

Mark Scheme for January 2011

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SECTION A

- 1* Discuss the argument that the Occupiers' Liability Act 1957 provides justice for all parties.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
Level 2	6-10	5-8
Level 1	1-5	1-4

Mark Levels	A03
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1**(25)**

Explain the basic duty in section 2(1):

- the common duty of care owed to all lawful visitors

Explain that section 2(1) also allows the occupier to extend, restrict modify or exclude his duty

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

Define occupier – not in Act but in common law is a person in control of the premises

Wheat v Lacon

Explain that premises are broadly defined in section 1(3) 1957 Act as any 'fixed or movable structure' and at common law has even included a ladder leaning against a wall

Wheeler v Copas

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 allurement 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*

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 – and choosing a competent contractor may involve checking that the contractor is insured *Bottomley v Todmorden*
- the work was inspected if appropriate *Haseldine v Daw* (compare with *Woodward v Mayor of Hastings*)

Explain that a lawful visitor may become a trespasser by exceeding the proper limits of his visit – section 2(4)(a) – and *The Calgarth*

Explain the available ways of avoiding or reducing liability under the Act:

- sufficient warnings under section 2(4)(a) but must be enough to protect *Rae v Mars*
- use of exclusion clauses in certain circumstances – but subject to UCTA

- *volenti non fit injuria* under section 2(5) – but not if the visitor had no choice but than to enter the premises *Burnett v British Waterways Board*
- contributory negligence under section 2(3)

Assessment Objective 2**(20)**

Discuss any of the following:

- the major purpose in passing the Act was to create a common duty of care to all lawful visitors because prior to the Act different duties were owed to different types of lawful visitor – so this has obviously had the effect of being more fair and consistent to different lawful visitors and possibly fairer to the occupier also
- there is no definition of occupier in the Act so the common law definition applies – the person in actual control of the premises *Wheat v Lacon* – so this certainly seems to be just to the defendant but may leave a lawful visitor without a remedy
- there can be dual liability so this broadens the possibility of a successful claim *Stevens v Anglia Water Authority*
- premises is very broadly defined in both section 1(3) and in common law *Wheeler v Copas* so this also increases the possibility of claiming successfully
- liability is only for the state of the premises which may limit possible claims but an alternative action in negligence is still possible *Ogwo v Taylor* and *Salmon v Seafarers Restaurant* – so this still seems fair to all the parties
- the special duty owed to children under section 2(3)(a) of the Act gives extra protection to the most vulnerable but, without the principle in *Phipps* might prove unfair to the occupier
- the rules on those carrying out a trade under section 2(3)(b) relieves the liability of the occupier quite justly
- the special rules on work of independent contractors under section 2(4)(b) – this is fair to the occupier and the claimant may still have an action against the contractor in negligence
- the numerous means available to the occupier for avoiding liability are more extensive than under common law and so possibly not so fair to potential claimants.

Reach any sensible conclusion

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both visitors and occupier. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role played by judges in interpreting the statutory provisions, and the justice of their decision making as well as of the statute itself.

Assessment Objective 3**(5)**

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

- 2* 'The two main aims of the law of torts are to compensate the victims of wrongdoing and to deter wrongdoing.'

Discuss the extent to which the Animals Act 1971 achieves these aims. [50]

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Potential answers **MAY**:

Assessment Objective 1 (25)

Explain that the Act imposes liability on the 'keeper' of an animal

Explain that under section 6(3) the 'keeper' is either the owner of the animal or the head of a household in which a person under 16 is the owner

Explain that the Act distinguishes between dangerous and non-dangerous species

Define dangerous species under the Act:

- By section 6(2) – an animal not commonly domesticated in UK & with characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe
- Dangerous is a question of fact in each case *Behrens v Bertram Mills Circus*
- By section 2(1) the keeper is strictly liable for any animal defined as dangerous
- By section 5 the only defences are *volenti* or where the damage was caused by the claimant's own fault.

