



GCE

Law

Unit **G157**: Law of Torts

Advanced GCE

Mark Scheme for June 2017

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

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

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

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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

Question		Indicative Content	Mark	Guidance												
1		<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain that there are three torts: assault, battery and false imprisonment</p> <p>Define assault: directly and intentionally causing the claimant to apprehend an imminent battery:</p> <ul style="list-style-type: none"> • Must involve threatening behaviour - <i>Read v Coker</i> • The threat must be real and imminent - <i>Thomas v NUM</i> • Threat must create a feeling of being threatened in the claimant - <i>Stephens v Myers</i> • Words can negate the fear of assault - <i>Tuberville v Savage</i> • But words alone were traditionally insufficient - <i>Read v Coker</i>, however, silent telephone calls have now been accepted in criminal assault - <i>R v Ireland; R v Burstow</i> <p>Define battery: a direct and intentional unwanted touching:</p> <ul style="list-style-type: none"> • Direct is given a broad interpretation - <i>Scott v Shepherd, Nash v Sheen</i> • Direct application does not include the careless or negligent application of force - <i>Letang v Cooper</i> • Hostility was identified as a requirement - <i>Wilson v Pringle</i>; and 'the least touching of another in anger is battery' - <i>Cole v Turner</i> • The need for hostility has been removed - <i>Collins v Wilcock</i>; and hostile touching could not be a requirement in medical battery - <i>F v West Berks HA</i> <p>Explain that defences to assault and battery include:</p> <ul style="list-style-type: none"> • Statutory authority 	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 support their argument and make reference to specific sections of the relevant statute, where appropriate</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, where appropriate</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, where appropriate</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, where appropriate</p> <p>Level 1 – some accurate statements of fact but there</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"> • Lawful arrest • Mental Health Act 1983 • Consent - <i>Re T</i> • Necessity - <i>F v West Berks HA</i> • Parental authority - <i>A v UK</i> • Self-defence using reasonable force - <i>Lane v Holloway</i> <p>Define false imprisonment: an act which directly and intentionally places a total restraint upon the claimant's freedom of movement without lawful justification – <i>Austin and Another v Metropolitan Police Commissioner</i></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> • The claimant need not be aware of the false imprisonment – <i>Meering v Grahame-White Aviation</i> • The defendant does not need to be aware that the imprisonment is unlawful – <i>R v Governor of Brockhill Prison</i> • The claimant does not need to make an attempt to leave – <i>Grainger v Hill</i> • It is not necessarily false imprisonment to place a reasonable condition on someone before they are allowed to leave - <i>Robinson v Balmain Ferry Co</i> • The imprisonment must be caused by an intentional act and not just a careless one – <i>Sayers v Harlow Urban District Council</i> • False imprisonment cannot be committed by omission – <i>Iqbal v Prison Officers Association</i> • The tort is considered to be one of strict liability – <i>R v Governor of Brockhill Prison</i> 	<p>may not be any reference to relevant cases or reference may be confused</p>
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		<p>Explain the defences to false imprisonment which include lawful arrest under PACE 1984 and consent</p> <p>Credit any other relevant case(s)</p> <p>Credit any other relevant point(s).</p>														
		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss how judges have developed assault:</p> <ul style="list-style-type: none"> • The tort is actionable <i>per se</i> and a remedy is available without proof of damage, which means the tort has developed as an effective deterrent and is effective in addressing unwanted interference to the person • Judges have counteracted this wide availability of the tort with the need for the threat to be real, imminent and make the claimant feel threatened • Words alone were traditionally insufficient but the tort may now be persuaded by criminal law that has accepted silence <p>Discuss how judges have developed battery:</p> <ul style="list-style-type: none"> • No need to prove actual harm, which means the tort has developed as an effective deterrent and is effective in addressing unwanted interference to the person • Judges have given a broad interpretation of direct, meaning it is easier for the claimant to prove their claim • Judges have been inconsistent in requiring hostility <p>Discuss how judges have developed false imprisonment:</p> <ul style="list-style-type: none"> • Judges have given a wide interpretation to the requirement of restraint as there is no need for the claimant to know of the restraint and claims have been successful even where the restraint is only for a few seconds 	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 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>	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"> • Judges have restricted the tort with the requirement of total bodily restraint • The distinction judges have drawn between acts and omissions could lead to “apparent injustice in particular cases” <p>Discuss how the different defences have impacted on the development and application of trespass against the person.</p> <p>Credit any other relevant points.</p>		<p>Level 1 – an awareness of the area of law identified by the question</p>												
