



**GCE**

**Law**

Unit **G157**: Law of Torts

Advanced GCE

**Mark Scheme for June 2014**

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

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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.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

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## Annotations

Annotation	Meaning
	AO2+
	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only or Case with no name
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	Sort of

**Comment [U1]:** Annotations agreed with PE and Ops 22/11/13

Subject-specific marking instructions

**Before** you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria \*<sub>1</sub> (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column\*<sub>2</sub>
- question specific guidance given in 'Guidance' column\*<sub>3</sub>
- the 'practice' scripts\*<sub>4</sub> provided in Scoris and accompanying commentaries

\*<sub>1</sub> The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.

\*<sub>2</sub> The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.

\*<sub>3</sub> Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.

\*<sub>4</sub> The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

**may still** achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

**Awarding Assessment Objectives 1 and 2**

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest\*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided in point 10 of the above marking instructions, with the key point being that you start at the **middle\*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, should receive no marks.

**\* Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.**

**Awarding Assessment Objective 3**

AO3 marks are awarded based on the marks achieved for either AO1, AO2 or in some cases, the total of AO1 and AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

**Rubric****What to do for the questions the candidate has not answered?**

The rubric for G153 instructs candidates to answer **three** questions; one from Section A, one from Section B and one from Section C. For the questions the candidate has not answered you should record **NR** (no response) in the mark column on the right-hand side of the screen. Do **not** record a 0.

**What to do for the candidate who has not complied with the rubric either by answering more than three questions or by answering more or less Section A, B or C questions than is permitted?**

*This is a very rare occurrence.*

Mark all questions the candidate has answered. Scoris will work out what the overall highest mark the candidate can achieve whilst conforming to the rubric. It will **not** 'violate' the rubric.

### **Blank pages and missed answers**

Sometimes candidates will skip a few pages in their answer booklet and then continue their answer. To be sure you have not missed any candidate response when you come to mark the last question in the script you must check every page of the script and annotate any blank pages with an annotation.

This will demonstrate that every page of a script has been checked.

**BP**

You must also check any additional pages eg A, A1 etc, which the candidate has chosen to use.

## SECTION A

Question	Indicative Content	Mark	Guidance												
1*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Define the tort of private nuisance – an unlawful, indirect interference with another person’s use or enjoyment of land in which they have an interest            Explain the need for the claimant to have an interest in the land affected by the nuisance <i>Malone v Laskey</i>, <i>Hunter v Canary Wharf</i>            Explain that potential defendants include:</p> <ul style="list-style-type: none"> <li>• The occupier of the land <i>Tetley v Chitty</i></li> <li>• The creator of the nuisance <i>Southport Corporation v Esso Petroleum</i></li> <li>• Independent contractors</li> <li>• Landlords</li> </ul> <p>Explain that only indirect interference gives rise to liability such as:</p> <ul style="list-style-type: none"> <li>• Noise <i>Sturges v Bridgman</i></li> <li>• Smoke and fumes <i>St Helens Smelting v Tipping</i></li> </ul> <p>Explain that there is a difference between a nuisance causing damage and one causing interference with comfort or the enjoyment of land <i>Halsey v Esso Petroleum</i>, <i>St Helens Smelting Co v Tipping</i>            Explain that the interference must involve an unlawful (unreasonable) use of land            Explain the factors to consider when assessing unreasonableness:</p> <ul style="list-style-type: none"> <li>• Locality <i>Sturges v Bridgman</i>, <i>Kennaway v Thompson</i>, <i>Laws v Florinplace</i>, (and impact of planning permission on locality <i>Gillingham BC v Medway Dock</i>, <i>Wheeler v Saunders</i>)</li> </ul>	25	<table border="1" data-bbox="1115 403 1610 588"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> <li>• Duration <i>Spicer v Smee, De Keyser's Royal Hotel v Spicer Bros</i></li> <li>• Abnormal sensitivity of the claimant <i>Robinson v Kilvert</i> – but see <i>Network Rail Infrastructure v Morris</i> which appears to replace the test with one of foreseeability</li> <li>• The presence of malice <i>Christie v Davey, Hollywood Silver Fox Farm v Emmett</i></li> </ul> <p>Explain the need for the claimant to suffer damage</p> <p>Explain the possibility of a claim under Article 8 HRA 1998 <i>Hatton v UK, Dennis v MOD, Marcic v Thames Water</i></p> <p>Explain the potential defences:</p> <ul style="list-style-type: none"> <li>• 20 years prescription <i>Sturges v Bridgman</i></li> <li>• Statutory authority <i>Allen v Gulf Oil</i></li> <li>• Consent (as when parties share premises) <i>Kiddle v City Business Properties</i></li> <li>• Act of a stranger <i>Sedleigh Denfield v O'Callaghan</i></li> </ul> <p>Explain the ineffective defences:</p> <ul style="list-style-type: none"> <li>• Public policy <i>Adams v Ursell, Miller v Jackson</i></li> <li>• Claimant came to the nuisance <i>Miller v Jackson</i></li> <li>• Defendant took all reasonable care</li> </ul> <p>Explain the available remedies:</p> <ul style="list-style-type: none"> <li>• Injunctions <i>Kennaway vThompson</i></li> <li>• Damages</li> <li>• Abatement</li> </ul> <p>Credit any other relevant point. Credit any other relevant cases.</p>		<p>references may be confused.</p>



