



GCE

Law

Unit **G158**: Law of Torts Special Study

Advanced GCE

Mark Scheme for June 2018

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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.

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

Annotation	Meaning
1	Q1&3 AP1
2	Q1&3 AP2
3	Q1&3 AP3
4	Q1&3 AP4
5	Q1 AP5
A2	Q2 AO2
C	Q1&3 Critical Point Q2 Case
CON	Q2 Bald case Q3 Conclusion
X	ALL Not correct / Page checked for response
LNK	Q1 Linked case Q2 Link to source
?	ALL Not Relevant or Too vague Also no response or response achieves no credit
REP	ALL Repetition/or 'noted' where a case has already been used in the response
SC	Q2 Synopticism
✓	Q1 Use of word 'significance', 'importance' etc Q2 AO1

Subject-specific marking instructions

Before you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria *₁ (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column*₂
- question specific guidance given in 'Guidance' column*₃
- the 'practice' scripts*₄ provided in Scoris and accompanying commentaries

*₁ The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.

*₂ The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.

*₃ Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.

*₄ The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

Awarding Assessment Objectives 1 and 2

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided in point 10 of the above marking instructions, with the key point being that you start at the **middle*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, should receive no marks.

Aw * 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.

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		Indicative Content	Mark	Guidance												
1*		<p>Potential answers may:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>CP1 (Facts): Stockport MBC (the defendants) were responsible for a pipe supplying water to a block of flats. A leak, which had gone undetected for some time, caused water from the pipe to collect in an embankment which collapsed. The collapse caused damage to Transco's (the claimants) gas pipe which passed through the embankment. Transco claimed the cost of the remedial work from Stockport MBC in <i>Rylands</i>.</p> <p>CP2: The claim failed because the House of Lords held that accommodating a water pipe was not an unnatural use of land. Lord Bingham stated that 'unnatural user' was not a helpful phrase and that a better question might be whether the user was an 'ordinary user'.</p> <p>CP3: Lord Bingham also stated that <i>Rylands</i> should only offer a cause of action where D's use of land was 'extraordinary and unusual' – but that this qualification should not be used inflexibly (what was extraordinary and unusual in one time and place might not be so in another) – better to ask 'did the user do something out of the ordinary considering the time and place'?</p> <p>LC1: In <i>Transco</i> Lord Bingham also stated that D's use of land being 'of benefit to the community' was irrelevant which would seem to doubt both <i>Rickards v Lothian</i> and <i>British Celanese v AH Hunt</i>.</p> <p>LC2: <i>Transco</i> was applied in <i>LMS International v Styrene Packaging and Insulation</i> and <i>Stanard v Gore</i> proving that <i>Rylands</i> still exists as the basis of a potential claim.</p>	12	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11–12</td> </tr> <tr> <td>4</td> <td>9–10</td> </tr> <tr> <td>3</td> <td>7–8</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>CP – Max 3 marks Linked to the material point/ratio – 1 mark is available for that facts of the case but these are not essential to get full marks. An accurate source and line reference is adequate for the facts of the case to receive the one mark. Where given, the ratio of the case needs to be given an AO2 slant to get a mark</p> <p>AP – Max 6 marks for any applied point(s) These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks</p> <p>LNK – Max 3 marks for a relevant, linked case The case must be linked for a particular point. Marks can be achieved as follows, for example: 1 mark for the name of the case, 1 mark for some development and 1 mark for a link to the question</p>	AO2 Levels	AO2 Marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3
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Question	Indicative Content	Mark	Guidance
	<p>LC3: Transco can be linked with the line of reasoning running through <i>Cambridge Water Co v Eastern Counties Leather</i> and <i>Hunter v Canary Wharf</i> that <i>Rylands</i> is a special form of nuisance and, since nuisance is a tort against land, damages for personal injury are not recoverable.</p> <p>AP1: In relation to LC3 (above) recognise Lord Bingham's reasoning that <i>Rylands</i> cannot include a claim for death or PI since such a claim 'does not relate to any right in or enjoyment of land'.</p> <p>AP2: The House of Lords acknowledged the arguments suggesting that <i>Rylands</i> should be absorbed into the law of negligence (<i>Burnie Port Authority v General Jones Property Ltd</i>) but rejected the opportunity to do so insisting that <i>Rylands</i> still has a role to play where it is 'just to impose liability in the absence of fault'.</p> <p>AP3: The House of Lords also rejected the suggestion of a more generous application of the rule. They favoured a more restrictive approach confining the rule to 'exceptional circumstances' where D has brought something dangerous onto land which poses an exceptional risk to neighbouring property.</p> <p>AP4: The House of Lords also ended speculation about the relationship between <i>Rylands</i> and private nuisance ruling that it should be treated as a sub-species of nuisance although distinct from it.</p> <p>AP5: The case also confirms that the rule has a residuary role in a modern society where UK and EU statutes and regulations dominate most areas of dangerous escapes.</p> <p>AP6: Any other relevant critical point.</p>		

