

Mark Scheme for June 2012

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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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Annotations

Annotation	Meaning
	Point 1 (Q7-8)
	Point 2 (Q7-8)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6)
	Developed (replace DP)
	Expansion of developed point (replace WDP)
	Not Relevant
	Repetition/or where it refers to a case this indicated that the case has already been noted by examiner
	AO1
	Vague/sort of

Subject-specific Marking Instructions

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

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

- *₁ The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- *₂ The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.
- *₃ Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes the '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 that this to be the case you should discuss the candidates answer 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 (in some units 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, will 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.

SECTION A

Question	Answer	Marks	Guidance													
1*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the basic principle of negligent misstatement – pure economic loss as a result of negligent statements or advice</p> <p>Explain that there was originally no liability for negligent misstatement causing a purely financial loss <i>Candler v Crane Christmas</i></p> <p>Explain the criteria for a duty of care to arise under negligent misstatement arising from a special relationship under <i>Hedley Byrne</i>:</p> <ul style="list-style-type: none"> • Possession (or implication) of a special skill by the person giving the advice <i>Esso Petroleum v Mardon, Hedley Byrne, Mutual Life v Evatt</i> • Reliance on the defendant’s skill and judgement <i>JEB Fasteners</i> • Reasonableness of the reliance considering factors such as: <ul style="list-style-type: none"> ○ Knowledge of the purpose of the advice <i>Caparo v Dickman, Law Society v KPMG Peat Mardick</i> ○ Social or business context <i>Chaudhry v Prabhaker</i> ○ Whether the advice was aimed at the claimant <i>Harris v Wyre Forest DC</i> • Knowledge that the claimant would rely on the advice <i>Smith v Bush</i> <p>Explain the subsequent additional / alternative requirement for liability:</p> <ul style="list-style-type: none"> • Voluntary assumption of responsibility for advice by defendant <i>Henderson v Merritt Syndicates, Dean v Allin & Watts, Calvert v William Hill</i> <p>Explain the development of the law and the courts’ reluctance to impose liability for claims of negligent statement - originally actions could only be brought for fraudulent statements <i>Derry v Peek</i> and it was Lord Denning’s dissenting judgement in <i>Candler v</i></p>	25	<table border="1" data-bbox="1377 323 2069 534"> <thead> <tr> <th data-bbox="1377 323 1724 359">AO1 Levels</th> <th data-bbox="1724 323 2069 359">AO1 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1377 359 1724 394">5</td> <td data-bbox="1724 359 2069 394">21-25</td> </tr> <tr> <td data-bbox="1377 394 1724 429">4</td> <td data-bbox="1724 394 2069 429">16-20</td> </tr> <tr> <td data-bbox="1377 429 1724 464">3</td> <td data-bbox="1724 429 2069 464">11-15</td> </tr> <tr> <td data-bbox="1377 464 1724 499">2</td> <td data-bbox="1724 464 2069 499">6-10</td> </tr> <tr> <td data-bbox="1377 499 1724 534">1</td> <td data-bbox="1724 499 2069 534">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> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>		AO1 Levels	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p><i>Crane Christmas</i> that was finally accepted in <i>Hedley Byrne</i> Explain situations where the principles do not fit and the court's approach <i>White v Jones</i>, <i>Ross v Caunters</i>, <i>Spring v Guardian Assurance</i> Explain the more restrictive approach adopted by the courts in <i>James McNaughten Paper Group v Hicks Anderson</i> Use any other cases. Credit any other relevant points.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following issues:</p> <ul style="list-style-type: none"> • Early cases accepted reasonable foreseeability as the basis for a claim which may be seen to be fairer to the claimant • The early reluctance of the courts to allow claims for economic loss arising from negligent statements on grounds of policy, best dealt with by contract law and how this disadvantaged many victims who couldn't prove deceit or a contractual relationship • The principle under which a claim can now be made is that outlined in <i>Hedley Byrne</i> with the possible additional requirement of knowledge and an assumption of responsibility making it harder for a victim of negligent statement to make a claim when compared to a victim of negligence • The unpredictability of the rules making it difficult for a victim to claim, especially concerning the reasonableness of the reliance eg when can a special relationship arise in a social context; when is advice given in the course of business? • The principles have not been applied consistently • The particular rules applying to wills cases, references and the provision of services 	20	<table border="1" data-bbox="1375 517 2069 727"> <thead> <tr> <th data-bbox="1375 517 1722 555">AO2 Levels</th> <th data-bbox="1722 517 2069 555">AO2 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1375 555 1722 587">5</td> <td data-bbox="1722 555 2069 587">17-20</td> </tr> <tr> <td data-bbox="1375 587 1722 619">4</td> <td data-bbox="1722 587 2069 619">13-16</td> </tr> <tr> <td data-bbox="1375 619 1722 651">3</td> <td data-bbox="1722 619 2069 651">9-12</td> </tr> <tr> <td data-bbox="1375 651 1722 683">2</td> <td data-bbox="1722 651 2069 683">5-8</td> </tr> <tr> <td data-bbox="1375 683 1722 727">1</td> <td data-bbox="1722 683 2069 727">1-4</td> </tr> </tbody> </table> <p>Candidates will be unlikely to achieve the following levels without: L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate L2 – identification of some relevant points, using cases where appropriate L1 – 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"> • The contradictory positions regarding architects / surveyors and builders • Policy may be an overriding consideration - this may be to the benefit of the victim – but may not when floodgates become the reason • A further expansion is unlikely <i>Morgan Crucible v Hill Samuel</i> and that this may be to a victim's detriment • Reach any sensible conclusion • Credit any other relevant points. <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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1373 582 1722 619">AO1+AO2 Marks</th> <th data-bbox="1722 582 2069 619">AO3 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1373 619 1722 655" style="text-align: center;">37-50</td> <td data-bbox="1722 619 2069 655" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1373 655 1722 692" style="text-align: center;">28-36</td> <td data-bbox="1722 655 2069 692" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1373 692 1722 729" style="text-align: center;">19-27</td> <td data-bbox="1722 692 2069 729" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1373 729 1722 766" style="text-align: center;">10-18</td> <td data-bbox="1722 729 2069 766" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1373 766 1722 802" style="text-align: center;">1-9</td> <td data-bbox="1722 766 2069 802" style="text-align: center;">1</td> </tr> </tbody> </table>		AO1+AO2 Marks	AO3 Marks	37-50	5	28-36	4	19-27	3	10-18	2	1-9	1