Question	Indicative Content	Mark	Guidance													
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Discuss why the tort may be seen as law of give and take and is effective:</b></p> <ul style="list-style-type: none"> <li>• The essence of the tort is balancing competing interests of neighbours so that compromise may result</li> <li>• One person's interests can be protected at the expense of the other party where the other party is acting unreasonably</li> <li>• It is relatively easy to prove nuisance where there is damage <i>St Helens Smelting Co v Tipping</i></li> <li>• The test of unreasonableness gives the court flexibility to apply give and take</li> <li>• The importance of locality in determining unreasonableness gives effect to the give and take principle</li> <li>• Planning permission as merely a factor to consider on the reasonableness of the interference is an example of give and take</li> <li>• The overriding importance of malice by the defendant or claimant on the success of the claim demonstrates how give and take works</li> <li>• Defendant cannot simply claim long established use and that the claimant arrived later to give effect to give and take</li> <li>• The possibility of a claim under Article 8 HRA1998 continues give and take principle</li> </ul> <p><b>Discuss why the tort may no longer give effect to give and take and is ineffective:</b></p> <ul style="list-style-type: none"> <li>• There are difficulties in any case in establishing use of land as unreasonable</li> <li>• Proving liability in nuisance is not straightforward as competing interests often lead to complexity</li> </ul>	20	<table border="1" data-bbox="1115 284 1608 475"> <thead> <tr> <th data-bbox="1115 284 1346 316">AO2 Levels</th> <th data-bbox="1346 284 1608 316">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1115 316 1346 347">5</td> <td data-bbox="1346 316 1608 347">17–20</td> </tr> <tr> <td data-bbox="1115 347 1346 379">4</td> <td data-bbox="1346 347 1608 379">13–16</td> </tr> <tr> <td data-bbox="1115 379 1346 411">3</td> <td data-bbox="1346 379 1608 411">9–12</td> </tr> <tr> <td data-bbox="1115 411 1346 443">2</td> <td data-bbox="1346 411 1608 443">5–8</td> </tr> <tr> <td data-bbox="1115 443 1346 475">1</td> <td data-bbox="1346 443 1608 475">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases. Responses are unlikely to satisfy the descriptor for Level 5 without a discussion that considers whether the tort is effective and ineffective.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<ul style="list-style-type: none"> <li>• The limitations imposed by the courts in the definition given to potential claimants <i>Hunter v Canary Wharf</i>, <i>Malone v Laskey</i> is not necessarily give and take and possibly ineffective</li> <li>• Prescription is limited in its application due to the requirement of 20 years continuous interference.</li> <li>• The lack of public policy as a valid defence means that other important principles may not be considered</li> <li>• Statutory authority can leave a claimant with no remedy for intolerable interferences which may refute give and take</li> <li>• The lack of a defence of taking all reasonable care runs counter to give and take and can make the law ineffective</li> <li>• Statutory nuisance is probably a more effective control of most modern nuisances suggesting that private nuisance struggles to be effective</li> <li>• As yet no successful claims under Article 8 HRA 1998</li> </ul> <p>Discuss the possible reform of replacing private nuisance with negligence based on fault which would be more relevant in a modern context</p> <p>Reach a sensible conclusion. Credit any other relevant comment.</p>															
	<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO1+AO2 marks</th> <th style="text-align: center;">AO3 mark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">37–45</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1+AO2 marks	AO3 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1	