Define where liability exists for non-dangerous species under section 2(2) of the Act:

- The keeper is liable if:
 - (a) The damage is of a kind the animal is likely to cause unless restrained or if caused by the animal is likely to be severe; and
 - (b) The likelihood or severity of damage is due to abnormal characteristics of the individual animal or species or of species at specific times; and
 - (c) The keeper knows of the characteristics

Identify that all three parts of section 2(2) must be shown for liability:

- By section 2(2)(a) 'likely' means possible rather than probable *Smith v Ainger* and that 'severe' is a question of fact in each case *Curtis v Betts*
- By section 2(2)(b) a characteristic is abnormal if it is not common in other animals *Cummings v Grainger* and circumstances can vary eg a bitch looking after her litter of pups – but it can also include even apparently unforeseeable circumstances where the keeper is not at fault *Mirhavedy v Henley*

Explain that available defences include:

- Section 5(1) – Damage due entirely to fault of victim *Sylvester v Chapman*
- Section 5(2) – Victim voluntarily accepted risk *Cummings v Grainger*
- Section 5(3) – Animal was either not kept for protection or if so then it was reasonable to do so
- Section 10 – Contributory negligence *Cummings v Grainger*.

Use any other relevant cases.

Assessment Objective 2

Discuss any of the following: (20)

- the different rules applicable to dangerous and non-dangerous species – it might be questionable how this satisfies two conflicting aims
- the definition of keeper is the same regardless of whether the animal is dangerous or non-dangerous – so this would appear to be a very effective deterrent
- that in the case of ‘dangerous’ animals liability is strict so that the keeper is liable for any damage – which is a very efficient deterrent and ensures also that the claimant always receives compensation
- the definition of dangerous may even include animals that are not actually dangerous *Tutin v Chipperfields*, *Behrens v Bertram Mills Circus* – again providing a very efficient deterrent and ensuring that the claimant always receives compensation
- to impose liability on non-dangerous species under the Act it must be shown that damage is likely to be severe - this depends on specific characteristics, and that the keeper knows of those characteristics meaning that liability is easier to avoid for pet owners and therefore there is less deterrent effect and the claimant may go uncompensated
- there is no need for a link between the characteristics and the damage *Curtis v Betts*, *Jandrill v Gillett*, *Dhesi v West Midlands Police* – which increases the deterrent effect and the chance of the claimant being compensated
- the difficulty of distinguishing between permanent and temporary characteristics *Kite v Japp*, *Gloster v Greater Manchester Police*, *Curtis v Betts* – which can be good for the claimant but not so good for the keeper
- the courts have dealt with the issue of characteristics in recent cases *Gloster v Chief Constable of Greater Manchester* and *Mirhavedy (FC) v Henley* – the latter is very much like strict liability – so this may have removed the fault principle for non-dangerous animals making it much more like strict liability ensuring effective deterrence and compensation for the claimant even where the defendant appears not to be at fault
- the Act applies to animals used for guarding *Cummings v Grainger* – which is both a deterrent and ensures appropriate compensation
- the extent to which defences reduce the possibility of successful claims which may diminish the deterrent effect and the chance of compensation
- the more limited circumstances in which a claim can be avoided for animals classed as dangerous by contrast to those classed as non-dangerous (unlikely to be a claim against a pet until it has already done some damage) seems to be a fair distinction and so a greater deterrent for dangerous species seems only appropriate.

Reach any sensible conclusion.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both deterrence and compensation of the claimant. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role played by judges in interpreting the statutory provisions, possibly expanding or contracting the meaning of the sections, the justice of their decision making and the need for reform.

Assessment Objective 3**(5)**

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

- 3* 'There are two main defences used in negligence actions: *volenti non fit injuria* and contributory negligence. However, there is really very little difference between the two.'

Discuss the two defences in the light of the above statement.