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	<p>Assessment Objective 3 - Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"><thead><tr><th>AO2 Marks</th><th>AO3 Mark</th></tr></thead><tbody><tr><td>10–12</td><td>4</td></tr><tr><td></td><td></td></tr><tr><td>7–9</td><td>3</td></tr><tr><td>4–6</td><td>2</td></tr><tr><td>1–3</td><td>1</td></tr></tbody></table>	AO2 Marks	AO3 Mark	10–12	4			7–9	3	4–6	2	1–3	1	
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Question		Indicative Content	Mark	Guidance	
2*		Potential answers may:	16	AO1 Levels	AO1 Marks
Assessment Objective 1 - Knowledge and understanding	5	14–16			
Define the tort in <i>Rylands v Fletcher</i>. <i>Rylands v Fletcher</i> ; <i>Hale v Jennings</i> ; <i>Perry v Kendricks</i> ; <i>Smith v Scott</i> ; <i>Cambridge Water Co v Eastern Counties Leather plc</i> ; <i>Transco plc v Stockport Metropolitan Borough Council</i> ; <i>Stannard (t/a Wyvern Tyres) v Gore</i>	4	11–13			
Brings on and accumulates: <i>Giles v Walker</i> ; <i>Rickards v Lothian</i> ; <i>Smeaton v Ilford Corporation</i> ; <i>British Celanese v A H Hunt</i> ; <i>Mason v Levy Autoparts</i> ; <i>Ellison v Ministry of Defence</i>	3	8–10			
Something likely to do mischief: <i>Jones v Festiniog Railway</i> (Fire), <i>Batchelor v Tunbridge Wells Gas Co</i> (Gas), <i>West Bristol Tramways Co</i> (Fumes), <i>Hillier v Air Ministry</i> (Electricity), <i>Crowhurst v Amersham Burial Board</i> (Yew Tree), <i>Attorney General v Cory Brothers & Co Ltd</i> (Rubbish), <i>Attorney General v Corke</i> (Travellers), <i>Musgrove v Pandelis</i> (Car), <i>Shiffman v Order of the Hospital of St John of Jerusalem</i> (Flag pole) and/or a dangerous activity: <i>Cambridge Water Co v Eastern Counties Leather plc</i> , <i>Hale v Jennings</i> (Chair-o-plane)	2	5–7			
If it escapes: <i>Read v Lyons & Co Ltd</i> ; <i>Miles v Forest Rock Granite Co (Leics) Ltd</i> , <i>LMS International Ltd v Styrene Packaging & Insulation Ltd</i> , <i>Crown River Cruises Ltd v Kimbolton Fireworks Ltd</i> , <i>Transco plc v Stockport Metropolitan Borough Council</i> , <i>Stannard (t/a Wyvern Tyres) v Gore</i> - contrary law on whether this should be from land over which D has control <i>Read</i> or from circumstances over which D has control <i>Hale</i> and <i>British Celanese</i> even after <i>Transco</i> . Escape of thing itself not the escape of fire caused by the thing (<i>Gore v Stannard</i>)	1	1–4			
				Level 5	Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include common law provisions, where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed*. Responses are likely to use material both from within the pre-release materials (LNK) and from beyond the pre-release materials which have a specific link to the area of law.
				Level 4	Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed*.

