

A Level Law

H415/02 Law making and the law of tort Sample Question Paper

Date – Morning/Afternoon

Time allowed: 2 hours

OCR supplied materials:

- Printed Answer Booklet

You must use:

- Printed Answer Booklet
- A pen



INSTRUCTIONS

- Write your name, centre number and candidate number in the spaces provided on the Answer Booklet. Please write clearly and in capital letters.
- Answer **five** questions in total:
Section A: answer **one** from questions **1–2** and **one** from questions **3–4**
Section B: choose Part 1 **or** Part 2 and answer the **three** questions below.
- Do **not** write in the bar codes.

INFORMATION

- The total mark for this paper is **100**.
- The marks for each question are shown in brackets [].
- Quality of extended response will be assessed in those questions marked with an asterisk (*).
- This document consists of **4** pages.

SECTION A

Law making

Answer **two** questions (**one** from questions 1–2 and **one** from questions 3–4).

Answer **one** question from questions 1–2.

1 Explain the extrinsic aids used in statutory interpretation. [10]

2 Describe the stages of the parliamentary law making process. [10]

Answer **one** question from questions 3–4.

3 Discuss the advantages **and** disadvantages of the literal rule. [15]

4 Discuss the advantages **and** disadvantages of creating law using Acts of Parliament. [15]

SECTION B**Law of tort**

Choose **Part 1** or **Part 2**.

Part 1

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are related.

Ahmed is mowing his lawn with a powerful petrol lawnmower. The mower has a sticker on it stating that goggles must be worn by anyone who gets close to the mower because it can throw up small stones. Ahmed's neighbour, Bilal, comes out of his house and leans on the fence to chat to Ahmed. Ahmed does not warn Bilal that he should wear goggles as he knows Bilal has a similar mower and assumes that he will be aware of the necessary precautions. Ahmed decides to show off by pushing the mower much too fast. The mower hits a stone which is thrown up and hits Bilal in the face causing him serious injuries.

Bilal decides to aid his recovery by paying for an overnight stay at the Lush Breakz Hotel. He awakes in the middle of the night unable to sleep and decides to go to the hotel swimming pool for a swim. A sign on the door reads: 'Pool Closed Overnight – No Entry To Guests During These Hours'. Bilal reads the sign but ignores it and goes in. The swimming pool is in darkness and Bilal cannot find the light so he dives in. Unfortunately the swimming pool has been emptied for maintenance and Bilal is badly injured.

- 5** Advise whether Bilal will be successful in a claim of negligence against Ahmed. **[25]**
- 6** Advise whether Bilal will be successful in a claim in occupier's liability against Lush Breakz Hotel. **[25]**

Essay question on the law of tort

- 7*** Discuss the extent to which vicarious liability is fair on employers. **[25]**

Part 2

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Andy owns a house directly opposite Supa Skreenz who make computer screens and other technical equipment. Supa Skreenz is generally only busy in the daytime when Andy is at work. However, due to a recent business expansion, Supa Skreenz is increasing production and they are working all night. This means that there is noise from the production processes, factory lights shining brightly and fleets of delivery lorries coming and going throughout the night. As a result, Andy cannot sleep. His fifteen year old daughter, Becky, can no longer get a mobile phone signal because Supa Skreenz have also built an extension opposite her bedroom window which blocks out the signal.

Newtown Recycling owns a unit on an industrial estate where they operate a recycling centre. They have a tank, where people can dispose of old motor oil, and a used tyre dump. Clarissa owns a neighbouring allotment where she grows organic vegetables. One night during a terrible storm, the lid of the oil tank is blown off. Rainwater fills the oil tank which overflows, spreading used oil all over Clarissa's allotment, destroying her vegetables. A bolt of lightning strikes the pile of used tyres and sets them alight. The tyres burn rapidly and thick black smoke covers Clarissa's greenhouse with soot.

