>Lisa's injury from the spider</b></p> <ul style="list-style-type: none"> <li>Marcus is the keeper of the poisonous spider as he is the owner of the animal</li> <li>Identify that a poisonous spider is a dangerous animal under section 6(2)</li> <li>A poisonous spider is not normally domesticated in the UK</li> <li>It has characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe</li> <li>Dangerousness is a question of fact and an Australian Poisonous spider is considered a dangerous animal</li> <li>Marcus will be strictly liable as he is the keeper of the poisonous spider</li> </ul> <p>In the case of <b>Lisa's injury from the dog</b></p> <ul style="list-style-type: none"> <li>Marcus is the keeper of the dog</li> <li>A dog is a non-dangerous species under section 2(2)</li> <li>The type of injury suffered by Lisa could be of a kind that is likely to be caused</li> <li>The dog has reacted to a sudden sound which would be a common response</li> <li>Marcus did not know the dog would react this way as the dog has not responded in this way before</li> </ul>		<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>

Question			Answer/Indicative content	Mark	Guidance												
			<ul style="list-style-type: none"><li>• Marcus could be liable regardless of this lack of knowledge if it was held a keeper should be aware of these characteristics</li><li>• Reach any sensible conclusion</li></ul>														
			<b>Assessment Objective 3 – Communication and presentation</b> Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><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></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																
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19–27	3																
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Question			Answer/Indicative content	Mark	Guidance													
7	(a)		<b>Assessment Objective 2 – Analysis, evaluation and application</b> <b>P1</b> Reason that there must be an escape from a place where the defendant has occupation or control to one outside his occupation/control <b>P2</b> Reason that there has been no escape <b>P3</b> Reason that the tort of nuisance does not allow for recovery for personal injury <b>P4</b> Reason that Harry cannot claim as he has suffered facial injuries <b>P5</b> Conclude that the statement is <b>inaccurate</b>	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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	(b)		<b>P1</b> Reason that the thing that escaped must cause the damage to the rights and enjoyment of land <b>P2</b> Reason that thick smoke has drifted onto the road resulting in a car crash <b>P3</b> Reason that the damaged caused must be foreseeable <b>P4</b> Reason that the car crash is not a foreseeable type of damage <b>P5</b> Conclude that the statement is accurate	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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Question			Answer/Indicative content	Mark	Guidance													
	(c)		<p><b>P1</b> Reason that the defence of act of a stranger will be successful if the escape is due to the act of a third party over whom the defendant has no control</p> <p><b>P2</b> Reason that the escape is the result of the actions of an uninvited guest over whom he cannot be expected to have control</p> <p><b>P3</b> Reason that the defence will be successful if the act is one that is unforeseeable</p> <p><b>P4</b> Reason that although Gareth left the shed unlocked, Jamie throwing a lit match on the fireworks was unforeseeable</p> <p><b>P5</b> Conclude that the statement is <b>accurate</b></p>	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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	(d)		<p><b>P1</b> Reason that there must be an accumulation of something likely to cause mischief</p> <p><b>P2</b> Reason that Gareth has accumulated fireworks – these are likely to cause mischief if they escape</p> <p><b>P3</b> Reason that the type of damage must be reasonably foreseeable</p> <p><b>P4</b> Reason that if a firework escaped this type of damage is reasonably foreseeable, regardless of what Gareth believe</p> <p><b>P5</b> Conclude that the statement is <b>inaccurate</b></p>	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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Question			Answer/Indicative content	Mark	Guidance												
8			<p><b>Statement A</b></p> <p>Kool Kolours is liable to Theresa for her hair loss because Susan is an employee.</p> <p><b>P1</b> Reason that in order for Kool Kolours to be liable there must be an employer/employee relationship</p> <p><b>P2</b> Reason that Susan used Kool Kolour’s products to make the treatments but chooses her own working hours but Kool Kolour’s pays her tax and national insurance</p> <p><b>P3</b> Reason that using the economic reality test can be used to establish this relationship</p> <p><b>P4</b> Reason that using this test Susan is likely to be seen as an employee</p> <p><b>P5</b> Reason that the statement is <b>accurate</b></p>	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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			<p><b>Statement B</b></p> <p>Theresa can claim against Kool Kolours because Susan has committed a tort.</p> <p><b>P1</b> Reason that employers are liable for their employees when acting in the course of their employment</p> <p><b>P2</b> Reason that Susan is acting in the course of employment when she labels the bottles</p> <p><b>P3</b> Reason that employers can be liable even when employees perform their jobs in a negligent way</p> <p><b>P4</b> Reason that Susan has been negligent by mislabelling the bottles</p> <p><b>P5</b> Reason that the statement is <b>inaccurate</b></p>	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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Question			Answer/Indicative content	Mark	Guidance													
			<p><b>Statement C</b></p> <p>Kool Kolours would be liable for any tort committed by Susan in the course of employment.</p> <p><b>P1</b> Reason that employers are liable for the criminal acts of employees if they are closely connected to the employment</p> <p><b>P2</b> Reason that Susan’s actions are closely connected as she is responsible for preparing and selling the hair treatments</p> <p><b>P3</b> Reason that employers can be held vicariously liable for torts that occur when an employee commits a crime</p> <p><b>P4</b> Reason that Susan has not committed an intentional tort</p> <p><b>P5</b> Reason that the statement is <b>inaccurate</b></p>	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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			<p><b>Statement D</b></p> <p>Kool Kolours’ insurance company could claim from Susan any damages payable to Theresa.</p> <p><b>P1</b> Reason that insurance company is entitled to recover from an employee who is a tortfeasor</p> <p><b>P2</b> Reason that Susan is a tortfeasor as she has been negligent</p> <p><b>P3</b> Reason that this power is rarely exercised</p> <p><b>P4</b> Reason that Kool Kolours insurance company could claim but they are unlikely to do so</p> <p><b>P5</b> Reason that the statement is <b>accurate</b></p>	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><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></table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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# APPENDIX 1 – Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by Responses 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 Responses 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 Responses 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 Responses 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 Responses 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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