

Mark Scheme for June 2011

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 2011

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

This mark scheme must be used in conjunction with the Advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

Candidates can score in the top bands without citing all the points suggested in the scheme. Answers, which contain no relevant material at all, will receive no marks.

For question 1 AO3 marks should be awarded as follows:

- If 1-3 marks awarded for AO2 = award 1 AO3 mark
- If 4-6 marks awarded for AO2 = award 2 AO3 marks
- If 7-9 marks awarded for AO2 = award 3 AO3 marks
- If 10-12 marks awarded for AO2 = award 4 AO3 marks

For question 2 AO3 marks should be awarded as follows:

- If 1-8 marks awarded for AO1/AO2 = award 1 AO3 mark
- If 9-16 marks awarded for AO1/AO2 = award 2 AO3 marks
- If 17-23 marks awarded for AO1/AO2 = award 3 AO3 marks
- If 24-30 marks awarded for AO1/AO2 = award 4 AO3 marks

- 1* Discuss the development made to the law on trespass to the person by the case of *Herd v Weardale Steel, Coal and Coke Co* [Source 5 page 6 Special Study Materials]. [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 – Analysis, evaluation and application

[12]

Identify the major issue in the case – the appellants, miners in a breach of contract action, argued that they had been falsely imprisoned when they were prevented from returning to the surface in conditions that they believed to be dangerous

Identify that their appeal was unsuccessful

Discuss the development arising from the case – it is not false imprisonment to hold a person to contractual conditions that they have already accepted, even if this restricts their free movement

Discuss the reasoning given by the court:

- The miners were *volenti*
- They had accepted the terms by which they went underground – that they should stay till the end of their shift
- So they were bound by those terms and could not avoid them
- The pit owner was not obliged to take them to the surface.

Credit any discussion of the analogy drawn by Viscount Haldane of a train stopping at a signal:

Contrast with any other relevant case on false imprisonment for development eg *Robinson v Balmain Ferry*

Make any other relevant point.

Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without discussing the key critical point arising from the case and using a linked case to show development. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion does this and identifies the role played by judges in developing the law.

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 6 [page 7 line 1 Special Study Materials] the author suggests that “*the remaining importance of trespass to the person is in the area of civil liberties ...*”.

Discuss the extent to which judges have succeeded in protecting ‘civil liberties’ in developing rules in the tort of trespass to the person. [34]

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

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

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding [16]

Identify that there are three types of trespass to the person: assault, battery, false imprisonment

Define assault – intentionally and directly causing the other to reasonably apprehend imminent battery

Explain the essential elements of the tort:

- Intention concerns effect produced in claimant *Blake v Barnard*
- Traditionally required an active threat *Read v Coker*
- Words alone were insufficient *Tuberville v Savage* (but see *R v Ireland*, *R v Burstow* in criminal law may be persuasive in tort).

Identify that the fact that the claimant does not intend or cannot carry out the tort does not matter as long as it reasonably produces and is intended to produce the effect of apprehension in the victim *Stevens v Myers*

Explain also that if it is not possible to place the claimant in apprehension of imminent battery then there is no assault *Thomas v NUM*

Define battery – intentionally and directly inflicting unlawful force

Explain essential elements of battery:

- Must involve intention not carelessness *Letang v Cooper*
- And requires direct contact – but this is broadly defined *Scott v Shepherd* and *Nash v Sheen*
- Requirement of hostility – compare *Wilson v Pringle* with *Re F*.

Possible defences – *volenti* *Simms v Leigh RFC* and *Condon v Basi*, inevitable accident *Stanley v Powell*, self-defence if reasonable force used *Lane v Holloway*

Define false imprisonment – unlawful, intentional bodily restraint

Explain elements of false imprisonment:

- Requires total restraint *Bird v Jones*
- Can be for short period *White v WP Brown*
- And it does not matter that the claimant is unaware *Meering v Graham White Aviation* or unconscious at the time *Murray v MOD*.

Possible defences – lawful arrest/detention *Tims v John Lewis*, *White v WP Brown*

Credit any relevant references to *Wilkinson v Downton* or the Protection from Harassment Act

Use any other relevant cases.