8 Advise whether Andy and Becky can make successful claims in private nuisance. **[25]**

9 Advise whether Clarissa will be successful in a claim in *Rylands v Fletcher* against Newtown Recycling. **[25]**

Essay question on the law of tort

10* Discuss the extent to which vicarious liability is fair on employers. **[25]**

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...day June 20XX – Morning/Afternoon

A Level Law

H415/02 Law making and the law of tort

SAMPLE MARK SCHEME

Duration: 2 hours

MAXIMUM MARK 100

SPECIMEN

SUBJECT-SPECIFIC MARKING INSTRUCTIONS

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**

Questions 1–2

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.
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Questions 3–4

Assessment Objectives:	AO3 1b: Analyse and evaluate legal concepts and issues. 15 marks.
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Section B

Questions 5, 6, 8 and 9

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
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Questions 7* and 10*

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
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Questions that have an asterisk (*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

Section A

<p>1</p>	<p><i>Explain the extrinsic aids used in statutory interpretation.</i></p> <p>Answers may include:</p> <ul style="list-style-type: none"> • Dictionaries of the time • Hansard, through the rules from <i>Pepper v Hart</i> • Law Commission reports or other law reform bodies' publications • Relevant case law • Relevant Acts of Parliament • Relevant international legal instruments • Academic publications • The Interpretation Act 1978. <p>Credit any other relevant point(s).</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.</p> <p>Level 3 (6–8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.</p> <p>Level 2 (3–5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.</p> <p>Level 1 (1–2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>
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<p>2</p>	<p><i>Describe the stages of the parliamentary law making process.</i></p> <p>Answers may include:</p> <p>Pre-legislative process – Green Paper, White Paper</p> <p>Explain the stages in the House of Commons (or the House of Lords):</p> <ul style="list-style-type: none"> • Bills may start in either House – except finance bills which must start in the House of Commons • First Reading (formality) • Second Reading (discussion of the principles of the Bill, House vote) • Committee Stage (detailed discussion in the whole House, proposed amendments voted on in Committee) • Report Stage (Committee’s proposed amendments presented to the House, House votes on proposed amendments) • Third Reading (Final chance for House vote on the Bill). <p>The other House – bill is passed from House of Commons to House of Lords (or vice versa) for consideration and amendments – it is then passed back to Commons for further amendments – and may then be returned to Lords - can result in ‘ping-pong’.</p> <p>Royal Assent (the final part of the parliamentary process – a formality - not physically signed by the monarch).</p> <p>Credit any other relevant point(s).</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed.</p> <p>Level 3 (6–8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p>Level 2 (3–5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p>Level 1 (1–2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>
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<p>3</p>	<p><i>Discuss the advantages and disadvantages of the literal rule.</i></p> <p>Candidates may develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column.</p> <p>Advantages of the Literal Rule:</p> <ul style="list-style-type: none"> • Gives clarity and therefore predictability • Focusses the mind of Parliament, forcing them to be clear in their language • Respects Parliamentary Sovereignty in that it gives effect to the precise words legislated • Respects the Separation of Powers doctrine as the judges have minimal or no legislative function. <p>Disadvantages of the Literal Rule:</p> <ul style="list-style-type: none"> • Can lead to absurd/unjust results • Can undermine Parliament’s intentions rather than further them • It demands unrealistic perfection from draftsmen and foresight from Parliament • It is based on erroneous assumptions regarding meaning in language. <p>Credit any other relevant point(s).</p>	<p>15 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (12–15 marks) Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p>Level 3 (8–11 marks) Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p>Level 2 (4–7 marks) Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p>Level 1 (1–3 marks) Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p>To attain Levels 3 and 4 candidates need to explain both advantages and disadvantages of the literal rule.</p>
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<p>4</p>	<p><i>Discuss the advantages and disadvantages of creating law using Acts of Parliament.</i></p> <p>Candidates may develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column.</p> <p>Advantages of Parliamentary law making:</p> <ul style="list-style-type: none"> • It is democratic – laws are made by our elected representatives • There is a consultation stage – the pre-legislative process, which allows influences on Parliament • The process in both Houses is lengthy – bills are generally the subject of much debate • Bills must be approved by both the House of Commons and House of Lords • Acts of Parliament can be wide ranging. <p>Disadvantages of Parliamentary law making:</p> <ul style="list-style-type: none"> • Parliament does not have time to deal with all the reforms that are proposed • The legislative process has many stages and can take several months • The government controls the parliamentary timetable • Little time is given to Private Members Bills, which can be voted down by government • Acts of parliament can be very long and complex. <p>Credit any other relevant point(s).</p>	<p>15 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (12–15 marks) Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p>Level 3 (8–11 marks) Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p>Level 2 (4–7 marks) Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p>Level 1 (1–3 marks) Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p>To attain Levels 3 and 4 candidates need to explain both advantages and disadvantages of creating law using Acts of Parliament.</p>
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Mark scheme continued on page 10.