Question	Indicative Content	Mark	Guidance
	<p>Non-natural user of land: <i>Rickards v Lothian, Musgrove v Pandelis, Rainham Chemical Works v Belvedere Fish Guano Co Ltd, LMS International Ltd v Styrene Packaging & Insulation Ltd, Mason v Levy Autoparts, Cambridge Water Co v Eastern Counties Leather plc, Ellison v Ministry of Defence, Transco plc v Stockport Metropolitan Borough Council</i> – 'extraordinary and unusual considering time and place'</p> <p>Defendant must control the land: <i>Rylands v Fletcher, Smith v Scott, Rigby v Chief Constable of Northamptonshire</i></p> <p>Claimant must have an interest in land: <i>Hunter v Canary Wharf, Transco plc v Stockport Metropolitan Borough Council</i></p> <p>Foresight of harm: <i>Cambridge Water Co v Eastern Counties Leather plc, The Wagon Mound (No 1), Transco plc v Stockport Metropolitan Borough Council</i></p> <p>Personal injury claims excluded: explain that claims are unlikely to be permitted for personal injury - <i>Cambridge Water</i> and pure economic loss <i>Weller v Foot and Mouth Disease Research Unit</i></p> <p>Defences: Volenti non fit injuria: <i>Peters v Prince of Wales Theatre (Birmingham) Ltd, Carstairs v Taylor</i></p> <p>Common benefit: <i>Dunne v North West Gas Board</i></p> <p>Act of God: <i>Nicholls v Marsland, Greenock Corporation v Caledonian Railway</i></p> <p>Act of a Stranger: <i>Box v Jubb, Rickards v Lothian, Northwestern Utilities Ltd v Lonsdale Guarantee & Accident Co Ltd, Hale v Jennings, Perry v Kendricks</i></p>		<p>Level 3 Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed*.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without 2 relevant cases, neither of which are required to be developed.</p> <p>Level 1 Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p> <p>*Developed = case name + facts (minimal) or ratio (minimal)</p>

Question		Indicative Content	Mark	Guidance												
		<p>Statutory Authority: <i>Green v Chelsea Waterworks Co, Charing Cross Electricity Co v Hydraulic Power Co</i></p> <p>Damage caused through the fault of the claimant himself: <i>Eastern & South African Telegraph Company Limited v Cape Town Tramways Companies Ltd</i></p> <p>Contributory Negligence: under the Law Reform (Contributory Negligence) Act 1945 which reduces damages: <i>Dunn v Birmingham Canal Navigation Company</i></p> <p>Reform: Royal Commission on Civil Liability and Compensation for Personal Injury and Royal Commission on Civil Liability for Dangerous Things and Activities</p>														
		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Discuss the ways <i>Rylands v Fletcher</i> has been developed. Does it offer any realistic means of addressing environmental losses?</p> <p>Consider whether <i>Rylands</i> has its background in the industrial revolution when concerns for the environment were secondary to balancing conflicting property rights.</p> <p>Discuss whether the historical and economic importance of mechanised industry led the courts to give restrictive interpretations of <i>Rylands</i> at the cost of protecting the environment.</p> <p>Discuss the more recent 'polluter pays' principle. Arguably it was hoped that <i>Cambridge Water</i> would give a new lease of life to <i>Rylands</i> as a defender against environmental pollution. However, many would argue that this ambition has not been realised – possibly because of a combination of restrictive interpretation and extensive regulation by both the UK and the EU.</p>	14	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13–14</td> </tr> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion* with some synoptic content.</p>	AO2 Levels	AO2 Marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
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Question	Indicative Content	Mark	Guidance
	<p>Discuss the extent to which <i>Rylands</i> should be a tort of strict liability? Consider the principled arguments for and against strict liability as opposed to fault based liability as a means of protecting the environment.</p> <p>Discuss whether <i>Rylands</i> fills a necessary gap in the spectrum of environmental protection laws or whether it has been superseded by other torts:</p> <ul style="list-style-type: none"> • Fills a gap: <ul style="list-style-type: none"> • The House of Lords in <i>Transco</i> stated that although there is an overlap between a claim in <i>Rylands</i> and a claim in negligence, claims involving damage to the environment are better placed in <i>Rylands</i> • The House of Lords also stated in <i>Transco</i> that <i>Rylands</i> would be useful where damage has been caused to the environment where negligence cannot be proved • Although there is an overlap with private nuisance, <i>Rylands</i> should be preferred where the escape is an isolated incident causing harm to the environment • Where statutory or regulatory provisions may apply on a national basis, <i>Rylands</i> may still prove useful in relation to local or individual issues • Superseded: <ul style="list-style-type: none"> • the development of the tort of negligence means that because of the restrictive nature of <i>Rylands</i> it is easier to bring a claim in negligence • The current stricter meaning of what is natural/non-natural use of land (<i>Transco</i>: 'extraordinary & unusual') may well mean that some industrial activity causing damage to the environment could not be dealt with under <i>Rylands v Fletcher</i> • Environmental protection is now largely governed by statutory provision and EU legislation so there is little need for private actions 		<p>Level 4 Responses are unlikely to achieve level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p>Level 3 Responses are unlikely to achieve level 3 without adequate analytical evaluation of the relevant areas of law and limited focus on the quote.</p> <p>Level 2 Responses are unlikely to achieve level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>Level 1 Responses are unlikely to achieve level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (NB conclusion does not need to appear at end).</p>