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2		<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the defence of <i>volenti non fit injuria</i>:</p> <ul style="list-style-type: none"> • It is a complete defence when the defendant has been negligent and caused damage to the claimant • But the claimant has voluntarily accepted the risk of harm <p>Explain the essential elements of the defence:</p> <ul style="list-style-type: none"> • The claimant exercised free choice in accepting the risk - <i>Smith v Baker</i> • The claimant understood the exact nature of the risk- <i>Stermer v Lawson</i> • The claimant expressly or impliedly agreed to the risk - <i>ICI v Shatwell</i> <p>Explain the application of the defence in a sporting context:</p> <ul style="list-style-type: none"> • The injury occurred within the rules of the game • Compare <i>Simms v Leigh RFC</i> and <i>Condon v Basi</i> <p>Explain the application of the defence in a medical context:</p> <ul style="list-style-type: none"> • The patient must consent to all treatment - <i>Re T</i> • And must be made aware of risk- <i>Chatterton v Gerson</i> • Patients have a right to make their own decisions about treatment and must be given sufficient information to do so – <i>Montgomery v Lanarkshire Health Board</i> • But emergency treatment may be an exception- <i>Leigh v Gladstone</i> <p>Explain the application of the defence in road traffic accidents –</p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>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, where appropriate</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, where appropriate</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, where appropriate</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, where appropriate</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>Road Traffic Act 1988</p> <p>Explain the defence of contributory negligence</p> <ul style="list-style-type: none"> Only a partial defence under the Law Reform (Contributory Negligence) Act 1945 Which reduces damages by the extent to which the claimant is responsible for his own harm - <i>Baker v Willoughby</i>, <i>Spencer v Wincanton Holdings</i> <p>Explain the essential elements of the defence:</p> <ul style="list-style-type: none"> The claimant failed to take reasonable care for his own safety - <i>Jones v Livox Quarries</i>, <i>Badger v Ministry of Defence</i> This failure to take care was a cause of the harm suffered <i>Sayers v Harlow UDC</i> <p>Explain that where the claimant is a child they are judged against a reasonable child – <i>Evans v Souls Garage</i></p> <p>Explain that if the claimant's actions made no difference to the outcome then they will not be considered contributorily negligent – <i>Smith v Finch</i></p> <p>Explain the slightly different approach in emergencies - <i>Jones v Boyce</i></p> <p>Explain the application of the defence in road traffic accidents - <i>Froom v Butcher</i>, <i>Owens v Brimmell</i></p> <p>Recognise the technical possibility of a 100% reduction in damages- <i>Jayes v IMI (Kynoch)</i> and the arguments against such an approach- - <i>Pitts v Hunt</i></p> <p>Credit any other relevant case(s)</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>
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		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss how the defences limit the ability to make a successful claim:</p> <ul style="list-style-type: none"> • <i>Volenti</i> means no liability is attributed to the defendant and so no damages are payable to the claimant • <i>Volenti</i> being a complete defence means those causing harm can avoid their obligations and this undermines the effectiveness of the tort • Before 1945 both defences were complete so the ability to make a successful claim was even further limited than it is now • <i>Volenti</i> operates where the claimant has freely accepted a known risk and so it is arguably correct that the claimant cannot make a successful claim <p>Discuss how the defences do not limit the ability to make a successful claim:</p> <ul style="list-style-type: none"> • Contributory negligence is a partial defence only, this means that there is still liability for the defendant and blame apportioned • Contributory negligence means damages are awarded but reduced to the extent that the claimant is responsible for their own harm • The defence of <i>volenti</i> is harder to claim than contributory negligence meaning that it is less likely that the claim will be completely defeated • <i>Volenti</i> has been used much less since the passing of the 1945 Act and so few claims are completely defeated • <i>Volenti</i> is not available under the Road Traffic Act because of the availability of compulsory third party insurance 	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 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>	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"> Changes in knowledge: the defendant is judged according to acceptable standards at the time the negligence took place – <i>Roe v Minister of Health</i> <p>Credit any other relevant case(s) Credit any other relevant point(s).</p>		<p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or reference may be confused.</p>												