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2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain that both causation and remoteness must be proved for a claim in negligence to succeed Explain that there are two types of causation; causation in fact and causation in law (remoteness of damage)</p> <p>Explain factual causation: Explain the ‘but for’ test – but for the defendant’s breach of duty, would the claimant have suffered damage? <i>Barnett v Chelsea & Kensington HMC</i> Explain that the ‘but for’ test is not always straightforward to apply and show how causation is dealt with where there are:</p> <ul style="list-style-type: none"> • Multiple Causes • Successive Causes <p>On the issue of multiple causes, explain how liability is established:</p> <ul style="list-style-type: none"> • pre-existing condition <i>Cutler v Vauxhall Motors</i> • concurrent causes <i>Wilsher v Essex AHA</i> • material increase in the risk of harm <i>McGhee v NCB, Fairchild</i> • the reasoning on apportionment of blame following <i>Barker v Corus</i> and the subsequent position of the Compensation Act 2006 • consecutive causes <i>Performance Cars v Abraham, Jobling v Associated Dairies, Baker v Willoughby</i> <p>Explain the issue of remoteness Explain that the claimant can only claim for loss which is of a type that is foreseeable <i>The Wagon Mound (No.1)</i> Explain that the principle may be applied broadly where there is personal injury <i>Bradford v Robinson Rental</i> or narrowly where there is property damage <i>The Wagon Mound (No.2)</i></p>	25	<table border="1" data-bbox="1368 217 2069 432"> <thead> <tr> <th data-bbox="1368 217 1720 252">AO1 Levels</th> <th data-bbox="1720 217 2069 252">AO1 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1368 252 1720 287">5</td> <td data-bbox="1720 252 2069 287">21-25</td> </tr> <tr> <td data-bbox="1368 287 1720 322">4</td> <td data-bbox="1720 287 2069 322">16-20</td> </tr> <tr> <td data-bbox="1368 322 1720 357">3</td> <td data-bbox="1720 322 2069 357">11-15</td> </tr> <tr> <td data-bbox="1368 357 1720 392">2</td> <td data-bbox="1720 357 2069 392">6-10</td> </tr> <tr> <td data-bbox="1368 392 1720 432">1</td> <td data-bbox="1720 392 2069 432">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> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>It is unlikely that candidates will achieve Level 5 without explaining causation and remoteness.</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 the concept of a <i>novus actus interveniens</i> and how it can break the chain of causation:</p> <ul style="list-style-type: none"> • act of the claimant <i>Wieland v Cyril Lord Carpets, McKew v Holland & Hannon & Cubitts</i> • act of nature <i>Carslogie Steamship v Royal Norwegian Navy</i> • act of a third party <i>Knightly v Johns</i> <p>Credit the distinction between contributory negligence and intervening acts</p> <p>Explain the relevance/effect of the 'eggshell skull' rule <i>Smith v Leech Brain</i></p> <p>Use any other cases.</p> <p>Credit any other relevant points.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following issues:</p> <ul style="list-style-type: none"> • The fact that the principles of causation are aimed at compensating the claimant for loss which is foreseeable and attributable to the defendant and that this is generally fair to both sides • That where there is a single cause, the 'but for' test applies neatly and is unproblematic – it is therefore fair to the defendant. However where causation cannot be established the claimant may go uncompensated despite being owed a duty of care which was breached • The difficulties faced by a claimant in proving causation where there are multiple causes – again this could result in a claimant being uncompensated • The approach in <i>Fairchild</i> can be attributed to policy considerations but did provide a contrived outcome for the defendants • How the Compensation Act 2006 favours the claimant at the expense of the defendant on the issue of apportionment 	20	<table border="1" data-bbox="1368 651 2069 831" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO2 Levels</th> <th style="text-align: center;">AO2 marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17-20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13-16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9-12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5-8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1-4</td> </tr> </tbody> </table> <p>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – an awareness of the area of law identified by the question</p> <p>It is unlikely that candidates will achieve Level 5 without discussing causation and remoteness.</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"> • How, where consecutive causes are present, a defendant may escape liability despite being at fault • The rules of <i>novus actus interveniens</i> – the conflicting results from acts of the claimant, acts of a third party and acts of nature • The role of policy and the aim of the judges to neither over- or under-compensate following <i>Baker v Willoughby</i> and <i>Jobling v Associated Dairies</i> - this may be fair to the defendant but is arbitrary justice for the claimant on the facts • Whether the rules on remoteness are fair to claimants as they are a means of limiting the defendant's liability • The arbitrary nature of the approach taken by the judges in determining what 'type' of damage may be foreseeable – the narrow v wide approach • Reach any sensible conclusion • Credit any other relevant points. <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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1368 834 1720 868">AO1+AO2 Marks</th> <th data-bbox="1720 834 2069 868">AO3 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1368 868 1720 901" style="text-align: center;">37-45</td> <td data-bbox="1720 868 2069 901" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1368 901 1720 935" style="text-align: center;">28-36</td> <td data-bbox="1720 901 2069 935" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1368 935 1720 968" style="text-align: center;">19-27</td> <td data-bbox="1720 935 2069 968" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1368 968 1720 1002" style="text-align: center;">10-18</td> <td data-bbox="1720 968 2069 1002" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1368 1002 1720 1035" style="text-align: center;">1-9</td> <td data-bbox="1720 1002 2069 1035" style="text-align: center;">1</td> </tr> </tbody> </table>		AO1+AO2 Marks	AO3 marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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3*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define assault – intentionally and directly causing the other to apprehend immediate battery Explain the elements of the tort:</p> <ul style="list-style-type: none"> • Intention concerns the effect produced (and intended to be produced) in the claimant <i>Blake v Barnard</i> • Traditionally required an active threat <i>Read v Coker</i> • Words alone were insufficient and can negative an assault <i>Tuberville v Savage</i> but see also <i>R v Burstow</i>, <i>R v Ireland</i> <p>Explain the fact that the defendant does not intend or cannot carry out the force does not matter as long as the apprehension of it was intended <i>Stevens v Myers</i> Explain that if it is not possible to place the claimant in apprehension of imminent battery then there is no assault <i>Thomas v NUM</i></p> <p>Explain the elements of a battery:</p> <ul style="list-style-type: none"> • Must involve intention not carelessness <i>Letang v Cooper</i> • Requires direct contact as broadly defined <i>Scott v Shepherd</i>, <i>Nash v Sheen</i> • Requirement of hostility involving the contrasting decisions in <i>Wilson v Pringle</i> and <i>Re F</i> <p>Explain the defence of volenti</p> <p>Define false imprisonment – unlawful bodily restraint:</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</i> • Will not matter that the claimant is unaware or unconscious at the time <i>Meering v Grahame-White Aviation</i> • Will not matter that the defendant is unaware that the imprisonment is unlawful <i>R v Governor of Brockhill Prison</i> 	25	<table border="1" data-bbox="1377 231 2069 446"> <thead> <tr> <th data-bbox="1377 231 1724 271">AO1 Levels</th> <th data-bbox="1724 231 2069 271">AO1 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1377 271 1724 311">5</td> <td data-bbox="1724 271 2069 311">21-25</td> </tr> <tr> <td data-bbox="1377 311 1724 351">4</td> <td data-bbox="1724 311 2069 351">16-20</td> </tr> <tr> <td data-bbox="1377 351 1724 391">3</td> <td data-bbox="1724 351 2069 391">11-15</td> </tr> <tr> <td data-bbox="1377 391 1724 430">2</td> <td data-bbox="1724 391 2069 430">6-10</td> </tr> <tr> <td data-bbox="1377 430 1724 446">1</td> <td data-bbox="1724 430 2069 446">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> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>It is unlikely that candidates will achieve Level 5 without explaining each of the three forms of trespass to the person and the available defences.</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 the defences to false imprisonment include lawful arrest and detention under PACEA 1984, Mental Health Act 1983 and consent Credit explanation of harassment Use any other cases Credit any other relevant points.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following issues:</p> <ul style="list-style-type: none"> The tort of trespass to the person is actionable <i>per se</i> and that a remedy is available without proof of damage – this is an effective deterrent for all aspects but assault in particular <p>Assault:</p> <ul style="list-style-type: none"> Difficulties in assessing damages to compensate the victim Problems associated with the use of words may limit ability to compensate and deter Threats of future harm – lack of deterrence Requirement that the threat must be real and imminent for an action to be brought – may weaken deterrent effect Possible extension to allow silence increases the ability to compensate victims <p>Battery:</p> <ul style="list-style-type: none"> No need to prove actual harm – good deterrent, effective compensation Requirement of hostility means that only hostile acts will be deterred; a lack of hostility may also result in a claimant not being compensated <i>Wilson v Pringle, Re F</i> The confusion as to whether hostility is required may itself lead to lack of deterrence 	20	<table border="1" data-bbox="1375 448 2069 660"> <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>Candidates will be unlikely to achieve the following levels without:</p> <p>L5 – a well-developed discussion which makes good use of cases to develop clear arguments based on judicial reasoning, and with critical links between cases where appropriate</p> <p>L4 – a discussion which uses case law cited to make developed points, and analyses the basis of the decision in these cases where appropriate</p> <p>L3 – a discussion of some points, and making reference to the cases which have been used for the area of law being considered where appropriate</p> <p>L2 – identification of some relevant points, using cases where appropriate</p> <p>L1 – 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"> • Consent in sporting and/or medical context will leave a claimant uncompensated - this may not always be clear to determine; what is within the rules of the game? Issues of informed consent? • Ability to claim for psychiatric injury increases the ability to compensate victims <p>False Imprisonment</p> <ul style="list-style-type: none"> • For a successful claim, there must be total bodily restraint • Claimant may be fairly compensated even if they are unaware of the restraint • The defences limit the effectiveness of the tort and could leave a claimant uncompensated • The fact that the imprisonment can be for a short period allows for compensation and acts as a deterrent • The fact that the defendant does not need to be aware allows for compensation and acts as a deterrent • Reach any sensible conclusion. • Credit any other relevant points. <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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1373 906 1724 938">AO1+AO2 Marks</th> <th data-bbox="1724 906 2069 938">AO3 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1373 938 1724 975" style="text-align: center;">37-45</td> <td data-bbox="1724 938 2069 975" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1373 975 1724 1011" style="text-align: center;">28-36</td> <td data-bbox="1724 975 2069 