

Mark Scheme for June 2010

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of pupils of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, OCR Nationals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support which keep pace with the changing needs of today's society.

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.

© OCR 2010

Any enquiries about publications should be addressed to:

OCR Publications
PO Box 5050
Annesley
NOTTINGHAM
NG15 0DL

Telephone: 0870 770 6622
Facsimile: 01223 552610
E-mail: publications@ocr.org.uk

- 1* Discuss the significance of the decision in the case of *Wheat v E Lacon & Co. Ltd* [Source 2 page 3 Special Study Material] to the development of the law on occupiers' liability. [16]

Mark Levels	AO2
Level 5	11-12
Level 4	9-10
Level 3	7-8
Level 2	4-6
Level 1	1-3

Mark Levels	AO3
Level 4	4
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

Assessment Objective 2 (12)

- P1** Identify the major issue in the case – the claimant had been injured when falling down stairs in the private quarters of a public house because there was no light;
- P2** Identify that the court accepted that the injury occurred because of the state of the premises;
- P3** Recognise the fact that the first question for the court was which party, the brewery or the manager of the pub, was the occupier in the circumstances?
- CP4** Discuss the principle identified by the court:
- that an occupier is one who has control of the premises at the time of the incident;
 - that it is possible to have more than one occupier.
- P5** Discuss the fact that the court felt that the brewery had sufficient control over the private areas in the circumstances to put them under a duty to visitors because the manager only had a license and they had a right to do repairs to the private parts – but that the manager also had certain control over the private parts of the premises;
- P6** Discuss the fact that neither party was found to be in breach of their duty because before the accident there was nothing dangerous about the premises – and the thing that created the danger was an act of a stranger;
- P7** Link to any relevant case for development eg *Collier v Anglian Water Authority*.
- P8** Any other relevant comment.

Candidates will be unable to achieve level 5 without including the critical point (CP), without reference to the command word in the question or a synonym of that word, and without making reference to a linked case.

Assessment Objective 3 (4)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2* In Source 5 [page 5 lines 34-36 Special Study Material] Lord Hoffman suggests that “it will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land”.

Discuss how accurately the above statement reflects the way in which the courts have developed the rules on the duty owed by an occupier to trespassers to his land. [34]

Mark Levels	AO1	AO2	AO3
Level 5	14–16	13–14	–
Level 4	11–13	10–12	4
Level 3	8–10	7–9	3
Level 2	5–7	4–6	2
Level 1	1–4	1–3	1

Potential answers **MAY**:

Assessment Objective 1

(16)

Explain that the 1984 Act was introduced to provide a limited duty of care mainly towards trespassers;

Explain that the origin of liability under the Act was from the ‘common duty of humanity’ in *British Railways Board v Herrington* – overruling *Addie v Dumbreck* on the existence of a duty of care to trespassers, particularly child trespassers;

Explain that by section 1(1)(a) a duty applies in respect of people other than visitors for ‘injury on the premises by reason of any danger due to the state of the premises or things done or omitted to be done on them’;

Explain that the occupier will only owe a duty under section 1(3) if:

- he is aware of the danger or has reasonable grounds to believe it exists;
- he knows or has reasonable grounds to believe that the other is in the vicinity of the danger (in either case whether the other has lawful authority for being in that vicinity or not); and
- the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection;

Explain that the first part of the test is subjective and based on the occupier’s actual knowledge, but the final part is objective and based on what a reasonable occupier should do in the circumstances;

Explain that by section 1(4) the duty is to ‘take such care as is reasonable in all the circumstances’ to prevent injury to the non-visitor ‘by reason of the danger concerned’;

Explain that damage to property is not covered by the Act;

Explain that an occupier is entitled to take into account the practicality of taking precautions and the age of the trespasser *Tomlinson v Congleton Borough Council*;

Explain that an occupier is also entitled to expect that a trespasser will not engage in a foolhardy escapade *Donoghue v Folkestone Properties*;

An occupier can evade liability through effective warnings under section 1(5) *Westwood v The Post Office* and the defence of volenti under section 1(6) *Ratcliffe v McConnell*;

But the effect of exclusion clauses is less certain.

