

Mark Scheme for June 2013

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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
	Q1 & 3 AP1
	Q1 & 3 AP2
	Q1 & 3 AP3
	Q1 & 3 AP4
	Q1 AP5
	Q2 AO2
	Q1 & 3 Critical Point Q2 Case
	Q2 Bald case Q3 Conclusion
	ALL Not correct
	Q1 Linked case Q2 Link to source
	ALL Not Relevant or Too vague Also no response or response achieves no credit Page checked for response
	ALL Repetition/or 'noted' where a case has already been used in the response
	Q2 Synopticism
	Q1 Use of word 'significance', 'importance' etc Q2 AO1

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

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

- *1 The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- *2 The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.
- *3 Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.
- *4 The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

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

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

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

Awarding Assessment Objectives 1 and 2

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

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

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

* Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.

Aw**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:



This will demonstrate that every page of a script has been checked.

You must also check any additional items eg A, A1 etc, which the candidate has chosen to use. Before you begin marking, use the Linking Tool to 'Link' any additional page(s) to the relevant question(s) and mark the response as normal.

Question	Answer	Marks	Guidance												
1*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>CP Identify that the main issue from the case: that the Court of Appeal used the principle set down by the House of Lords in <i>Lister</i> – the so called ‘close connection’ test – and found that the employer of the nightclub bouncer was liable even though the bouncer had gone home to get a knife before returning to stab the claimant ‘off the employer’s premises’. The fact that he was encouraged to be intimidating and aggressive by his employers was a sufficiently close connection for the court to find them liable. Use any relevant link to the sources – for example <i>It is no answer to claim against the employer to say that the employee was guilty of intentional wrongdoing, or that his act was not merely tortious but criminal. Or that he was acting exclusively for his own benefit, that he was acting contrary to instructions, or that his conduct was the very negation of his employers duty... vicarious liability is not necessarily defeated if the employee acted for his own benefit</i> (Source 4).</p> <p>AP1 Arguments were put forward in the case by counsel for the appellant (and the author of Source 4) that since this was both a deliberate tort and a crime, a number of distinct factors might need to be taken into account such as whether the act was related to friction and confrontation inherent in the employer’s enterprise and the extent of self-determination allowed to the employee as suggested in <i>Bazley v Curry</i>. However, there are those who would argue that no employer would have foreseen this kind of action nor been able to guard against it.</p> <p>LC The case can be linked ‘backwards’ in that it made explicit reference to both <i>Lister</i> and <i>Dubai Aluminium</i> in applying the reasoning from those cases. The case can be linked ‘forwards’ to <i>N v CC Merseyside</i> where a contrasting interpretation of this line of authorities can be seen. Connections (in the case) were also made with <i>Warren v Henleys</i>, <i>Griggs v Southside Hotel</i>, <i>Daniels v Whetstone</i>, <i>Deatons Pty Ltd v Flew</i>, <i>Kettle Bus Co v Ahmad</i>, <i>Dyer v Munay</i>, <i>Vasey v Surrey Free Inns</i>, <i>K v Ritchie Motors</i> and <i>Fontin v Katapodis</i>.</p>	12	<table border="1" data-bbox="1462 247 1832 459"> <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 the 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 available. Where given, the ratio of the case needs to be given an AO2 slant to achieve 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>LC – Max 3 marks for a relevant, linked case The case must be linked for the purpose of showing development. Marks may 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		Answer	Marks	Guidance										
		<p>AP2 Credit any (additional) relevant analytical point(s) such as: whilst the case may stretch the concept of a close connection it is difficult to argue against the practical justice and the social and moral correctness of the judgment.</p> <p>AP3 It is also clear that decisions such as this should raise standards and place employers on a higher level of alertness as to the potential consequences of encouraging reckless and unprofessional behaviour in similar circumstances.</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.</p>	4	<table border="1"> <thead> <tr> <th>AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>10–12</td> <td>4</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 Marks	10–12	4	7–9	3	4–6	2	1–3	1