1011" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1373 1011 1724 1048" style="text-align: center;">19-27</td> <td data-bbox="1724 1011 2069 1048" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1373 1048 1724 1085" style="text-align: center;">10-18</td> <td data-bbox="1724 1048 2069 1085" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1373 1085 1724 1121" style="text-align: center;">1-9</td> <td data-bbox="1724 1085 2069 1121" style="text-align: center;">1</td> </tr> </tbody> </table>		AO1+AO2 Marks	AO3 marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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4*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define psychiatric injury (nervous shock) as a recognised psychiatric condition caused by a sudden single traumatic event Explain that recognised psychiatric conditions include PTSD and depression <i>Vernon v Bosley</i> Explain that emotional reactions such as grief and sorrow, claustrophobia and insomnia are not recognised <i>Reilly v Merseyside HA, Hinz v Berry</i></p> <p>Distinguish between primary and secondary victims:</p> <ul style="list-style-type: none"> • A primary victim is one who is present at the scene and directly involved <i>Page v Smith, Dulieu v White</i> • A secondary victim is one witnessing a single shocking event causing risk of injury or injury to a primary victim <i>Hambrook v Stokes</i> <p>Explain how the thin skull rule applies to primary victims as decided in the case of <i>Page v Smith</i> - provided that physical injury is foreseeable, any psychiatric injury which arises can also be claimed for and normal rules of negligence apply</p> <p>Explain the requirements for a successful claim by a secondary victim as outlined in <i>Alcock v Chief Constable of South Yorks Police</i>:</p> <ul style="list-style-type: none"> • Close tie of love and affection to a primary victim <i>Hambrook v Stokes</i> • Sufficient proximity in time and space to the event or its immediate aftermath <i>McLoughlin v O'Brian, Taylor v Somerset, NE Glamorgan NHS Trust v Walters, W v Essex CC</i> • Witnessing the traumatic event or its immediate aftermath with own unaided senses through either sight or hearing <i>Alcock</i> 	25	<table border="1" data-bbox="1377 272 2069 485"> <thead> <tr> <th data-bbox="1377 272 1722 308">AO1 Levels</th> <th data-bbox="1722 272 2069 308">AO1 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1377 308 1722 343">5</td> <td data-bbox="1722 308 2069 343">21-25</td> </tr> <tr> <td data-bbox="1377 343 1722 378">4</td> <td data-bbox="1722 343 2069 378">16-20</td> </tr> <tr> <td data-bbox="1377 378 1722 413">3</td> <td data-bbox="1722 378 2069 413">11-15</td> </tr> <tr> <td data-bbox="1377 413 1722 448">2</td> <td data-bbox="1722 413 2069 448">6-10</td> </tr> <tr> <td data-bbox="1377 448 1722 485">1</td> <td data-bbox="1722 448 2069 485">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> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>It is unlikely that candidates will achieve Level 5 without explaining both primary and secondary victims.</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"> Injury sustained as a result of a single shocking event <i>Sion v Hampsted HA</i> <p>Explain that for secondary victims, psychiatric damage must be foreseen in a person of normal fortitude</p> <p>Explain that for a rescuer to claim, they must either be a genuine primary victim and at risk of physical injury <i>Chadwick v BRB</i>, <i>McFarlane</i> or must fulfil the criteria as a secondary victim <i>Greatorex v Greatorex</i>, <i>White v Chief Constable of South Yorks Police</i></p> <p>Explain that a mere bystander cannot claim for failing to be in danger of physical harm and failing the relationship test in <i>Alcock</i>, <i>Bourhill v Young</i></p> <p>Use any other relevant cases Credit any other relevant points.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In relation to Minnie:</p> <ul style="list-style-type: none"> Identify that severe depression could constitute a recognized psychiatric condition The condition appears to be due to the incident Identify that she could claim as either a primary or secondary victim She may be treated as a rescuer but that she will still have to show that she is a genuine primary or secondary victim As a primary victim she was in fear for her own safety when the lighting rig collapsed onto the stage As a primary victim it was foreseeable that some loss could occur on the stage, there was proximity and it is just, fair & reasonable to impose a duty As a secondary victim she would have to establish the test outlined in <i>Alcock</i> 	20	<table border="1" data-bbox="1375 740 2069 954"> <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 most of the relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>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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	<ul style="list-style-type: none"> • As a secondary victim she has a close tie of love and affection although the case would have to be decided on its merits <i>Alcock</i>, they may also be construed as work colleagues • As a secondary victim she is present at the scene and witnesses the incident with her own unaided senses • Credit any reference to the fact that Minnie would be better off claiming as a primary victim as the test for secondary victims is far stricter (fear of floodgates) and can produce unfair results (tie of love and affection) • Reach any sensible conclusion <p>In relation to Kate:</p> <ul style="list-style-type: none"> • Identify that further information would be required to establish whether or not she has developed a recognized psychiatric condition • The condition appears to be due to the incident • Identify that Kate would claim as a primary victim as she was in danger of being hit by the lighting rig • It was foreseeable that some loss could occur from the lighting rig, there was proximity and it is just, fair & reasonable to impose a duty • Conclude that Kate is likely to be successful in her claim <p>In relation to Lorna:</p> <ul style="list-style-type: none"> • Identify that grief would not be recognized as a recognized psychiatric condition unless it was pathological and linked to depression • The condition appears to be due to the incident • Identify that Lorna's claim would be as a secondary victim • She will be unlikely to be able to establish a close tie of love and affection although this would have to be examined on its merits • She did not perceive the incident with her own unaided senses as it was relayed on the TV screen 		<p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p> <p>It is unlikely that candidates will achieve Level 5 without discussing Minnie as both a primary and secondary victim.</p>