[50]

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Potential answers **MAY**:

Assessment Objective 1

(25)

Explain the defence of *volenti non fit injuria*:

- It is a complete defence when
- The defendant has been negligent and caused damage to the claimant
- But the claimant has voluntarily exposed himself to the risk of harm

Explain the essential elements of the defence:

- The claimant exercised free choice in accepting the risk *Smith v Baker*
- The claimant understood the exact nature of the risk *Stermer v Lawson*
- The claimant voluntarily accepted the risk *ICI v Shatwell*

Explain the application of the defence in a sporting context:

- The injury occurred within the rules of the game
- Compare *Simms v Leigh RFC* and *Condon v Basi*

Explain the application of the defence in a medical context:

- The patient must consent to all treatment *Re T*
- And must be made aware of risk in broad terms *Chatterton v Gerson*
- But emergency treatment may be an exception *Leigh v Gladstone*

Explain the defence of contributory negligence

- Only a partial defence under the Law Reform (Contributory Negligence) Act 1945
- Which reduces damages by the extent to which the claimant is responsible for his own harm

Explain the essential elements of the defence:

- The claimant failed to take reasonable care for his own safety *Jones v Livox Quarries*
- This failure to take care was a cause of the harm suffered *Sayers v Harlow UDC*
- Explain the slightly different approach in emergencies *Jones v Boyce*
- Explain the application of the defence in road traffic accidents *Froom v Butcher* and *Owens v Brimmell*
- Recognise the technical possibility of a 100% reduction in damages *Jayes v IMI (Kynoch)* and the arguments against such an approach in *Pitts v Hunt*.

Assessment Objective 2**(20)**

Compare the effects of the defences:

- *Volenti* is a complete defence, contributory negligence is a partial defence only – so the defences differ in this respect
- With *volenti* there is no liability but with contributory negligence damages are reduced to the extent that the claimant is responsible for his own harm
- Before the 1945 Act the effects were the same for both defences, both were complete defences – so there was little difference at that point
- *Volenti* is the free acceptance of a known risk, whereas contributory negligence merely means that the claimant failed to take care of his own safety and partially caused the harm
- There is a more common approach between the two defences where the claimant is a child *Gough v Thorne*
- However, the existence of two defences has caused confusion and it is arguable that reform is needed
- Confusions are sometimes caused by both defences being referred to as consent to harm
- There is greater difficulty in succeeding under *volenti* than under contributory negligence
- In contributory negligence there is an apportioning of blame whereas with *volenti* no blame is attached to the defendant
- There are obvious difficulties in accurately apportioning blame, and thus damages in contributory negligence so *volenti* is a much simpler defence in this respect
- *Volenti* has been used much less since the passing of the 1945 Act
- *Volenti* is not available under the Road Traffic Act because of the availability of compulsory third party insurance, whereas contributory negligence is commonly used in road traffic accidents.

Reach any logical conclusion on the similarities or differences of the two defences.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both defences and on the issue raised by the quote. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role played by judges in interpreting the statutory provisions, and expanding/contracting the common law on the defences.

Assessment Objective 3**(5)**

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

SECTION B

- 4* Alan buys a large house which he converts into student flats to provide him with an income when he retires. Alan takes advice from his surveyor, Barnaby, that the house and the alterations that he is making are appropriate for such use. However, the local authority refuses to grant Alan permission to rent out the flats without making a further £50,000 of alterations, which Alan cannot afford and he has to sell the house at a loss.

Alan recently asked his friend Calum, an accountant, about investing in a company for which Calum prepares the annual accounts. Calum told Alan that it was a good investment which would give a high return. In fact Calum had failed to accurately prepare the company's accounts and the company went into liquidation soon after Alan invested in it, so that Alan lost most of his £60,000 investment.

Advise Alan of any claims that he may make against Barnaby and Calum in negligent misstatement.