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Question	Answer	Marks	Guidance												
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Definition: One party (usually an employer) is liable for the torts (and, in some cases, crimes) of another party (usually the employee)</p> <p>Liability based on three conditions being met:</p> <p><u>There must be an employer – employee relationship</u> Who is an employee? Explain the traditional master and servant approach Control test – <i>Cassidy v Ministry of Health; Honeywill and Stein Ltd v Larkin Brothers Ltd; Performing Right Society Ltd v Mitchell & Booker (Palais de Danse) Ltd; Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd</i> (credit also the ‘ordinary person’ test [<i>Cassidy</i>]) Integration test – <i>Stevenson Jordan & Harrison v MacDonald & Evans</i> Economic Reality test – <i>Ready Mixed Concrete (SE) Ltd v Minister of Pensions; Market Investigations Ltd v Minister of Social Security; Ferguson v John Dawson & Partners (Contractors) Ltd</i> No single test – <i>Market Investigations Ltd v Minister of Social Security</i> (Also credit references to: the ‘multiple’ test; the ‘entrepreneurial’ test; ‘four indicia’ test; ‘principal obligation’ test or the ‘independence’ test) Loaned or ‘borrowed’ employees <i>Mersey Docks and harbour Board v Coggins and Griffiths (Liverpool) Ltd</i> <i>Viasystems Ltd v Thermal transfer Ltd</i> <i>Hawley v Luminar Leisure Ltd</i> <i>Biffa Waste Services Ltd v Maschinefabrik</i> <u>Employee must have committed a tort</u> There must be a tort <i>Poland v Parr & Sons</i> <i>Morris v CW Martin</i> <u>The tort must be committed whilst in the course of employment</u> Two tests – traditional <i>Salmond</i> test and the ‘close connection’ (<i>Lister</i>) test. Where the tort is intentional use <i>Lister</i> but for other torts apply <i>Salmond</i> first and, if it is not met, then apply <i>Lister</i>.</p>	16	<table border="1" data-bbox="1462 236 1839 451"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14–16</td> </tr> <tr> <td>4</td> <td>11–13</td> </tr> <tr> <td>3</td> <td>8–10</td> </tr> <tr> <td>2</td> <td>5–7</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>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 statutory/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 (LTS) and from beyond the pre-release materials which have a specific link to the area of law.</p> <p>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*.</p>	AO1 Levels	AO1 Marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4
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Question	Answer	Marks	Guidance
	<p>Traditional (Salmond) test Not in the course of employment – express prohibition Benefit to employer (will be vicariously liable) <i>Rose v Plenty</i> – where employer benefits <i>Century Insurance Co Ltd v Northern Ireland Road Transport</i> – where employee acts in recklessly careless manner <i>Limpus v London General Omnibus Co Ltd</i> – acting in unauthorised manner <i>Poland v John Parr & Sons</i> – authorised acts as in employer’s</p> <p>No benefit to employer (will not be vicariously liable) <i>Twine v Bean’s Express</i> – against express instructions but with no benefit to employer <i>Beard v London General Omnibus Co</i> – against express instructions and not qualified to do so <i>Keppel Bus Co v Sa’ ad bin Ahmed</i> – similar to Poland but reaction disproportionate and completely outside scope of employment</p> <p>On a frolic/Travelling <i>Joel v Morrison; Harvey v RG O’Dell Ltd; Hilton v Thomas Burton; Storey v Ashton; Smith v Stages; Warren v Henlys</i> <i>Heasmans v Clarity Cleaning</i></p> <p>A new approach – the close connection test (McBride suggests: use both tests in combination or, in the case of intentional torts, only use <i>Lister</i>) <i>Bazley v Curry</i> – Canadian Supreme Court – sets the scene for <i>Lister</i> in HL <i>Trotman v North Yorkshire County Council</i> (since overruled by the HL) <i>Lister v Hesley Hall Ltd</i> – overruling <i>Trotman</i> which had applied the Salmond test and setting out new approach (but this was in the context of criminal acts) <i>Dubai Aluminium v Salaam & Others; Jacobi v Griffiths; New South Wales v Lepore; Fennelly v Connex South Eastern Ltd; Bernard v Attorney General of Jamaica; Brown v Robinson;</i> <i>Maga v Trustees of the Birmingham Archdiocese; Weir v Chief Constable of Merseyside Polic; Attorney General v Hartwell; Mattis v Pollock; Grivil v Carroll; MOD v Radclyffe</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) <i>PE to reorder to reflect questions focus on social policy</i></p>