SPECIMEN

Section B

5 Advise whether Bilal will be successful in a claim of negligence against Ahmed.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may**:

Define the basic elements of negligence:

- Duty of care between claimant and defendant – *Donoghue v Stevenson, Caparo v Dickman*
- Breach of duty – falling below the reasonable man test – *Blyth v Birmingham Waterworks*
- Damage caused to the claimant by the defendant.

Explain the factors to establish a duty of care:

- Foresight of damage, proximity and whether it just and reasonable to impose a duty.

Explain factors relating to breach:

- Foreseeability of harm, likelihood of harm, social utility.

Explain factors relating to causation:

- 'But for' test – *Barnett*
- Remoteness of damage – *Wagon Mound (No 1)*
- Break in the chain of causation – new intervening act.

Credit any other relevant point(s).

AO2 Indicative content

Answers **may**:

Reason that Ahmed owes a duty of care to Bilal. Assuming this is a novel situation an application of the *Caparo* test will show:

- It was a reasonably foreseeable event – as evidenced by the existence of a warning
- There is proximity between Ahmed and Bilal in both the physical sense and in terms of Ahmed’s awareness of the potential risk
- It will be fair, just and reasonable to impose a duty in the wider interests of public safety and the ease of taking precautions.

Reason that Ahmed has breached his duty of care by:

- Falling below the standard of the reasonable gardener using a powerful mower
- This is evidenced by the fact that he was showing off and pushing the mower too fast.

Reason that Ahmed has caused Bilal’s injuries and caused reasonably foreseeable harm by:

- Concluding that ‘but for’ Ahmed’s actions, Bilal would not have sustained his injuries
- Concluding that there were no intervening acts which might have broken the chain of causation.

Reason that Bilal’s damages may be reduced due to:

- Not wearing goggles (again knowing he should as he has a similar mower) may be considered contributorily negligent and lead to a reduction in damages.

Reason that Ahmed may escape liability due to:

- Bilal placing himself in known danger (since he has a similar mower) he might be argued to be *volenti*.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6 Advise whether Bilal will be successful in a claim in occupier's liability against Lush Breakz Hotel.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers may:

Identify the appropriate area as occupiers' liability.

State that the area is governed by two Acts of Parliament – one covering lawful visitors (The Occupiers' Liability Act 1957) and one covering non-lawful visitors (trespassers) (The Occupiers' Liability Act 1984).

Explain that under the 1957 Act a lawful visitor can be an invitee, a licensee, or someone with a contractual or legal right to enter.

A lawful visitor under the 1957 Act can become a trespasser when they go beyond their permission.

Identify that the occupier will only owe a duty under s.1(3) of the 1984 Act if:

- (a) He is aware of the danger (or has reasonable grounds to believe it exists)
- (b) He knows or has reasonable grounds to believe that C is in the vicinity of the danger; and
- (c) The risk is one against which, in the circumstances of the case, he may reasonably be expected to offer some protection.

s1(4) states duty is to 'take such care as is reasonable in all the circumstances' to prevent injury to trespassers 'by reason of the danger concerned'.