[50]

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Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

[25]

Explain that there was originally no liability for negligent misstatement causing a purely financial loss *Candler v Crane Christmas & Co*

Explain also that this was because tort does not generally provide a remedy for a loss of profit which can be recovered in other ways *Spartan Steels v Martin*

Explain the basic criteria for liability for negligent misstatement arising under *Hedley Byrne*:

- existence of a special relationship *Yianni v Edwin Evans*
- possession of specialist skill by the person giving the advice *Hedley Byrne, Mutual Life and Citizens Assurance v Evatt*
- reasonable reliance on the defendant's skill and judgment *Smith v Eric S Bush, Harris v Wyre Forest DC*
- voluntary assumption of responsibility for the advice

Explain also the subsequent additional requirements for liability:

- knowledge of the purpose for which the advice is needed *Caparo v Dickman*
- relevant factors identified in *James McNaughten Paper Group v Hicks Anderson*: purpose for which the statement was made, relationship of all parties, degree of knowledge of defendant
- assumption of responsibility for advice by defendant *Henderson v Merritt Syndicates*

Identify situations in which liability could be found at its widest and the position of advice given in a social context *Chaudhry v Prabhaker*

Identify situations where liability could not be found *JEB Fasteners v Marks Bloom*

Explain the usual position in relation to surveyors – they may be liable even where no contractual relationship exists as long as it is reasonable to rely on the advice they give *Harris v Wyre Forest DC*

Explain the usual position in relation to accountants and auditors – there is no liability towards potential investors in a company because the accounts have not been prepared for that purpose *Caparo v Dickman*.

Assessment Objective 2

(20)

In any claim against **Barnaby** for the negligent survey:

- identify that Alan must fulfil the factors giving rise to liability
- consider whether there is in fact a special relationship – it is reasonable to rely on advice by a surveyor
- discuss whether Barnaby has the specialist skills and knowledge required – purchasers of property are bound to use surveyors so this is clearly the case and Barnaby is a professional surveyor
- discuss the fact that Barnaby knew of the purpose for which the advice was required
- discuss whether it was reasonable for Alan to rely on the advice given by Barnaby – seems likely because it was precise advice he was asked for
- consider whether Barnaby in fact assumed responsibility for the advice that he gave to Alan

In any claim against **Calum** for the investment advice:

- identify that Alan must fulfil the factors giving rise to liability
- consider whether there is a special relationship
- discuss the informal context in which the advice has been given and whether *Chaudhry v Prabhaker* can apply
- identify that Calum certainly has the specialist skills and knowledge required
- discuss whether or not it is reasonable for Alan to rely on the advice in the circumstances – he does not seem to have paid Calum
- consider whether in fact Calum has accepted responsibility for the advice given
- discuss whether there could be liability in the light of the fact that the purpose of preparing the accounts was not for potential investors

Reach any sensible conclusion in each case.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without considering both the survey and the investment advice in depth. Stretch and challenge and synoptic consideration can be demonstrated by candidates who apply principles of law appropriately and comment on the potential outcomes.

Assessment Objective 3

(5)

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

- 5* Ellis works as a driver for Fundrives, which provides stretch limousines to drive parties between different bars. Ellis is paid per trip but Fundrives deducts tax and national insurance from his pay. Fundrives owns the limousine. Under his contract Ellis is allowed to drive for other firms at times when he is not driving for Fundrives.

Ellis is not allowed to smoke while on duty. During one recent trip Ellis was smoking in the limousine. When his passengers came out of the bar he threw his cigarette out of the window and it landed on the dress of one of the passengers, Felicity, ruining it.

Under the contract Ellis is responsible for dealing with clients that get drunk. During another trip a passenger, Garth, got very drunk and was sick in the limousine. When Garth refused to get out of the limousine, Ellis hit Garth breaking Garth's jaw.

Advise Felicity and Garth of any actions that they may have against Fundrives.