Question	Answer	Marks	Guidance												
	<p>contrast with <i>N v Chief Constable Merseyside</i> Credit principal – agent cases <i>Ormrod v Crossville Motors; Morgans v Launchbury</i> (drivers) Credit reference to the role of indemnity insurance <i>Lister v Romford Ice</i></p>														
	<p>Assessment Objective 2 – Analysis evaluation and application</p> <p>Compensation Effective: It gives claimants access to compensation where immediate defendant is a man of straw Effective: Vindicates compulsory Employer’s Liability Insurance (which gives confidence in system) Ineffective: Means that costs are passed on to public authorities, tax payers, paying customers, increased insurance premiums Ineffective: Merely become loss (re)distribution with no real net gain</p> <p>Deterrence Effective: Encourages high standards of recruitment, training and supervision of staff Effective: Nexus makes employer think about wider context of employment Ineffective: There is no deterrence in ‘blink of an eye carelessness’ or in unforeseen situations (<i>Gravill</i>) or situations that could not have been guarded against Ineffective: There is no deterrent effect on the employee if they are not paying Ineffective: There is no deterrent effect on the employer if they are simply insuring under compulsion</p> <p>Blameworthiness Effective: Requirement of three elements means there is a standard Effective: Requirement of a <i>nexus</i> between tort and employment Ineffective: Contradicts basic fault principle – especially where employer has given explicit prohibition and/or extensive training Ineffective: In many cases liability is effectively strict even where employer is unaware and hasn’t had opportunity to address issue</p>	14	<table border="1" data-bbox="1462 443 1839 671"> <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> <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>	AO2 Levels	AO2 Marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
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Question	Answer	Marks	Guidance										
	<p>Social Justice</p> <p>Effective: Has been used to hold abusers to account – in some cases well after the abuse – ‘sins of the past’</p> <p>Effective: Has been used to counter institutional racism – <i>Jones v Tower Boot Co</i></p> <p>Effective: Raises standards of hygiene, safety and service</p> <p>Ineffective: Blunt instrument subject to (sometimes dubious) judicial interpretation of a close connection – see Lord Neuberger in <i>Maga</i> (duty to evangelise?)</p> <p>Ineffective: High costs (especially insurance) may be anti-business or discourage otherwise worthwhile activity</p> <p>Ineffective: Imposes undue burdens</p> <p>Draw any sensible, logical, reasoned and supported conclusion.</p>		<p>Level 2</p> <p>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</p> <p>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>										
	<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.</p>	4	<table border="1"> <thead> <tr> <th data-bbox="1456 798 1736 837">AO1 + AO2 Marks</th> <th data-bbox="1736 798 1892 837">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1456 837 1736 869">24–30</td> <td data-bbox="1736 837 1892 869">4</td> </tr> <tr> <td data-bbox="1456 869 1736 901">17–23</td> <td data-bbox="1736 869 1892 901">3</td> </tr> <tr> <td data-bbox="1456 901 1736 933">9–16</td> <td data-bbox="1736 901 1892 933">2</td> </tr> <tr> <td data-bbox="1456 933 1736 973">1–8</td> <td data-bbox="1736 933 1892 973">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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3	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Use any relevant cases as illustration when applying the law to the problems.</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of (a):</p> <p>AP1 In order for Floral Farms to be vicariously liable for Amaan’s negligence, three requirements will need to be satisfied. First, Amaan must be in an employer/employee relationship with Floral Farms. Second, it must be established that Amaan has committed a tort. The third requirement is that it must be shown that Amaan’s tort was committed whilst she was in the course of her employment with Floral Farms.</p> <p>AP2 The first requirement would appear to be met. Amaan’s situation is similar to the case of <i>Nethermere v Gardiner</i> and it would be most unlikely any tribunal would find Amaan is ‘in business on her own account’. Indeed, any of the tests of employment are likely to find that Amaan is under such a degree of control that she is, effectively, employed – even if she had a contract stating the opposite (<i>Ferguson v John Dawson</i>). The fact that Floral Farms pay her tax and insurance as well as the fact that they have a high degree of control based on housing her, all point to her being an employee.</p> <p>AP3 The second requirement has been met as there is a clear statement in the question that Amaan has been ‘negligent’. She owes a duty of care (<i>Caparo</i>), she has, it is submitted, fallen below the standard of the reasonable flower picker (<i>Nettleship</i>) and her negligence has led to foreseeable harm (<i>Wagon Mound</i>).</p> <p>CP The third requirement has also been met as the tort has arisen ‘in the course of employment’. This is because Amaan is carrying out an authorised act in a negligent way as seen in the case of <i>Century Insurance</i>. This complies with the <i>Salmond</i> test which would be a conclusive test in a case like this involving an unintentional tort.</p>	<p>10</p> <p>20</p>	<table border="1" data-bbox="1462 236 2069 440"> <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" data-bbox="1462 555 1917 756"> <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) <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>	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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Question	Answer	Marks	Guidance
	<p>CON Reason that Floral Farm will be vicariously liable for Amaan's negligence. Candidates who approach the question based on the close connection test should also be credited where the reasoning is sound.</p>		
(b)	<p>In the case of (b):</p> <p>AP1 In order for Pronto Parcels to be vicariously liable for Bruce's negligence, three requirements will need to be satisfied. First, Bruce must be in an employer/employee relationship with Pronto Parcels. Second, it must be established that Bruce has committed a tort. The third requirement is that it must be shown that Bruce's torts were committed whilst he was in the course of her employment with Pronto Parcels.</p> <p>AP2 The first requirement would appear to be met. Since there is a clear statement that Bruce is a full-time 'employed' delivery driver he would meet the most basic (but perfectly valid) test of employment – the 'control test' <i>Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd</i> and is almost certain to be found to be an employee under any of the other tests.</p> <p>AP3 The second requirement is also met (that there is a tort) as there is clear evidence of negligence both when he causes damage to Kwik Courier's van and when Charlie is injured. He owes a duty of care in both cases (<i>Caparo</i>), he has, it is submitted, fallen below the standard of the reasonable van driver in respect of both the driving carelessly (first incident) and driving illegally (in the second instance) (<i>Nettleship</i>) and his negligence/recklessness has led to foreseeable harm in both instances (<i>Wagon Mound</i>).</p> <p>CP1 The third requirement needs to be considered separately: 1. The damage to Kwik Courier's van. There is likely to be liability here because case law under the <i>Salmond</i> test has confirmed that even where an employee is carrying out an expressly forbidden act, he will still be liable where the act is done in the employer's benefit. Bruce is carrying out such an unauthorised act and, it is submitted, for the benefit of Pronto Parcels (<i>Rose v Plenty</i>).</p>		<p><i>PE to remove reference to contributory negligence as seat belt no longer in question.</i></p>