		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss that the law relating to breach of duty is fair:</p> <ul style="list-style-type: none"> There are many different factors that are considered to determine if the breach was reasonable Allowing certain characteristics of the defendant to be considered allows the law to be applied fairly to the defendant Allowing characteristics of the claimant to be considered offers more vulnerable claimants greater protection Considering the size of the risk and the practicality of eliminating it means that avoiding risk is not onerous for the defendant It is fair that there is no liability if a risk should be taken when the benefit to society is greater than the potential harm It is fair that the defendant is judged against what is common practice and the knowledge of the time, especially in medical or scientific areas where developments and changes in practice can happen quickly <p>Discuss that the law relating to breach of duty is unfair:</p> <ul style="list-style-type: none"> What is reasonable is an objective question which could operate unfairly against the defendant The law does not take account of the defendant's actual experience just what standard of skill is expected at that 	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 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>	AO2 Levels	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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			<p>level</p> <ul style="list-style-type: none"> • The claim may be defeated if the defendant's actions are considered reasonable even if others in the profession have differing opinions about the actions taken • 'Common Practice' allows professionals to set their own acceptable standards which means claims are easier to defeat and marginal or experimental practice could be deemed acceptable • It may be considered unfair to the claimant that the claim can be defeated by policy considerations <p>Credit any other relevant points.</p>		<p>Level 1 – an awareness of the area of law identified by the question</p>												
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4		<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define vicarious liability – imposing liability on an employer for the torts of their employees (the tortfeasor)</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> • So close in character to an employer – employee relationship - <i>JGE v Trustees of Portsmouth RCDT</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> • Acting in a purely careless manner - <i>Century Insurance v Northern Ireland Transport Board</i> • Carrying out authorised acts in an unauthorised manner - <i>Limpus v London General Omnibus</i> <p>Explain that there are also limited circumstances where there can be liability for the intentional or criminal acts of employees:</p>	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly support their argument and make reference to specific sections of the relevant statute, where appropriate</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, where appropriate</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, where appropriate</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, where appropriate</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"> Where the tort/crime is closely connected with the nature of the employment – <i>Majrowski v Guy's and St Thomas' NHS Trust, 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 circumstances that are not within the course of employment:</p> <ul style="list-style-type: none"> activities not within the scope of employment - <i>Beard v London General Omnibus</i> a 'frolic on his own' - <i>Hilton v Thomas Burton</i> giving unauthorised lifts - <i>Twine v Beans Express</i> <p>Credit any other relevant case(s) Credit any other relevant point(s).</p>		<p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or reference may be confused.</p>												
		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Recognise that the potential claims would come under vicarious liability:</p> <p><u>In relation to Reena crashing the delivery van</u></p> <ul style="list-style-type: none"> Identify that Reena is an employee Consider that as giving lifts is against company rules it maybe considered to be expressly prohibited Alternatively, discuss that Reena's act may not be within the scope of her employment, and thus unauthorised, if her role is to make milkshakes and not drive delivery vans Conclude that Milkeze will not be liable for the injuries that Iain suffers in the crash <p><u>In relation to grabbing Charlotte for stealing the milkshakes</u></p> <ul style="list-style-type: none"> Identify that this is in the course of employment 	20	<table border="1" data-bbox="1331 822 1814 1044"> <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</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"> Discuss that this is an authorised act as Reena is acting in an emergency to protect her employer's goods Conclude that Milkeze will be liable for the battery caused to Charlotte <p><u>In relation to the hairclip in the milkshake</u></p> <ul style="list-style-type: none"> Identify that Reena is acting in the course of employment Discuss that she acted in a careless manner when making up the batches of milkshakes as she did not follow the reasonable precaution of wearing a hair net Conclude that Milkeze will be liable for the injuries caused when Charlotte drinks the milkshake <p><u>In relation to the broken nose</u></p> <ul style="list-style-type: none"> Identify that Reena breaking Charlotte's nose is both a criminal act and an intentional tort (battery) Identify that Milkeze could be liable for the battery where there is a close connection between Reena's duties and the battery Conclude that there is insufficient connection here for Milkeze to be responsible for Reena's act Alternatively, discuss whether Reena is 'on a frolic of her own' as this is after working hours and it appears she is not trying to recover the stolen property Conclude that it is unlikely that Milkeze will be liable as Reena's acts are unrelated to her employment <p>Credit any other relevant points.</p>	<p>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>
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			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>37-45</td><td>5</td></tr><tr><td>28-36</td><td>4</td></tr><tr><td>19-27</td><td>3</td></tr><tr><td>10-18</td><td>2</td></tr><tr><td>1-9</td><td>1</td></tr></tbody></table>	AO1 + AO2 Marks	AO3 Mark	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1	
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Question		Indicative Content	Mark	Guidance												