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	<ul style="list-style-type: none"> • Credit comparison of live relay here with the issues examined in <i>A/cock</i> • She was not present at the scene or the immediate aftermath • She appears to have suffered sudden shock • Conclude that she is going to have difficulties in bringing a claim as she would generally be classed as a bystander • Credit any discussion of breach and causation. • Credit any other relevant points. <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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1375 595 1722 633">AO1+AO2 Marks</th> <th data-bbox="1722 595 2069 633">AO3 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1375 633 1722 667" style="text-align: center;">37-45</td> <td data-bbox="1722 633 2069 667" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1375 667 1722 700" style="text-align: center;">28-36</td> <td data-bbox="1722 667 2069 700" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1375 700 1722 734" style="text-align: center;">19-27</td> <td data-bbox="1722 700 2069 734" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1375 734 1722 767" style="text-align: center;">10-18</td> <td data-bbox="1722 734 2069 767" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1375 767 1722 801" style="text-align: center;">1-9</td> <td data-bbox="1722 767 2069 801" style="text-align: center;">1</td> </tr> </tbody> </table>		AO1+AO2 Marks	AO3 marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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5*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define the tort of trespass to land – an intentional and direct entry onto land in another person’s possession Explain that the tort is actionable <i>per se</i> Explain the need for a claimant to show an interest in the land superior to that of the trespasser at the time of the trespass in order to be able to claim <i>Graham v Peat, White v Bayley</i> Explain the ways in which the tort can be committed:</p> <ul style="list-style-type: none"> • Entering land intentionally and voluntarily <i>League Against Cruel Sports v Scott</i> • Remaining on land after permission is withdrawn <i>Holmes v Wilson</i> • Placing things on the land <i>Smith v Stone</i> • Taking things away from the land <i>Basely v Clarkson</i> <p>Explain that the merest contact with the land can amount to a trespass <i>Westripp v Baldock</i> Explain how land is defined under the tort:</p> <ul style="list-style-type: none"> • Covers land itself and anything on the land such as buildings • Extends to the airspace above <i>Kelsen v Imperial Tobacco, Civil Aviation Act 1983</i> • Subsoil <i>Hickman v Maisey, Harrison v Duke of Rutland, Star Energy v Bocardo SA</i> <p>Explain lawful and unlawful entry and the statutory right under PACEA 1984 Explain the possible defences of permission and necessity <i>Cope v Sharp</i> Explain the concept of trespass <i>ab initio</i> where a lawful visitor abuses the proper limits on their right to enter <i>The Six Carpenters’ Case, Cinnamond v British Airport Authority</i> Credit any reference to possible remedies including:</p> <ul style="list-style-type: none"> • Damages and mesne profits 	25	<table border="1" data-bbox="1375 277 2069 491"> <thead> <tr> <th data-bbox="1375 277 1722 316">AO1 Levels</th> <th data-bbox="1722 277 2069 316">AO1 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1375 316 1722 354">5</td> <td data-bbox="1722 316 2069 354">21-25</td> </tr> <tr> <td data-bbox="1375 354 1722 392">4</td> <td data-bbox="1722 354 2069 392">16-20</td> </tr> <tr> <td data-bbox="1375 392 1722 430">3</td> <td data-bbox="1722 392 2069 430">11-15</td> </tr> <tr> <td data-bbox="1375 430 1722 469">2</td> <td data-bbox="1722 430 2069 469">6-10</td> </tr> <tr> <td data-bbox="1375 469 1722 491">1</td> <td data-bbox="1722 469 2069 491">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> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>		AO1 Levels	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> • Distress damage feasant • Injunctions <i>Anchor Brewhouse v Berkley House</i> • Removal by reasonable force <i>Hemmings v Stoke Poges Golf</i> <p>Use any other relevant cases Credit any other relevant points.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss Lisa’s status as a potential claimant:</p> <ul style="list-style-type: none"> • Lisa appears to have a proprietary interest as a tenant or lodger if she rents the house from Tom <p>In relation to the concreted in fence post holes:</p> <ul style="list-style-type: none"> • Merest contact with the land will amount to a trespass • Land extends to the subsoil • It does not appear that Lisa has given permission for this • Conclude that laying concrete in the fence post holes will therefore amount to a trespass • Credit discussion that the fence post holes may be on Mr Xi’s land and no tort is committed <p>In relation to the broken fence:</p> <ul style="list-style-type: none"> • There would not be a trespass when the customer reversed the car into the fence panel due to a lack of intention and directness • If Lisa has asked Mr Xi to remove the panel and it is still lying on the garden, this may amount to a trespass • Reach any sensible conclusion <p>In relation to the advertising hoarding:</p> <ul style="list-style-type: none"> • Land extends to the airspace above the land to a reasonable height 	20	<table border="1" data-bbox="1375 448 2072 660" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO2 Levels</th> <th style="text-align: center;">AO2 marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17-20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13-16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9-12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5-8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">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 most of the relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>	AO2 Levels	AO2 marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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	<ul style="list-style-type: none"> • An advertising board will be located at a sufficiently low level • Mr Xi has intentionally and voluntarily entered Lisa's land by erecting the advertising board over the boundary • Conclude that this is likely to amount to a trespass <p>In relation to the overhanging branches and fruit picking:</p> <ul style="list-style-type: none"> • Identify that as the trees are growing naturally there may be no intention to trespass • As Mr Xi regularly picks fruit he will be aware of the overhanging branches suggesting intention • Reach any sensible conclusion • Identify that Mr Xi placing his ladder on the land to pick the fruit may amount to a trespass by placing things on the land • If Lisa had given permission initially, then this may constitute a defence, even though permission has since been withdrawn following the dispute • Reach any sensible conclusion • Identify that the damage to Lisa's vegetable patch by the ladder may also amount to a trespass • The ladder appears to be remaining on the land after permission is withdrawn as Lisa tells Mr Xi not to do this • Credit discussion that Lisa may be within her rights to sell the ladder as mesne profits or keep the ladder as distress damage feasant until Mr Xi pays for the damage • Conclude that this is likely to amount to a trespass. • Credit any other relevant points. <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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO1+AO2 Marks</th> <th style="text-align: center;">AO3 marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">37-45</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28-36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19-27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10-18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1-9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>		AO1+AO2 Marks	AO3 marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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6*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain that a claimant must have an interest in the land to pursue a claim as in the case of nuisance <i>Transco, Hunter v Canary Wharf</i></p> <p>Explain that a defendant needs to be either the accumulator or the occupier of the land accumulated on <i>Read v Lyons</i></p> <p>Explain that for a claim in <i>Rylands v Fletcher</i>, a claimant will have to show that:</p> <ul style="list-style-type: none"> • The thing was brought and accumulated on the defendant's land <i>The Charing Cross Case, Giles v Walker</i> • The thing will be likely to cause mischief if it escapes, <i>Rylands v Fletcher, Hale v Jennings Bros</i> although the thing itself need not be inherently dangerous <i>Shiffman</i> • There must be an escape but this can be either from land over which the defendant has control <i>Read v Lyons</i> or from circumstances over which the defendant has control <i>Transco, British Celanese v Hunt, Hale v Jennings</i> • The thing escaping must cause damage • The harm must be foreseeable <i>Cambridge Water v Eastern Counties Leather, Transco</i> <p>Explain that the use of land must be non-natural:</p> <ul style="list-style-type: none"> • A potentially dangerous activity <i>Cambridge Water v Eastern Counties Leather</i> • Things stored in large quantities <i>Mason v Levy Autoparts</i> • A truly domestic use is a natural use • If the public derive a benefit from the use of land that is in question then the court may find the use to be natural <i>British Celanese v Hunt</i> <p>Explain that claims are unlikely to be permitted for personal injury <i>Cambridge Water</i> and financial loss <i>Weller v Foot & Mouth Disease Research Unit</i></p> <p>Explain the defence of Act of God <i>Nicholls v Marsland</i></p>	25	<table border="1" data-bbox="1377 279 2069 491"> <thead> <tr> <th data-bbox="1377 279 1724 316">AO1 Levels</th> <th data-bbox="1724 279 2069 316">AO1 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1377 316 1724 352">5</td> <td data-bbox="1724 316 2069 352">21-25</td> </tr> <tr> <td data-bbox="1377 352 1724 389">4</td> <td data-bbox="1724 352 2069 389">16-20</td> </tr> <tr> <td data-bbox="1377 389 1724 426">3</td> <td data-bbox="1724 389 2069 426">11-15</td> </tr> <tr> <td data-bbox="1377 426 1724 462">2</td> <td data-bbox="1724 426 2069 462">6-10</td> </tr> <tr> <td data-bbox="1377 462 1724 491">1</td> <td data-bbox="1724 462 2069 491">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> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>		AO1 Levels	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
AO1 Levels	AO1 marks															
5	21-25															
4	16-20															
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Question	Answer	Marks	Guidance												
	<p>Use any other relevant cases Credit any other relevant points.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify that Harriet has an interest in the land as she owns the neighbouring farm Identify that Cheapsells is the occupier of the land accumulated on and may be viewed as the accumulator</p> <p>In relation to Harriet’s cut face:</p> <ul style="list-style-type: none"> • The cans have been brought on to Cheapsells land • Cans are a thing likely to cause mischief if they escape • The can escapes by being blown from the unit and on to the farm • Discuss whether the use of land is non-natural – the recycling is in large quantities and so may be viewed as non-natural; but there is a public benefit derived from the use of the land as it is the community recycling facility and so it may be viewed as natural use of the land • Credit any recognition/comparison with domestic recycling arrangements and its acceptance as natural use of land • It is now settled that the rule in <i>Rylands v Fletcher</i> is a form of nuisance and that recovery for personal injury is not covered by the rule • Conclude that Harriet cannot claim in <i>Rylands v Fletcher</i> for her cut face <p>In relation to Harriet’s smashed greenhouse:</p> <ul style="list-style-type: none"> • The top of the can unit has been brought on to Cheapsells land • The top of the can unit is a thing likely to cause mischief if it escapes 	20	<table border="1" data-bbox="1377 311 2069 523" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO2 Levels</th> <th style="text-align: center;">AO2 marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17-20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13-16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9-12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5-8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">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 most of the relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>	AO2 Levels	AO2 marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
AO2 Levels	AO2 marks														
5	17-20														
4	13-16														
3	9-12														
2	5-8														
1	1-4														

Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> • The top of the can unit escapes by being blown from the unit and on to the farm • Discuss whether the use of land is non-natural – the recycling is in large quantities and so may be viewed as non-natural; but there is a public benefit derived from the use of the land as it is the community recycling facility and so it may be viewed as natural use of the land • Credit any recognition/comparison with domestic recycling arrangements and its acceptance as natural use of land • The damage to the greenhouse door (property on the land) is allowed to be claimed for • Damage to the door is a foreseeable type of loss as a result of the top of the can unit escaping • Reach any sensible conclusion on whether the tort has been proved <p>In relation to Harriet’s contaminated soil and the loss of profits on the pumpkin crop:</p> <ul style="list-style-type: none"> • The oil has been brought on to Cheapsells land • Oil is a thing likely to cause mischief if it escapes • Oil escapes by leaking into Harriet’s garden • Storage of oil in large quantities is likely to be non-natural use as, since, <i>Transco</i>, the requirement of exceptional danger is fulfilled • Although there is still a public benefit derived from the oil recycling facility, this activity may be seen as bringing with it a potential level of danger to merit it as a non-natural use overriding any public benefit derived • The damage to the soil and the pumpkins are allowed to be claimed for • Damage to the soil is a foreseeable type of loss as a result of the top of the can unit escaping • The financial loss of prize-winning pumpkins is unlikely to be allowed as a result of the top of the can unit escaping and / or is unlikely to be reasonably foreseeable 		