Question	Indicative Content	Mark	Guidance
	<p>Consider the way individual elements of the tort have been interpreted. Have such elements been interpreted too strictly to allow it to offer any meaningful protection of the environment? Examples include the changing approach to 'non-natural use' and of showing non-natural use in a technological age; the meanings given to accumulation; problems of defining an escape (see, for example, escape of fire in <i>Gore</i>); the limitations to claimants by a wide range of defences; the impact of the requirement of foreseeability.</p> <p>Consider any specific conflicting cases such as <i>British Celanese v Hunt</i> which suggests that <i>Rylands</i> is of little use in relation to environmental protection but <i>Cambridge Water</i> seems to suggest otherwise as industrial processes can be a non-natural use of land even if they benefit the community as a whole.</p> <p>Consider the particular environmental issues raised in <i>Cambridge Water</i>. For example, the way the fact that the pollution was only discovered because of EC regulations requiring tests to be done. However, the case failed to give a clear definition of non-natural use of land.</p> <p>Consider the extent to which <i>Rylands</i> may still fulfil a deterrent effect to those who might pollute the environment in spite of the rarity of its successful application. For example, will <i>Rylands</i> have a future as part of environmental sustainability by being applied to things like fracking?</p> <p>Consider reform: the 1978 Royal Commission on Civil Liability and Compensation for Personal Injury recommended that <i>Rylands</i> should be replaced with a statutory scheme but neither this, nor a later Royal Commission on Civil Liability for Dangerous Things and Activities, has never been enacted. Does this mean that Parliament considers the environment to be adequately protected by other provisions and there is no need to legislate?</p>		

Question		Indicative Content	Mark	Guidance										
		<p>Credit discussion of the approach to environmental protection in other jurisdictions.</p> <p>Reach any sensible conclusion</p>												
		<p>Assessment Objective 3 - Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>24–30</td> <td>4</td> </tr> <tr> <td>17–23</td> <td>3</td> </tr> <tr> <td>9–16</td> <td>2</td> </tr> <tr> <td>1–8</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	24–30	4	17–23	3	9–16	2	1–8	1
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Question		Indicative Content	Mark	Guidance																														
3		<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define the tort: A bringing onto and accumulation on defendant's land – <i>Charing Cross Case, Giles v Walker</i> Of a thing likely to cause 'mischief' if it escapes although the thing need not be inherently dangerous <i>Shiffman v Order of the Hospital of St John of Jerusalem</i> Escape – <i>Read v Lyons, Hale v Jennings, British Celanese v AH Hunt, Transco v Stockport</i> Thing escaping causes damage Non-natural use of land - <i>Mason v Levy Autoparts, Rickards v Lothian, Cambridge Water v Eastern Counties Leather, Musgrove v Pandelis</i> Harm must be foreseeable – <i>Transco</i></p> <p>Identify the available defences: <i>Volenti non fit injuria</i> – <i>Peters v Prince of Wales Theatre</i> Common benefit - <i>Dunne v North West Gas Board</i> Act of God - <i>Nicholls v Marsland</i> Act of a stranger - <i>Perry v Kendricks Transport</i> Damage caused through claimant's fault- <i>Eastern & South African Telegraph v Cape Town Tramways</i></p> <p>Credit any other relevant point(s) Credit any other relevant case(s).</p>	10	<table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1 Marks</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>7–8</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>5–6</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>3–4</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–2</td> <td>1–4</td> </tr> </tbody> </table> <p>Marks should be awarded as follows (per part question):</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> </tr> <tr> <td>4</td> <td>7–8</td> </tr> <tr> <td>3</td> <td>5–6</td> </tr> <tr> <td>2</td> <td>3–4</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p>NB A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> • Max 3 marks for the critical point (CP) • Max 6 marks for applied points (AP) • Max 1 mark for a logical conclusion*/assessment of the most likely outcome in terms of liability (CON) 	Mark Levels	AO1 Marks	AO2 Marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4	Mark Levels	(a), (b) or (c)	5	9–10	4	7–8	3	5–6	2	3–4	1	1–2
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1	1–2																																	