5		<p>Potential answers may include:</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>The injury sustained must be as a result of a single shocking event – <i>Sion v Hampstead HA</i></p> <p>The injury can come from the loss of property – <i>Attia v British Gas</i></p> <p>Explain that the injury must be a recognised psychiatric condition which includes PTSD and depression – <i>Vernon v Bosley, 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, Hinz v Berry</i></p> <p>Explain that there must be some basis for the claimant's 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, 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 support their argument and make reference to specific sections of the relevant statute, where appropriate</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, where appropriate</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, where appropriate</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, where appropriate</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>Tan v East London and City Health Authority, 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 a mere bystander cannot claim as s/he is unlikely to fulfil the <i>Alcock</i> criteria – <i>Bourhill v Young</i></p> <p>Credit any other relevant case(s)</p> <p>Credit any other relevant point(s).</p>		<p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or reference may be confused.</p>												
		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Recognise that the claims would come under the tort of negligence for the potential psychiatric harm caused:</p> <p><u>In relation to Callum</u></p> <ul style="list-style-type: none"> Identify that Callum's injury has been caused by a single 	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>	AO2 Levels	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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		<p>shocking event of the plane crashing</p> <ul style="list-style-type: none"> Consider whether anxiety is a recognised psychiatric injury Identify that Callum is unlikely to be considered a primary or secondary victim as although at the scene he is behind safety barriers and is not directly involved or in danger of physical harm Conclude that Callum will be considered a bystander who cannot successfully claim unless the crash is deemed particularly horrific <p><u>In relation to Toby</u></p> <ul style="list-style-type: none"> Identify that Toby's injury has been caused by the single shocking event of the plane crashing and seeing his friend's house on fire Identify that whilst being upset will not qualify as a 'positive psychiatric injury', depression will Identify that Toby can be considered a secondary victim Identify that to claim as a secondary victim Toby would need to fulfil the <i>Alcock</i> criteria Consider whether the friendship between Toby and Matthew will be considered a close tie of love or affection Consider whether Toby is sufficiently proximate as he heard of the events <i>via</i> an announcement Consider that Toby then did witness the plane crash and the aftermath of his friend's condition with his own unaided senses Conclude that Toby is unlikely to succeed in his claim as a secondary victim due to the lack of a close tie of love and affection 	<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>
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		<p><u>In relation to Matthew</u></p> <ul style="list-style-type: none"> Identify that Matthew's injury has been caused by a single shocking event of the plane crashing and buildings catching fire Recognise that the shock can also come from the shock of losing his house Recognise that whilst insomnia is not a recognised medical condition PTSD is Identify that Matthew is a primary victim as physical injury is foreseeable Identify that he is directly involved Conclude that Matthew would succeed in a claim <p>Credit any other relevant points.</p>														
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6		<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Trespass to Land:</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 <i>per se</i> (without proof of damage)</p> <p>Explain the need to show an interest in land to 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"> • Entering land voluntarily and intentionally - <i>League Against Cruel Sports v Scott</i> • Placing things on the land <i>Smith v Stone, Westripp v Baldock</i> <p>Explain how land is defined for liability under the tort:</p> <ul style="list-style-type: none"> • Covers the land itself • Extends to the airspace above to a reasonable height - <i>Kelsen v Imperial Tobacco, Bernstein v Skyways, Anchor Brewhouse Developments Ltd v Berkley House Ltd, Civil Aviation Act 1982</i> • Extends to the subsoil below <i>Harrison v Duke of Rutland</i> 	25	<table border="1" data-bbox="1336 298 1808 520"> <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 support their argument and make reference to specific sections of the relevant statute, where appropriate</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, where appropriate</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, where appropriate</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, where appropriate</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>Nuisance:</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 the need for the claimant to have an interest in the land affected by the nuisance - <i>Malone v Laskey, Hunter v Canary Wharf</i></p> <p>Explain that potential defendants include:</p> <ul style="list-style-type: none"> • The occupier of the land - <i>Tetley v Chitty</i> • The creator of the nuisance - <i>Southport Corporation v Esso Petroleum</i> <p>Explain that only indirect interference gives rise to liability including:</p> <ul style="list-style-type: none"> • Noise - <i>Christie v Davey</i> • Smuts – <i>Halsey v Esso Petroleum</i> <p>Explain that nuisance can come from causing interference with comfort or the enjoyment of land - <i>Sedleigh -Denfield v O'Callaghan</i></p> <p>Explain that the interference must involve an unlawful (unreasonable) use of land – <i>Coventry v Lawrence</i></p> <p>Explain the factors to consider when assessing unreasonableness:</p> <ul style="list-style-type: none"> • Locality - <i>Sturges v Bridgman, Kennaway v Thompson, Laws v Florinplace</i> • Duration and timing - <i>Spicer v Smee, De Keyser's Royal Hotel v Spicer Bros, Halsey v Esso</i> • Abnormal sensitivity of the claimant - <i>Robinson v Kilvert</i> – but see <i>Network Rail Infrastructure v Morris</i> which appears 	<p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or reference may be confused</p>