[50]

Mark Levels	A01	A02
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
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Mark Levels	A03
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

(25)

Define vicarious liability – imposing liability on a person other than the tortfeasor (usually an employer)

Identify that for the employer to be liable the tortfeasor must:

- be an employee of the defendant
- be acting within the course of employment when the tort occurs (so does not cover acts outside of employment eg a frolic)
- and have committed a tort
- identify that there are also limited situations where there can be liability for the crimes of employees:
- either where there is eg dishonesty *Grace v Lloyd Smith*
- or more recently where the tort is closely connected with the nature of the employment *Trotman, Lister v Hesley Hall* followed in *Mattis v Pollock*

Explain the tests of employment:

- control test *Mersey Docks & Harbour Board v Coggins and Griffiths*
- integration (organisation) test *Stevenson, Jordan & Harrison v Macdonald & Evans*
- economic reality (multiple) test *Ready Mixed Concrete case*
- identify circumstances where the tort falls within the course of employment:
 - authorised acts *Poland v Parr*
 - doing an authorised act in an unauthorised manner *Limpus v London General Omnibus*

- or in a purely careless manner *Century Insurance v Northern Ireland Transport Board*
- and where the employer benefits from the tort *Rose v Plenty*
- and paid travelling time *Smith v Stages*

Identify circumstances that are not within the course of employment:

- activities not within the scope of employment *Beard v London General Omnibus*
- a 'frolic on his own' *Hilton v Thomas Burton*; giving
- unauthorised lifts *Twine v Beans Express*
- crimes generally

Use any other relevant cases.

Assessment Objective 2

(20)

Discuss whether or not Ellis is an employee rather than an independent contractor:

- the economic reality test is probably the most appropriate test to use
- Ellis is paid by the job rather than a set wage
- Fundrives pays his tax and NI
- Ellis uses Fundrive's vehicle
- he is allowed to take other work so he has some independence
- but Ellis is likely to be seen as an employee

For both claimants consider whether the act is a tort and whether Ellis commits it in the course of his employment

In the case of **Felicity**:

- identify that there is probable negligence in Ellis carelessly throwing out the cigarette end – so there is likely to be a tort
- identify that Ellis is engaged in a prohibited act which leads to the tort and the damage to the dress
- consider whether according to *Limpus* Fundrives is liable
- consider also the similarity with *Century Insurance*
- conclude that there is a possibility that Fundrives is liable for the damage

In the case of **Garth**:

- identify that there is a crime involved here as well as a tort
- discuss whether or not it occurs in the course of employment making it actionable against Fundrives
- identify the similarity to *Lister v Hesley Hall* – on the basis of the responsibility given Ellis is authorised to deal with drunken passengers
- consider whether *Mattis v Pollock* applies – Ellis is not authorised to be violent in the same way that a bouncer might be.

Reach any sensible conclusion.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without considering Ellis's employment status and possible claims by both Felicity and Garth. Stretch and challenge and synoptic consideration can be demonstrated by candidates who apply principles of law appropriately and comment on the potential outcomes.

Assessment Objective 3

(5)

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

- 6* Len lives in a quiet country village. Len has local authority planning permission to convert an old brick outhouse in his back garden into an office. Len does the conversion himself. Since Len works long hours in his job, he works on the conversion until very late at night including at weekends.

Len uses powerful floodlights to work by. These are powered by a very noisy generator. Len's neighbour, Mary, complains that both the lights and the noise keep her awake at night. The more Mary complains to Len the later at night he continues to work on the conversion.

Vibrations from the generator also cause an ornamental bird house hanging from a branch in one of Mary's trees to fall, injuring Mary's aged mother, Nerys.

Len also has several bonfires to burn old timbers and other rubbish from the outhouse. Mary complains that smoke from the fires have killed some delicate Japanese plants in her garden.

Advise Mary of any claims that she may make against Len.