Question	Indicative Content	Mark	Guidance
	<p>Assessment Objective 2 – Analysis, Evaluation and Application</p> <p>In the case of (a): Reason that any relevant AP points may apply. For law (1 point) and/or correct application (1 point) on any of the following: Recognition of the parties (who is claimant and who is defendant); Recognition of the requirement of a proprietary interest and/or control over the land (D and C); Did D bring on and accumulate; Was the thing something likely to cause mischief if it escapes; Did the storage amount to an extraordinary and unusual use of the land considering time and place; Did the thing escape from land/circumstances over which D had control; Did C suffer foreseeable harm</p> <p>CP Recognise that in this case the key elements of <i>Rylands</i> are present but Brenda has suffered personal injury not property damage. Recovery for personal injury is not allowed under <i>Rylands</i> (<i>Cambridge Water</i> affirmed in <i>Transco</i>)</p> <p>CON Brenda will not be able to recover in <i>Rylands v Fletcher</i> for her broken ankle.</p>	20	<p>In order to reach level 5, responses must include a discussion of the critical point, a relevant case and a conclusion*.</p> <p>Responses are unlikely to achieve level 5 if the conclusion* is incorrect <u>and</u> contradicted by the reason offered.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).</p>

Question	Indicative Content	Mark	Guidance
	<p>In the case of (b):</p> <p>Reason that any relevant AP points may apply. For law (1 point) and/or correct application (1 point) on any of the following:</p> <p>Recognition of the parties (who is claimant and who is defendant);</p> <p>Recognition of the requirement of a proprietary interest and/or control over the land (D and C); Did D bring on and accumulate;</p> <p>Was the thing something likely to cause mischief if it escapes; Did the storage amount to an extraordinary and unusual use of the land considering time and place; Did the thing escape from land/circumstances over which D had control; Did C suffer foreseeable harm</p> <p>CP Recognise that in this case the key elements of <i>Rylands</i> are present but Chandra has the defence of Act of a Stranger as a third party (Brian) was responsible for the harm (<i>Perry v Kendricks</i> (1956))</p> <p>CON Eric will not be able to recover in <i>Rylands v Fletcher</i> for his apple trees or the fruit.</p>		

Question	Indicative Content	Mark	Guidance
	<p>In the case of (c):</p> <p>Reason that any relevant AP points may apply. For law (1 point) and/or correct application (1 point) on any of the following:</p> <p>Recognition of the parties (who is claimant and who is defendant);</p> <p>Recognition of the requirement of a proprietary interest and/or control over the land (D and C); Did D bring on and accumulate;</p> <p>Was the thing something likely to cause mischief if it escapes; Did the storage amount to an extraordinary and unusual use of the land considering time and place; Did the thing escape from land/circumstances over which D had control; Did C suffer foreseeable harm</p> <p>CP Recognise that in this case the key elements of <i>Rylands</i> are present but because the thing that has escaped is the fire itself rather than the thing which has been brought on and accumulated, there is no cause of action under <i>Rylands</i> (<i>Stannard (t/a Wyvern Tyres) v Gore</i> (2012))</p> <p>CON George will not be able to recover in <i>Rylands v Fletcher</i> for his garage.</p>		

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