Assessment Objective 2 – Analysis, evaluation and application**(14)**

Consider that the tort is actionable *per se* so a remedy is available without proof of damage – meaning that the tort is quite effective in protecting civil liberties
Discuss any of the following:

In relation to **assault**:

- The difficulties of assessing damages
- The difficulties associated with use of words – may limit the protection – although if tort law follows the developments in crime then that increases the protection
- The fact that the tort may give less protection in the case of threats of future harm eg *Tuberville v Savage*
- The fact that the threat must be real and imminent and this may limit the protection as a means of preventing threatening behaviour eg *Thomas v NUM*.

In relation to **battery**:

- The fact that there is no need for actual harm to be proved so that the tort is a good protection
- The broad view applied to ‘direct’ eg *Nash v Sheen* thus providing wider protection
- The limitations associated with the requirement of hostility in eg *Wilson v Pringle* – which offers virtually no protection against injury caused by pranks etc – consider whether eg *Re F* offers any further protection
- The fact that this cannot apply in medical cases – but that in any case negligence is more commonly used in this context as it is more effective
- The difficulties associated with consent in a sporting context – compare eg *Simms v Leigh RFC* and *Condon v Basi*
- The difficulties associated with consent in a medical context eg *Re T, Ms B*, *Chatterton v Gerson* and particularly the lack of informed consent eg *Sidaway v Governors of the Royal Maudsley and Bethlem Hospitals* – may limit the extent of protection to patients lacking full understanding.

In relation to **false imprisonment**:

- The limitations of the requirement of total bodily restraint limiting the extent of protection
- The fact that there is even no need to know of the restraint so this is good protection
- The problem that the defences, particularly in relation to complaints about the police, possibly limit the extent of the protection.

Credit any relevant discussion of *Wilkinson v Downton* or the Protection from Harassment Act.

Credit any discussion on whether the quote is accurate.
Reach any sensible conclusion.

Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without a discussion that focuses on the quote. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role played by judges in developing the law, and the justice of their decision making.

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 the possibility of successful claims in trespass to the person in each of the following situations:
- (a) Dick is watching East City play Far Town in a professional football match. His team, East City, is losing 6-0 at half time so he wants to leave but the stewards will not open a gate to let him out. (10)
- (b) Gus, another East City fan, runs to the front of the stand and, while two stewards hold him back, he shouts at the East City goalkeeper "You're useless! I'll kill you if I get hold of you!" (10)
- (c) Gus struggles to get away from the stewards so one of them, Henry, punches Gus in the face as hard as he can. The punch breaks Gus' cheek bone and some of this bone goes into Gus' eye, blinding him in that eye. (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 – Knowledge and understanding [10]

Use any relevant case.

Assessment Objective 2 – Analysis, evaluation and application [20]

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

- Identify the possibility of false imprisonment
- Consider that it is probably a total restraint in the circumstances – there is unlikely to be another means of escape *Bird v Jones*
- Consider the possibility of *Volenti* and reasonable expectations as in *Robinson v Balmain Ferry*
- Reason that there is no available defence because of the time span *Tims v John Lewis* – so a claim may be possible.

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

- Identify the possibility of assault
- Discuss whether words alone are sufficient for a claim (refer also to *Ireland* and *Burstow*) and whether Gus's precise words negate assault *Tuberville v Savage*
- Discuss the fact that there is no need for the threat to be possible as long as the goalkeeper believes it is and apprehends imminent battery but consider whether the goalkeeper could have such apprehension in the circumstances as the stewards are holding Gus back *Thomas v NUM* – so a claim may be unlikely
- Or credit alternative in *Stephens v Myers* actionable if the goalkeeper believed the threat could be carried out.

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

- Identify the possibility of battery *Collins v Wilcock*
- Identify that Henry's action is intentional and direct *Letang v Cooper*, *Scott v Shepherd*
- Consider whether a defence of lawful detention or self-defence is possible – Gus is only trying to get past Henry so the punch is excessive and not reasonable force in the circumstances *Lane v Holloway*
- Reason that a claim may be possible.

Annotations**Questions 1 and 3**

AP1, AP2 etc	to indicate the analytical point identified
CP	to indicate the critical point 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
CON	conclusion (question 3)

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
(AO2)	vague comment
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