[50]

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Potential answers **MAY**:

Assessment Objective 1

(25)

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

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*

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*

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 Smee*, *De Keyser's Royal Hotel v Spicer Bros*
- sensitivity *Robinson v Kilvert*

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

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

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.

Assessment Objective 2

(20)

Identify that the problem concerns private nuisance

Consider the fact that both Len and Mary are occupiers so are potential defendant and claimants in an action for private nuisance

Discuss whether or not Len has *prima facie* created a nuisance

In the case of the **excessive light** and the **noise** from the generator:

- the interference is with Mary's use or enjoyment of her land
- both activities are indirect interference and both are also continuous
- the question is whether or not they are unreasonable:-
- locality may be important (ie the nature of the activity *Sturges v Bridgman* and the effect on the neighbourhood – more likely to be a nuisance in a rural setting)
- sensitivity does not appear to be an issue – certainly the activities being late at night would upset any neighbour

Conclude that there may well be a nuisance

In the case of the **bird house** falling on Mary's mother, Nerys:

- certainly there is indirect interference
- but a claim in nuisance is not possible as Mary's mother has no proprietary interest in land *Hunter v Canary Wharf*

Conclude that no recovery is possible in nuisance for personal injury *Malone v Laskey*

In the case of the destruction of the **Japanese plants**:

- discuss the possible distinction between the interference with enjoyment of land and actual damage *St Helens Smelting v Tipping* and *Halsey v Esso* - no need to prove unreasonable use of land

Conclude that there may be an issue of sensitivity since the plants are very delicate

Consider the effect of any possible defences:

- the only likely one is planning permission but there is no statutory change in the character of the land so it is likely to fail

Discuss the effect of Len's reaction to Mary's complaints – likely to be seen as malice

Consider the likely remedies – damages for the flowers, otherwise an injunction or possibly a restriction as in *Kennaway v Thompson*.

Reach any logical conclusion.

Assessment Objective 3

(5)

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

SECTION C

- 7 At morning break Paul, a schoolboy, pushes another boy, Quentin, in the playground so that Quentin falls and breaks his wrist. Quentin shouts up at Paul “If my wrist was not broken I would punch your face in”. Ruth, their teacher, grabs Paul by the ear and drags him to a third floor office where she locks him in until the end of the day.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

Statement A: Paul is liable to Quentin in the tort in *Wilkinson v Downton*.

Statement B: Quentin is not liable for an assault on Paul.

Statement C: Ruth has not committed a tort by grabbing Paul by his ear.

Statement D: Ruth has falsely imprisoned Paul but has a defence.

[20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
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Potential answers **MAY**:

Assessment Objective 2

(20)

Statement A: Paul is liable to Quentin in the tort in *Wilkinson v Downton*

- P1 Reason that *Wilkinson v Downton* is causing intentional indirect harm
 P2 Reason that harm is caused by Paul’s intentional act of pushing Quentin
 P3 Reason that the harm of a broken wrist is caused directly by Paul pushing Quentin
 P4 Reason that this means an action in trespass to the person is more appropriate
 P5 Conclude that the statement is inaccurate.

Statement B: Quentin is not liable for an assault on Paul.

- P1 Reason that assault involves intentionally and directly causing a person to apprehend imminent battery
 P2 Reason that traditionally words alone could not amount to assault but depending what was said could negate an assault
 P3 Reason that Quentin’s words are conditional and indicate that he will not carry out a battery so there can be no apprehension by Paul
 P4 Reason that his means Paul cannot apprehend an imminent battery
 P5 Conclude that the statement is accurate.

Statement C: Ruth has done nothing wrong in grabbing Paul by his ear.

P1 Reason that a battery can be any unwanted touching other than the ordinary brushes of life and those that are consented to

P2 Reason that Ruth has technically carried out a battery as she has directly applied unwanted force to Paul

P3 Reason that Ruth acts intentionally as she deliberately grabs his ear

P4 Reason that Ruth could have ordered Paul to the room so there is unlikely to be a defence

P5 Conclude that the statement is inaccurate.