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		<p>to replace the test with one of foreseeability</p> <ul style="list-style-type: none"> • The presence of malice - <i>Christie v Davey</i>, <i>Hollywood Silver Fox Farm v Emmett</i> <p>Describe any appropriate remedies</p> <p>Credit any other relevant point</p> <p>Credit any other relevant cases.</p>														
		<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p><u>In relation to the barbecue in Peter's field</u></p> <ul style="list-style-type: none"> • Identify that this will amount to a claim for trespass to land as Lara directly and intentionally entered the land without permission • The entry to the land is voluntary • Peter would be able to make a claim as he has an interest in the land as he is the owner • Conclude that a claim by Peter against Lara is likely to be successful <p><u>In relation to the smuts</u></p> <ul style="list-style-type: none"> • Identify that this will amount to a claim for nuisance as it is an indirect interference with another's use of the land – which includes hanging up their washing outside • Identify that Carole has an interest in the land being affected • Consider that the claim could be made against Lara as the creator of the nuisance or potentially Peter as the owner of the land if he is aware and has impliedly allowed the land to be used for this purpose • Discuss that it is likely that the use of the land is unreasonable as it has caused damage to Carole's clothes • Conclude that the claim is likely to be successful 	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>	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>In relation to the loud music</u></p> <ul style="list-style-type: none"> Identify that this will amount to a claim for nuisance as it is an indirect interference with another's use and enjoyment of the land Identify that Carole has an interest in the land being affected Consider that the claim could be made against Lara as the creator of the nuisance or potentially Peter as the owner of the land if he is aware and has impliedly allowed the land to be used for this purpose Discuss that the use of the land may not be considered unreasonable as it is possibly an open area, the duration is likely to be short, it is in the middle of the day, and it is unlikely that Lara did it maliciously Discuss the abnormal sensitivity of Carole and whether this is foreseeable Conclude that it is unlikely that the claim will be successful <p><u>In relation to the picnic blanket</u></p> <ul style="list-style-type: none"> Identify that placing the picnic blanket on Peter's field and leaving it there is a trespass to the land. Discuss that it was placed there intentionally, even if it was left unintentionally Conclude that it is likely that Peter will be successful in a claim against Lara <p><u>In relation to the Kite</u></p> <ul style="list-style-type: none"> Identify that this is a claim for trespass of Carole's airspace Discuss that the kite is unlikely to be very high and so the airspace will be considered part of Carole's land Consider that as long as Lara has flown the kite intentionally then it is irrelevant whether the trespass is intentional Conclude Carole's claim is likely to be successful against Lara 	<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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			<p><u>In relation to the sign</u></p> <ul style="list-style-type: none"> Identify that digging the sign into Carole's land will amount to a trespass to the land Discuss that Carole's land extends to the subsoil beneath the ground Discuss that Carole could make a claim against Peter even if he is unaware that he is trespassing as he has intentionally put the sign up Conclude that Carole's claim is likely to be successful <p>Consider any suitable remedies</p> <p>Credit any other relevant points.</p>														
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7	(a)	<p>Potential answers may include:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason a dangerous animal is one that is not commonly domesticated in the UK P2 Reason that crocodiles are not commonly domesticated P3 Reason that a dangerous animal is one whose characteristics are likely to cause severe damage or any damage caused is likely to be severe P4 Reason that a crocodile is likely to cause severe damage and any bite caused is likely to be considered severe P5 Conclude that the statement is inaccurate</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Mark</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>	AO2 Levels	AO2 Mark	5	5	4	4	3	3	2	2	1	1	
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	(b)	<p>P1 Reason that the defendant will not be liable for the damage to a trespasser P2 Reason that Arthur is a trespasser as he has come onto Jennifer's land uninvited P3 Reason that the defence does not apply where the animal is kept for the owner's protection unless it is reasonable to do so P4 Reason that it is unlikely that a crocodile is being kept for protection P5 Reason that the statement is accurate</p>	5														
	(c)	<p>P1 Reason that a non-dangerous is one that is not classified as a dangerous animal, which owners can have liability for if certain circumstances are met P2 Reason that a horse will be classified as a non-dangerous animal P3 Reason that the keeper can be liable if the damage caused by the animal was likely to be severe P4 Reason that it is likely that a horse will cause severe damage because of its weight and size P5 Reason that the statement is accurate</p>	5														

