

# **Mark Scheme for January 2011**

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by Examiners. It does not indicate the details of the discussions which took place at an Examiners' meeting before marking commenced.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

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- 1\* Discuss the significance of the case of *Letang v Cooper* [Source 3 page 4 Special Study Materials] to the development of the law of trespass to the person. [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
4	4
3	3
2	2
1	1

Potential answers **MAY**:

**Assessment Objective 2** (12)

- AP** Identify the major issue in the case – the respondent had suffered injury when the defendant carelessly ran over their legs
- AP** Identify why her action was originally brought – because she was time barred in negligence – she succeeded at trial but failed in the defendant’s appeal
- CP** Discuss the significance of the case – that damage caused without intention is not battery
- Discuss the reasoning given by the court:
- CP** Trespass torts require intention
- AP** Damage caused through carelessness should be brought under negligence.
- AP** Discuss also Lord Denning’s logic that – negligence requires damage while trespass does not
- AP** Identify the basis of an action in battery – direct and intentional infliction of unlawful force
- LC** Contrast with any appropriate case on battery for development eg *Cole v Turner* , *Fowler v Lanning*
- AP** Discuss whether the facts sustain the reasoning in *Cole* that ‘the least touching of another in anger is battery’
- AP** Make any other relevant point.

Maximum three marks for Critical point (CP)

Maximum three marks for any Analytical Point (AP)

Maximum three marks for any Second Analytical point (AP)

Maximum three marks for a relevant linked case (LC)

Candidates will be unable to achieve level 5 marks without discussing the key critical point arising from the case, using a linked case to show development and making two further analytical points. Stretch, 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 4 [page 5 lines 38 - 41 Special Study Materials] the authors suggest that “*Ultimately, Goff LJ’s notion of generally acceptable touching [in Re F (Mental Patient: Sterilisation)] falls foul of the same definitional difficulties as Croom-Johnson LJ’s in Wilson v Pringle, what constitutes contact ‘generally acceptable in the ordinary conduct of human life’ is just as problematic as what can be considered hostile*”.

Discuss how the judges have developed rules to overcome this and other ‘definitional difficulties’ in the tort of trespass to the person in the light of the above statement. [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
4	4
3	3
2	2
1	1

Potential answers **MAY**:

### Assessment Objective 1

(16)

Identify that there are three types of trespass to the person: assault, battery and 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 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 reasonable 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*
- 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 a short period *White v WP Brown*

- 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* and to the Protection from Harassment Act

Use any other relevant cases.

### Assessment Objective 2

(14)

Discuss the definitional difficulties of trespass to the person – and how judges have dealt with them:

In relation to assault:

- The difficulties associated with intention – eg Lord Denning in *Letang v Cooper*
- The difficulties associated with direct – contrast eg *Thomas v NUM* with *Stevens v Myers*
- The problems associated with use of words alone – and the various stages of development
- The problems associated with threats of future harm eg *Tuberville v Savage*;
- The problems associated with the immediacy of the threat.

In relation to battery:

- The problems associated with the fact that trespass is actionable *per se*
- The problems associated with intention – eg Lord Denning in *Letang v Cooper*
- The problems associated with direct – and the broad view applied to ‘direct’ in eg *Nash v Sheen*, *Scott v Shepherd*
- The problems associated with the requirement of hostility eg *Wilson v Pringle* and *Re F*
- The fact that this cannot apply in medical cases
- Whether Lord Goff’s definition is any better
- The difficulties associated with consent in a sporting context – eg compare *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 problems of defining total bodily restraint
- The meaning of a safe avenue of escape
- The problems associated with knowledge and that judges have ruled that there is no need to know of the restraint
- The meaning of lawful justification.

Credit any 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 unable to achieve level 5 AO2 marks 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 providing interpretation, 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) Andy undoes the locking nuts on Ben’s bicycle wheels so that the bike falls apart when Ben rides it. Ben suffers a broken leg in the fall. (10)
- (b) Collis, aged 15, throws a stone which breaks the window of his neighbour, Dingle. Having done this, Collis runs away. Dingle, who is arthritic and who uses a walking stick to walk with, shuffles after Collis and shouts out “if it was not for my arthritis I would give you a beating young man”. (10)
- (c) Eric has fallen asleep in Florence’s garden shed after stealing an apple pie from Florence’s window sill and eating it. While Eric is asleep, Florence locks Eric in the shed for several hours to teach him a lesson. However, Eric is still asleep when Florence unlocks the door. (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)

Use any relevant case.

**Assessment Objective 2** (20)

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

- Identify the possibility of battery
- Identify that Andy’s action is intentional *Letang v Cooper*
- Consider whether the definition of ‘direct’ force is broad enough to apply in the circumstances *Scott v Shepherd*
- Reason that there is no obvious defence and that a claim is possible
- Credit any appropriate application of *Wilkinson v Downton*.

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

- Identify the possibility that an assault has occurred
- Discuss whether words alone are sufficient for a claim (refer also to *Ireland* and *Burstow*)
- Discuss the fact that there is no need for the threat to be possible as long as Collis believes it is and apprehends imminent battery *Stephens v Myers* – and consider whether that would have been reasonable in the circumstances *Thomas v NUM*
- Reason that in any case Dingle’s precise words negate assault *Tuberville v Savage* – so a successful claim is unlikely.

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

- Identify the possibility of false imprisonment
- Consider that it is probably a total restraint in the circumstances – there is unlikely to be a window that opens in a shed *Bird v Jones*
- It also does not matter whether Eric is aware of the restraint *Meering v Graham White Aviation*
- Reason that there is no available defence because of the time span *Tims v John Lewis* – so a claim is possible.

For each part:

- Maximum three marks for discussing the relevant law (L)
- Maximum three marks for relevant authorities (A)
- Maximum three marks for applying the law to the facts (F)
- Maximum one mark for a suitable conclusion to the scenario (C)

**Annotations****Question 1**

CP	Critical point
AP	Analytical point
LC	Linked case
+	Well developed... eg CP+
R	Repeat
SO	Sort of
}	Irrelevant material

**Question 2**

C1	Case
C1+	Case – well explained
✓	Credited AO1 material
P or 2	Point (AO2)
DP	Developed point (AO2)
WDP	Well developed point (AO2)
LTS	Link to source
R	Repeat
SO	Sort of
}	Irrelevant material

**Question 3**

R	Definition of Rules
L	<b>Legal authority</b> (law/cases)
A	Factual applications
C	Conclusion
R	Repeat
SO	Sort of
}	Irrelevant material

### 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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> 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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> 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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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