Assessment Objective 2**(14)**

Discuss the fact that the Act came about because traditionally at common law trespassers were treated rather harshly and an occupier owed such entrants no duty at all, other than possibly to refrain from deliberately or recklessly inflicting damage or injury – so in this respect the quote does not necessarily apply;

Discuss the fact that it was the growth of more dangerous premises and the difficulties of making children appreciate danger that led to the Act;

Consider also that the standard is a minimum standard – again imposing a high level of care on the occupier;

Discuss the assertion that trespassers are unlawful entrants entering at their own risk and so the duty itself is unfair to the occupier and that occupiers should be allowed to guard their property no matter what;

Discuss the criteria for imposing a duty under section 1(3) – and the fact therefore that this duty obviously operates only in fairly limited circumstances;

Discuss also that the 1984 Act provides compensation for injuries only and so reflects the understandable view that trespassers are deserving of less protection than are lawful visitors;

Discuss the application of the principle in *Cole* [2007] that the damage must be caused by the ‘state of the premises’;

Consider that in *Tomlinson v Congleton* and *Donoghue v Folkestone* this supports the view that there is no apparent duty for inherently dangerous activities that trespassers undertake on the occupier’s land;

Consider the effect of warnings – an effective warning giving clear indication of the danger is sufficient for an adult trespasser *Westwood v The Post Office* – supporting the quote;

But this may not be the case with a child trespasser *Herrington v B R Board*;

Consider also the effect of volenti when the trespasser is fully aware of the extent of the risk *Ratcliffe v McConnell* – again supporting the quote;

Reach any logical conclusion.

Candidates will not satisfy the level 5 descriptor without engaging in a discussion using the quotation given in the question and without reaching a conclusion.

Candidates will not satisfy the level 3 descriptor without including a range of points on some of the issues in the question though there may not be a clear focus provided by the question.

Assessment Objective 3**(4)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 3 Consider whether a successful claim under the Occupiers' Liability Act 1957 is possible in each of the following situations against the Professional Academy:
- (a) Quentin, an expert on local history, is contracted with the Professional Academy to deliver a lecture on 'Local Legends'. As he begins to speak a large spotlight falls from the roof of the Professional Academy lecture theatre, injuring Quentin. The light has recently been installed by Oliver, an unqualified electrician. (10)
- (b) Reggie, an electrical contractor, is contracted by the Professional Academy to install a new spotlight. Reggie connects the new spotlight without switching the electricity supply off. He receives an electric shock, and falls off his ladder suffering a broken leg. (10)
- (c) Sara, the four-year-old daughter of the Professional Academy receptionist, regularly comes to work with her mother. Sara wanders off when her mother is on the phone and injures her foot on a rusty nail sticking out from a floorboard. (10)

[30]

Mark Levels	AO1	AO2	(a), (b) or (c)
Level 5	9–10	17–20	9 – 10
Level 4	7–8	13–16	7 – 8
Level 3	5–6	9–12	5 – 6
Level 2	3–4	5–8	3 – 4
Level 1	1–2	1–4	1 – 2

Potential answers **MAY**:**Assessment Objective 1**

(10)

Explain the scope of the duty under section 2(2) 1957 Act – to take reasonable care to keep the visitor safe for the purposes for which the visitor is permitted entry onto the premises;

Define occupier – a person in control of the premises *Wheat v Lacon*;

Explain that premises is defined in section 1(3) 1957 Act as any 'fixed or movable structure';

Explain that under section 2(4)(b) the occupier can avoid liability where the damage is caused by work negligently done by an independent contractor if:

- it was reasonable to hire a contractor for the work;
- a competent contractor was chosen;
- the work was inspected if appropriate *Haseldine v Daw*.