Explain that the occupier is entitled to take into account the practicality of taking precautions (*Tomlinson v Congleton BC*).

Identify that an occupier is also entitled to expect that a trespasser will not engage in foolhardy pursuits (*Donoghue v Folkestone*).

State that an occupier may also limit the scope of his duty through the use of effective warnings under s1(5) (*Westwood v Post Office*) or *volenti* under s.1(6) (*Ratcliffe v McConnell*).

Credit any other relevant point(s).

AO2 Indicative content

Answers **may**:

Reason that Lush Breakz Hotel will be considered as premises and they will be considered as 'occupiers'.

Reason that Bilal is a paying guest and that, as such, he has a licence (accept either express or implied) to be on the premises. However, when he reads and ignores the notice on the door he becomes a trespasser.

Reason that since Bilal has become a trespasser it is the 1984 Occupiers' Liability Act that will apply to him.

Reason that Lush Breakz will owe a duty of common humanity under the 84 Act if the three aspects of s.1(3) are satisfied: (1) there is an obvious danger when a pool is empty and in darkness; (2) Lush Breakz could anticipate trespassers being in the vicinity of the danger if the door is unlocked; and (3) Lush Breakz could easily have offered some protection by locking the door.

What is the status of the warning notice? Under s.1(5) the warning must be sufficient to enable the trespasser to be safe – *Roles v Nathan*.

Conclude that Lush Breakz look likely to be liable under s.1(3) as they satisfy the three aspects but that the warning notice acts as a full defence since it was capable of making Bilal safe – *Tomlinson v Congleton BC*.

If the warning notice *were* sufficient Bilal may have any damages reduced as he has contributed to his own injuries under the partial defence of contributory negligence (*Sayers v Harlow*) by ignoring the notice.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7* Discuss the extent to which vicarious liability is fair on employers.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

Explain the basic principle of vicarious liability – arises where the employer is liable for the torts of their employees.

Explain the main rules for imposing liability – the tortfeasor must be an employee and the tort must occur in the course of employment (or be closely connected with the employment).

Explain any of the basic tests for establishing that the tortfeasor is an employee – the control test – *Mersey Docks & Harbour Board v Coggins & Griffiths*; the integration test – *Stevenson, Jordan & Harrison v Macdonald & Evans*; the economic reality (multiple) test – *Ready Mixed Concrete & no single test – Market Investigations Ltd v Minister of Social Security*.

Explain the circumstances where the tort falls within the course of employment – authorised acts – *Poland v Parr*; acting in an unauthorised manner – *Limpus v London General Omnibus*; or in a purely careless manner – *Century Insurance v Northern Ireland Transport Board*; where the employer benefits from the tort – *Rose v Plenty*.

Explain circumstances that are not within the course of employment – employee's activities not within the scope of employment – *Beard v London General Omnibus*; employee on a frolic on his own – *Hilton v Thomas Burton*; giving unauthorised lifts – *Twine v Beans Express*.

Explain the new test applicable to intentional torts and crimes developed in *Lister v Hesley Hall* where there is liability if it can be shown that there was a close enough connection with the employment situation – *Mattis v Pollock & Maga v Trustees of the Birmingham Archdiocese*.

Reference to theory of the law of tort, including the objectives of tort law such as fairness and justice.

Credit any other relevant point(s).

AO3 Indicative content

Answers **may**:

Discuss the ways in which imposing vicarious liability is **fair** on employers because the employer:

- benefits from work so should be responsible
- is responsible for the work and should ensure it is carried out safely
- is more easily able to bear any loss than the employee and the employee will often be a man of straw
- is best placed (or legally obliged) to be insured
- is in control of the employee
- can pass costs on as appropriate
- it may encourage the employer to maintain high standards and thus deter poor employment practices
- is able to discipline employees for unsafe practices

- benefits from the decisions in some cases which show that the courts are conscious of imposing unreasonable burdens on business
- is best placed to employ and train 'appropriate' employees
- benefits from a limitation in the scope of vicarious liability via the three conditions which must be satisfied.