Question	Answer	Marks	Guidance													
	<ul style="list-style-type: none"> • Conclude that it is likely that the tort has been proved for the contaminated soil but not for the profits on the pumpkins <p>In relation to the potential defence:</p> <ul style="list-style-type: none"> • Discuss whether Cheapsells may claim Act of God – are these weather conditions sufficiently extreme? • Reach any sensible conclusion. <ul style="list-style-type: none"> • Credit any other relevant points. <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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1375 560 1722 595">AO1+AO2 Marks</th> <th data-bbox="1722 560 2069 595">AO3 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1375 595 1722 630" style="text-align: center;">37-45</td> <td data-bbox="1722 595 2069 630" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1375 630 1722 665" style="text-align: center;">28-36</td> <td data-bbox="1722 630 2069 665" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1375 665 1722 700" style="text-align: center;">19-27</td> <td data-bbox="1722 665 2069 700" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1375 700 1722 735" style="text-align: center;">10-18</td> <td data-bbox="1722 700 2069 735" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1375 735 1722 770" style="text-align: center;">1-9</td> <td data-bbox="1722 735 2069 770" style="text-align: center;">1</td> </tr> </tbody> </table>		AO1+AO2 Marks	AO3 marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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Question		Answer	Marks	Guidance													
7	(a)	<p>P1 Reason that under OLA 1957 liability will rest with the occupier of premises</p> <p>P2 Reason that there can be more than one occupier</p> <p>P3 Reason that occupier is defined as a person with a sufficient degree of control over the premises</p> <p>P4 Reason that Mr Black will have a sufficient degree of control over the premises as he is the owner</p> <p>P5 Conclude that statement is accurate</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 marks</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 marks	5	5	4	4	3	3	2	2	1	1
	AO2 Levels	AO2 marks															
5	5																
4	4																
3	3																
2	2																
1	1																
	(b)	<p>P1 Reason that Carrie as an occupier can avoid liability where the damage is caused by an independent contractor</p> <p>P2 Reason that Dave is an independent contractor as he is not an employee of the Manor Hotel</p> <p>P3 Reason that it must be reasonable for Carrie to entrust the work to an independent contractor and rewiring requires an expert</p> <p>P4 Reason that Carrie must take reasonable precautions to check the competence of the contractor and Dave is a qualified electrician</p> <p>P5 Conclude that the statement is inaccurate</p>	5														