Explain the special duty and higher standard of care owed to children under section 2(3)(a) – and the basic acceptance that a child is more at risk *Moloney v Lambeth BC* – and the basic allurements principle in common law *Taylor v Glasgow Corporation* – and the broad view of foreseeable harm *Jolley v Sutton LBC*;

Explain also that case law identifies that the occupier may expect parents to supervise young children *Phipps v Rochester Corporation*;

Explain that under section 2(3)(b) the occupier is entitled to expect a person entering to carry out a trade to guard against risks associated with the trade *Roles v Nathan*.

Assessment Objective 2**(20)**

For all three identify the Professional Academy as an occupier, its building as premises and that the incidents are due to the state of the premises.

In the case of **(a)**:

- CP1** • Identify that Quentin is a lawful visitor, having been invited, so falls within the duty in the 1957 Act;
- P2** • Consider whether the Professional Academy can avoid liability under section 2(4)(b);
- P3** • It is clearly reasonable to hire an electrical contractor to install a spot light, and is probably not reasonable in the circumstances to expect the Professional Academy to inspect the work;
- P4** • However, the Professional Academy must hire a competent contractor – this includes checking insurance *Gwillam v West Hertfordshire NHS Trust* – and it is unlikely that an unqualified electrician like Oliver would be insured – so the Professional Academy is unlikely to be able to avoid liability.

In the case of **(b)**:

- CP1** • Identify Reggie as a lawful visitor – he has a contractual license as a hired craftsman;
- P2** • Consider whether Professional Academy is entitled to avoid liability under section 2(3)(b);
- P3** • Discuss the fact that an occupier is entitled to expect a person entering to carry out a trade to guard against risks associated with the trade *Roles v Nathan*;
- P4** • As an experienced electrical contractor Reggie should have known the risk he was taking and Professional Academy is unlikely to be found liable in the circumstances.

In the case of **(c)**:

- CP1** • Identify Sara as a lawful visitor – at the least she has an implied license because the Academy is aware that she regularly visits;
- P2** • Discuss the fact that because Sara is a child the Academy owe her a higher standard of care under section 2(3)(a) – *Moloney v Lambeth BC* and credit any reference to the allurement principle *Taylor v Glasgow Corporation*;
- P3** • Consider whether Professional Academy will be able to rely on the principle that the occupier may expect parents to supervise young children *Phipps v Rochester Corporation*;
- P4** • Discuss the fact that, as Sara's mother is at work it may be impossible for her to supervise Sara, and as such the Academy may have assumed responsibility for Sara.

Candidates will not satisfy the level 5 descriptor without making wide ranging points, including analysis of the critical point (CP), and without reference to a linked, and relevant, case.

Annotations**Questions 1 and 3**

P1, P2 etc	to indicate the point identified
CP	to indicate the critical point identified
P1p	to indicate that a part of the point has been identified
R	repetition
}	irrelevant (use for more than a couple of lines of text otherwise use the following)
N/R	not relevant
N/Q	not quite
S/O	sort of

Question 2

✓	knowledge (AO1)
def	definition (AO1)
def/s	definition / statute (AO1)
C1 etc	to indicate cases (AO1)
C1+	to indicate a case which has been well developed
AO2	to indicate a bold comment
AO2+	to indicate developed comment / discussion
AO2(LTQ)	to indicate a bold comment that is linked to the quote
AO2(LTQ)+	to indicate a developed comment / discussion that is linked to the quote
LTS	indicates either AO1 / AO2 comment that is linked to the source
R	repetition
}	irrelevant (use for more than a couple of lines of text otherwise use the following)
N/R	not relevant
N/Q	not quite
S/O	sort of

Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

OCR (Oxford Cambridge and RSA Examinations)
1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

14 – 19 Qualifications (General)

Telephone: 01223 553998

Facsimile: 01223 552627

Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office; 1 Hills Road, Cambridge, CB1 2EU
Registered Company Number: 3484466
OCR is an exempt Charity

OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553

© OCR 2010