Discuss the ways in which imposing vicarious liability may be considered **unfair** to the employer because:

- it is a contradiction of the basic fault principle (problem of blameless defendants)
- the employer may still be fixed with liability even though he has expressly prohibited the unsafe practice
- the rule may operate inconsistently or arbitrarily (e.g. compare *Rose v Plenty* with *Twine v Beans Express*)
- the tort will often have occurred before the employer realises that the employee behaves badly and should be disciplined which goes against natural justice
- the employer may be liable even for mere carelessness on the employee's part – *Century Insurance*
- making a system of law based on personal responsibilities doesn't fit a world dominated by impersonal organisations.

Credit any reference to the potential unfairness of the rule in *Lister v Hesley Hall* and how it has been applied in subsequent cases (*Dubai Aluminium v Salaam*, *Mattis v Pollock & Maga v Trustees of the Birmingham Archdiocese*) – these cases have blurred the line between what is connected to the employers business and the behaviour complained of.

Link made to tort law theory relevant to the focus of the question.

Reach any sensible conclusion on the extent to which the doctrine is fair or unfair.

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9–10	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6–8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3–5	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

8 Advise whether Andy and Becky can make successful claims in private nuisance.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

Define the tort of private nuisance – an unlawful, indirect interference with another person's use or enjoyment of land or rights over it.

Identify that a potential defendant is an occupier of land *Tetley v Chitty*.

Explain that for a claimant to sue he must be able to show an interest in the land affected by the nuisance *Malone v Laskey*, *Hunter v Canary Wharf* – and that those lacking a proprietary interest cannot sue.

Identify the type of indirect interference giving rise to liability:

- Noise or vibrations – *Sturges v Bridgman*
- Smoke and fumes – *St Helens Smelting v Tipping*
- Smell – *Bliss v Hall*
- Damage – *St Helens Smelting v Tipping*
- Hot air – *Robinson v Kilvert*.

Identify that there is a difference between nuisance causing damage and one causing interference with comfort or the enjoyment of land *Halsey v Esso Petroleum*.

Identify the occupier's measured duty of care – *Holbeck Hall Hotel v Scarborough BC*.

Explain that the term unlawful actually means unreasonable.

Identify the elements that may be taken into account in determining whether the use of land is unreasonable:

- Locality – *Sturges v Bridgman*, *Kennaway v Thompson*, *Laws v Florinplace*
- Duration – *Spicer v Smees*, *De Keyser's Royal Hotel v Spicer Bros*
- Sensitivity – *Robinson v Kilvert*, *Network Rail*.

Identify that the presence of malice *Hollywood Silver Fox Farm v Emmett* by either party *Christie v Davey* may have an impact.

Explain the law relating to nuisance and the Human Rights Act – *Marcic v Thames Water*.

Explain the possible defences:

- local authority planning permission *Gillingham BC v Medway Dock* (but see *Wheeler v JJ Saunders*)
- and the effect of public policy *Adams v Ursell*, *Miller v Jackson*.

Identify the basic remedies:

- Damages – *Halsey*
- Injunctions – *Kennaway v Thompson*

• Abatement.

Credit any other relevant point(s).

AO2 Indicative content

Answers **may**:

In respect of Andy:

Reason that:

- Andy is an occupier as he has a proprietary interest in the land affected – *Hunter v Canary Wharf*
- Since there is no physical damage, the claim will be based on interference with comfort and enjoyment of land and this will involve establishing unreasonable use of land – *St Helens Smelting Co v Tipping; Sturges v Bridgman*
- The interference is indirect and continuous despite only starting recently – *Crown River Cruises Ltd v Kimbolton Fireworks Ltd; Halsey v Esso*
- The case has a similarity to *Halsey v Esso* and the change of practice may have created a level of unreasonableness in the potential nuisance
- Andy will need to check that Supa Skreenz do not have planning permission or statutory authority.