Statement D: Ruth will have a defence to a claim of false imprisonment by Paul.

P1 Reason that false imprisonment involves total bodily restraint and Ruth has locked Paul up for several hours

P2 Reason that Paul has no safe means of escape and he does not consent

P3 Reason that Ruth does not have a defence based on mistake as she intended to lock Paul in the office

P4 Reason that there is no lawful justification here and Ruth has exceeded her authority as a schoolteacher so an action for false imprisonment is possible

P5 Conclude that the statement is inaccurate.

- 8 After a fall, Sven went to the hospital and complained of a dreadful headache. The doctor did not examine Sven or order an X-ray, but prescribed Sven pain killers and sent him home. Sven felt too ill to collect the painkillers from the chemist and died later that night. Tests showed that Sven had suffered a fractured skull and brain haemorrhage (internal bleeding) but Sven would have had a 75% chance of a full recovery if the doctor had examined him.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

Statement A: The doctor will not be liable as he does not owe a duty of care to Sven.

Statement B: The doctor will not be liable for Sven's death because there is no liability for a failure to examine.

Statement C: The doctor will not be liable for Sven's death because there is no liability for a loss of a chance.

Statement D: The doctor is not liable to Sven because there was a *novus actus interveniens* when Sven failed to fetch the painkillers.

[20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2

(20)

Statement A: The doctor will not be liable as he does not owe a duty of care to Sven.

P1 Reason that doctors owe a duty of care to patients and as the doctor is on duty he should examine Sven

P2 Reason that it is foreseeable Sven could suffer harm as he is not examined

P3 Reason that there is proximity given the doctor/patient relationship

P4 Reason that it is not unreasonable to impose a duty

P5 Conclude that the statement is inaccurate.

Statement B: The doctor will not be liable for Sven's death because there is no liability for a failure to examine.

P1 Reason that there is generally no liability for a failure to act but sometimes there is a duty so that there can be liability for an omission

P2 Reason one of these is where a special relationship

P3 Reason that there could be a contractual relationship as it is the doctor's job to care for his patients

P4 Reason that the doctor's failure creates liability as an examination is standard practice

P5 Conclude that the statement is inaccurate.

Statement C: The doctor will not be liable for Sven's death because there is no liability for a loss of a chance.

P1 Reason that there is no liability for a mere loss of a chance

P2 Reason that this is because causation must be proved on a balance of probabilities

P3 Reason that the but for test would appear to make the doctor liable

P4 Reason that this is because there is a relatively clear link in time and that on a balance of probabilities the doctor's failure to examine Sven is the likely cause of his death

P5 Conclude that the statement is inaccurate

Statement D: The doctor is not liable to Sven because there was a *novus actus interveniens* when Sven failed to fetch the painkillers.

P1 Reason that if a *novus actus interveniens* by the claimant does break the chain of causation then this will relieve a defendant of liability

P2 Reason that the chain of causation is only broken where the intervening act is in fact the operating cause of the harm suffered and the claimant has acted unreasonably

P3 Reason that Sven's failure to fetch the painkillers is not unreasonable

P4 Reason that even if he had taken the painkillers it would have had no effect on the outcome

P5 Conclude that the statement is inaccurate

Annotations for use

R	repetition
}	irrelevant (use for more than a couple of lines of text otherwise use the following)
S/O	sort of
✓	knowledge (AO1)
def	definition (AO1)
C1 etc	to indicate cases (AO1)
n/o	to indicate use of a case but in name only
^	omission
AO2	to indicate a bold comment
AO2+	to indicate developed comment / discussion
AO2++	to indicate extremely well developed comment / discussion

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.

Possible annotations used in marking this unit

R	repetition
}	irrelevant (use for more than a couple of lines of text)
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✓	knowledge (AO1)
def	definition (AO1)
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