Question	Answer	Marks	Guidance
	<p>CP2 The injuries to Charlie – here, it is submitted, there is no vicarious liability. This is because Bruce will be considered to be doing an unauthorised act in an unauthorised manner – see <i>Twine v Beans Express</i> where the courts accepted that an employer is not vicariously liable for the acts/omissions of an employer who is acting against strict instructions and where there is no benefit to the company (<i>cf: Rose v Plenty</i>).</p> <p>AP5 Although it is unclear whether Bruce has gone through the red light deliberately or not – also credit any candidates who note that what Bruce has done could be illegal and argue the ‘close connection’ test to a sensible reasoned conclusion. Also credit any discussion of contributory negligence regarding Charlie not wearing a seat belt or of <i>prima facie</i> negligence in Bruce allowing Charlie not to wear a seat belt.</p> <p>CON Any reasonable and reasoned conclusion.</p>		
(c)	<p>In the case of (c):</p> <p>AP1 In order for CAS to be vicariously liable for Dave’s assault, three requirements will need to be satisfied. First, Dave must be in an employer/employee relationship with CAS. Second, it must be established that Dave has committed a tort. The third requirement is that it must be shown that Dave’s tort was committed whilst he was in the course of his employment with CAS.</p> <p>AP2 The first requirement is met to the extent that Dave is clearly an employee of the CAS. <i>Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd</i>. There may be arguments about whether he is under their control whilst acting in this way but the fact remains he <i>is</i> an employee of the CAS.</p> <p>AP3 The second requirement is that Dave has committed a tort. In this instance he has committed a clearly intentional tort (trespass to the person) and a crime (<i>Letang v Cooper</i>). He has directly and intentionally inflicted harm and cannot, in the circumstances described, claim consent (<i>R v Williams; R v Brown</i>) or medical necessity (<i>Re: F</i>).</p>		Candidates who approach the question based on the <i>Salmond</i> tests should also be credited where the reasoning is sound although the CP of this question is awareness of the role of the <i>Lister</i> test so these answers would be capped at Level 3.

Question	Answer	Marks	Guidance
	<p>CP The third requirement has, however, not been met as the tort has not, it is submitted, arisen 'in the course of employment'. In this instance we are dealing with an intentional tort and, whilst the Salmond test might reach a similar conclusion (that Dave was 'on a frolic of his own' and outside the course of employment) it is preferable to use the <i>Lister</i> 'close connection' test. This case can be compared to <i>N v Merseyside Police</i>. Dave's employers had similarly not entrusted Emily to Dave's care and he was using his uniform and first aid kit on a frolic of his own in circumstances where it would not be fair, just or reasonable to hold CAS liable.</p> <p>CON Reason that CAS will not be vicariously liable for Dave's intentional tort.</p>		

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 (<i>includes QWC</i>)
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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