Conclude that based on *Halsey v Esso*, Andy may well have an actionable nuisance.

In respect of Becky:

Reason that:

- Because Becky is only aged fifteen and because she has no proprietary interest in the property (as it is her father's house), she will be unable to bring a claim under the rule laid down in *Hunter v Canary Wharf*
- This doesn't stop Andy bringing an action if his signal is similarly affected. He would need to establish unreasonable use of land and check that Supa Skreenz do not have planning permission or statutory authority
- The problem is very similar to the facts of *Hunter v Canary Wharf* and it may be that the court would take a different view about the value of mobile phone signals in people's lives to that taken regarding TV signals at the time.

Conclude that Becky is unlikely to have an actionable nuisance.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

9 Advise whether Clarissa will be successful in a claim in Rylands v Fletcher against Newtown Recycling.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

Explain that a claimant must have an interest in the land to pursue a claim as in the case of nuisance *Transco, Hunter v Canary Wharf*.

Explain that a defendant needs to be either the accumulator or the occupier of the land accumulated on *Read v Lyons*.

Explain that for a claim in *Rylands v Fletcher*, a claimant will have to show that:

- The thing was brought and accumulated on the defendant's land – *The Charing Cross Case, Giles v Walker*
- The thing escaping causes damage and note the position (at least) regarding fire under *Stannard v Gore*
- The thing will be likely to cause mischief if it escapes – *Rylands v Fletcher, Hale v Jennings Bros* although the thing itself need not be inherently dangerous – *Shiffman*
- There must be an escape but this can be either from land over which the defendant has control *Read v Lyons* or from circumstances over which the defendant has control – *Transco, British Celanese v Hunt, Hale v Jennings*
- The thing escaping must cause damage
- The harm must be foreseeable – *Cambridge Water v Eastern Counties Leather, Transco*.

Explain that the use of land must be non-natural:

- A potentially dangerous activity – *Cambridge Water v Eastern Counties Leather*
- Things stored in large quantities – *Mason v Levy Autoparts, Musgrove v Pandelis*
- 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 – *British Celanese v Hunt*.

Explain that claims are unlikely to be permitted for personal injury – *Cambridge Water* and financial loss – *Weller v Foot & Mouth Disease Research Unit*.

Explain the defence of Act of God *Nicholls v Marsland*.

Identify the available defences:

- Volenti non fit injuria – *Peters v Prince of Wales Theatre*
- Common benefit – *Dunne v North West Gas Board*
- Act of God – *Nicholls v Marsland*
- Act of a stranger – *Perry v Kendrick's Transport*
- Damage caused through claimant's fault – *Eastern & South African Telegraph v Cape Town Tramways*.

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

In respect of the damage to Clarissa's vegetables

- The oil has been brought onto Newtown Recycling's land
- Oil (especially used oil) is a thing which is likely to cause mischief if it escapes
- Oil escapes by running into Clarissa's land when the water forces it out of the tank
- Storage of oil in such industrial quantities is likely to be considered as non-natural use of land since Transco and 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 vegetables can be claimed for
- Damage to the soil is a foreseeable type of loss as a result of the oil tank losing its lid and the oil escaping.

In respect of the damage to Clarissa's greenhouse

- The tyres have been brought onto Newtown Recycling's land and accumulated there
- Burning rubber tyres are things likely to cause a mischief if they escape
- What actually escapes from Newtown Recycling's land is the smoke from the tyres
- 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 may be a public benefit derived from the use of the land as it may be a community recycling facility which might 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 (property on the land) is the kind of damage which can be claimed for
- Damage to the greenhouse is a foreseeable type of loss as a result of the type of thick black smoke associated with burning rubber
- However, there are arguments on both sides relating to this type of 'escape'. According to the case of *Stannard v Gore* escaping smoke from a fire would not be counted as the *thing itself* escaping but other case law supports the escape of things like fumes from chemicals and explosions from dynamite.