	(d)	<p>P1 Reason that the likelihood of the damage, or of it being severe must be due to characteristics that are not normally found in animals of that species</p> <p>P2 Reason that the damage was caused by the horse's unusual habitual characteristic of attacking people who are running</p> <p>P3 These unusual characteristics must be known to the keeper</p> <p>P4 Reason that Jennifer knew of the characteristic</p> <p>P5 Conclude that the statement is inaccurate</p>	5	
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Question		Indicative Content	Mark	Guidance													
8	(a)	<p>Potential answers may include:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that generally a claim cannot be based on purely economic loss</p> <p>P2 Reason that Sam has suffered financial loss from his investment</p> <p>P3 Reason that the exception is where there has been a negligent misstatement</p> <p>P4 Reason that there is negligent misstatement as Kadri has carelessly advised Sam in regards to his investment</p> <p>P5 Conclude that the statement is accurate</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Mark</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>	AO2 Levels	AO2 Mark	5	5	4	4	3	3	2	2	1	1	
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1	1																
	(b)	<p>P1 Reason that for a claim of negligent misstatement there does not need to be a contract between the parties</p> <p>P2 Reason that the claim will not be defeated just because Sam is Kadri's friend and not his client</p> <p>P3 Reason that there needs to be a special relationship between the parties</p> <p>P4 Reason that this relationship exists as Kadri has a specialist skill that he has voluntarily used to give advice to Sam and a reasonable person would realise that Sam would rely on it</p> <p>P5 Conclude that the statement is inaccurate</p>	5														
	(c)	<p>P1 Reason that comments made in a social setting do not normally give rise to a duty</p> <p>P2 Reason that because Kadri made the comments to his friend over dinner then this could be considered a social setting</p> <p>P3 Reason that even in a social setting it is reasonable to expect a standard of care that is commensurate of someone with the skills and experience of the defendant</p> <p>P4 Reason that Kadri should have taken more care in giving advice due to his skill and knowledge.</p> <p>P5 Conclude the statement is inaccurate</p>	5														

	(d)	<p>P1 Reason that claimants must rely on the information P2 Reason that Sam has relied on Kadri's advice and invested P3 Reason that it must be reasonable to rely on the advice P4 Reason that Kadri gave Sam the advice for him to be able to rely upon it in making an investment decision and so the reliance was reasonable P5 Conclude that the statement is inaccurate</p>	5	
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OCR (Oxford Cambridge and RSA Examinations)
1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

Education and Learning

Telephone: 01223 553998
Facsimile: 01223 552627
Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

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Facsimile: 01223 552553

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