Question		Answer	Marks	Guidance
	(c)	<p>P1 Reason that the occupier must do what is reasonable to check that the work of the independent contractor is carried out to a reasonable standard</p> <p>P2 Reason that the more complex the work the less the occupier has to do</p> <p>P3 Reason that Carrie is not an expert</p> <p>P4 Reason that Carrie will not be expected to check the wiring</p> <p>P5 Conclude that the statement is accurate</p> <p>Or</p> <p>P4a Reason that Carrie will be expected to make a visual inspection</p> <p>P5a Conclude that the statement is inaccurate</p>	5	
	(d)	<p>P1 Reason that a warning can prevent a defendant from being liable</p> <p>P2 Reason that Carrie has put up a sign to warn visitors about the renovations</p> <p>P3 Reason that a warning must do what is reasonable to keep the visitor safe</p> <p>P4 Reason that the warning sign is too vague and does not inform Edith of this specific danger</p> <p>P5 Conclude that the statement is inaccurate</p>	5	

Question		Answer	Marks	Guidance													
8	(a)	P1 Reason that a private nuisance is an unlawful and indirect interference with the claimant's use and enjoyment of land	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 marks</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 marks	5	5	4	4	3	3	2	2	1	1
		AO2 Levels				AO2 marks											
5	5																
4	4																
3	3																
2	2																
1	1																
		P2 Reason that Joan has a proprietary interest in the land															
		P3 Reason that the courts will not protect purely aesthetic interests															
		P4 Reason that Joan is bringing a claim for loss of view															
		P5 Conclude that the statement is inaccurate															
	(b)	P1 Reason that noise and dust can amount to an unlawful interference with a person's use and enjoyment of land	5														
		P2 Reason that noise and dust can amount to an indirect interference with a person's use and enjoyment of land															
		P3 Reason that the duration of the nuisance will be a factor in determining what is reasonable															
		P4 Reason that noise and dust from 6.00 am to 10.00 pm every day is unreasonable															
		P5 Conclude that the statement is accurate															

Question		Answer	Marks	Guidance
	(c)	<p>P1 Reason that Ian has a proprietary interest in the land</p> <p>P2 Reason that the tort of private nuisance is concerned with balancing competing interests of occupiers</p> <p>P3 Reason that malicious acts by the claimant is likely to defeat a claim</p> <p>P4 Reason that Ian has undertaken an act in malice by parking his car near the entrance</p> <p>P5 Conclude that the statement is inaccurate</p>	5	
	(d)	<p>P1 Reason that planning permission can be a defence to private nuisance in some circumstances</p> <p>P2 Reason that planning permission has been granted to Katastrophie</p> <p>P3 Reason that the defence can only be used where there is an inevitable change in the character of the neighbourhood</p> <p>P4 Reason that Katastrophie is building a housing estate near a country village which has inevitably changed the character of the neighbourhood</p> <p>P5 Conclude that the statement is accurate</p>	5	

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 candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or 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 or identify some of the points of law in issue. A limited ability to produce arguments based on their material or 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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