In relation to any potential defences to both:

- Discuss whether Newtown recycling may claim Act of God – are these weather conditions sufficiently extreme?
- Reach any sensible conclusion.

Reach any sensible conclusion on whether the tort is actionable in both instances.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

10* Discuss the extent to which vicarious liability is fair on employers.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

Explain the basic principle of vicarious liability – arises where the employer is liable for the torts of their employees.

Explain the main rules for imposing liability – the tortfeasor must be an employee and the tort must occur in the course of employment (or be closely connected with the employment).

Explain any of the basic tests for establishing that the tortfeasor is an employee – the control test – *Mersey Docks & Harbour Board v Coggins & Griffiths*; the integration test – *Stevenson, Jordan & Harrison v Macdonald & Evans*; the economic reality (multiple) test – *Ready Mixed Concrete & no single test – Market Investigations Ltd v Minister of Social Securit.*

Explain the circumstances where the tort falls within the course of employment – authorised acts – *Poland v Parr*; acting in an unauthorised manner – *Limpus v London General Omnibus*; or in a purely careless manner – *Century Insurance v Northern Ireland Transport Board*; where the employer benefits from the tort – *Rose v Plenty*.

Explain circumstances that are not within the course of employment – employee's activities not within the scope of employment – *Beard v London General Omnibus*; employee on a frolic on his own – *Hilton v Thomas Burton*; giving unauthorised lifts – *Twine v Beans Express*.

Explain the new test applicable to intentional torts and crimes developed in *Lister v Hesley Hall* where there is liability if it can be shown that there was a close enough connection with the employment situation – *Mattis v Pollock & Maga v Trustees of the Birmingham Archdiocese*.

Reference to theory of the law of tort, including the objectives of tort law such as fairness and justice.

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

Discuss the ways in which imposing vicarious liability is **fair** on employers because the employer:

- benefits from work so should be responsible
- is responsible for the work and should ensure it is carried out safely
- is more easily able to bear any loss than the employee and the employee will often be a man of straw
- is best placed (or legally obliged) to be insured
- is in control of the employee
- can pass costs on as appropriate
- it may encourage the employer to maintain high standards and thus deter poor employment practices

- is able to discipline employees for unsafe practices
- benefits from the decisions in some cases which show that the courts are conscious of imposing unreasonable burdens on business
- is best placed to employ and train 'appropriate' employees
- benefits from a limitation in the scope of vicarious liability via the three conditions which must be satisfied.

Discuss the ways in which imposing vicarious liability may be considered **unfair** to the employer because:

- it is a contradiction of the basic fault principle (problem of blameless defendants)
- the employer may still be fixed with liability even though he has expressly prohibited the unsafe practice
- the rule may operate inconsistently or arbitrarily (e.g. compare *Rose v Plenty* with *Twine v Beans Express*)
- the tort will often have occurred before the employer realises that the employee behaves badly and should be disciplined which goes against natural justice
- the employer may be liable even for mere carelessness on the employee's part – *Century Insurance*
- making a system of law based on personal responsibilities doesn't fit a world dominated by impersonal organisations.

Credit any reference to the potential unfairness of the rule in *Lister v Hesley Hall* and how it has been applied in subsequent cases (*Dubai Aluminium v Salaam*, *Mattis v Pollock & Maga v Trustees of the Birmingham Archdiocese*) – these cases have blurred the line between what is connected to the employers business and the behaviour complained of.

Link made to tort law theory relevant to the focus of the question.

Reach any sensible conclusion on the extent to which the doctrine is fair or unfair.

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9–10	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6–8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3–5	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1–2	10	0	0	0	10
3–4	0	0	0	15	15
5 or 8	10	15	0	0	25
6 or 9	10	15	0	0	25
7* or 10*	10	0	15	0	25
Total	40	30	15	15	100

**AO2 elements 1a and 1b will be awarded jointly

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