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2*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain the basic principle of vicarious liability – one party (usually an employer) is fixed with liability for the tort (and sometimes the crimes) of another party (usually an employee)</p> <p>Explain the main rules for imposing liability:</p> <ul style="list-style-type: none"> <li>• Tortfeasor commits an earlier tort</li> <li>• Tortfeasor must be an employee</li> <li>• Tort must occur in the course of employment</li> </ul> <p>Explain the basic tests for establishing that the tortfeasor is an employee:</p> <ul style="list-style-type: none"> <li>• Control test <i>Mersey Docks &amp; Harbour Board v Coggins &amp; Griffiths</i></li> <li>• Integration test <i>Stevenson, Jordan &amp; Harrison v Macdonald &amp; Evans</i></li> <li>• Economic reality (multiple) test <i>Ready Mixed Concrete v MPNI</i></li> </ul> <p>Explain the circumstances where the tort falls within the course of employment:</p> <ul style="list-style-type: none"> <li>• Expressly or impliedly authorised acts <i>Poland v Parr</i></li> <li>• Acting in an unauthorised manner <i>Limpus v London General Omnibus</i></li> <li>• Acting in a purely careless manner <i>Century Insurance v Northern Ireland Transport Board</i></li> <li>• Where the employer benefits from the tort <i>Rose v Plenty</i></li> <li>• Paid travelling time <i>Smith v Stages</i></li> </ul> <p>Explain circumstances that are not within the course of employment:</p>	25	<table border="1" data-bbox="1115 343 1608 529"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> <li>• Activities not within the scope of employment <i>Beard v London General Omnibus</i></li> <li>• A 'frolic of his own' <i>Hilton v Thomas Burton</i></li> <li>• Giving unauthorised lifts <i>Twine v Beans Express</i></li> </ul> <p>Explain there can be liability for the crimes of employees where these are:</p> <ul style="list-style-type: none"> <li>• Within the authorised scope of employment <i>Lloyd v Grace Smith</i></li> <li>• Have a close enough connection with the employment <i>Lister v Hesley Hall</i></li> </ul> <p>Credit also any reference to the 'loaned car' cases <i>Morgans v Launchbury</i>            Credit any other relevant point.            Credit any other relevant cases.</p>		<p>Responses are unlikely to satisfy the descriptor for Level 5 without an explanation of the tests for "employee", circumstances viewed as within the course of employment and circumstances viewed as outside the course of employment.</p>													
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Discuss the ways in which a lack of fault in vicarious liability may be considered unfair:</b></p> <ul style="list-style-type: none"> <li>• A contradiction of the basic fault principle targets the employer as simply being better able to bear the loss whatever their situation</li> <li>• The employer may still be fixed with liability even though he has expressly prohibited the unsafe practice which is hard for an employer trying to run a business</li> <li>• The rule may operate inconsistently or arbitrarily eg compare <i>Rose v Plenty</i> with <i>Twine v Beans Express</i> which makes it hard for employers to create clear rules for employees and leaves them vulnerable</li> <li>• The tort will often have occurred before the employer realises that the employee behaves badly and should be disciplined which makes it</li> </ul>	20	<table border="1" data-bbox="1115 738 1608 922"> <thead> <tr> <th data-bbox="1115 738 1346 770">AO2 Levels</th> <th data-bbox="1346 738 1608 770">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1115 770 1346 802">5</td> <td data-bbox="1346 770 1608 802">17–20</td> </tr> <tr> <td data-bbox="1115 802 1346 834">4</td> <td data-bbox="1346 802 1608 834">13–16</td> </tr> <tr> <td data-bbox="1115 834 1346 866">3</td> <td data-bbox="1346 834 1608 866">9–12</td> </tr> <tr> <td data-bbox="1115 866 1346 898">2</td> <td data-bbox="1346 866 1608 898">5–8</td> </tr> <tr> <td data-bbox="1115 898 1346 922">1</td> <td data-bbox="1346 898 1608 922">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases. Responses are unable to achieve Level 5 without a discussion of fairness.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases</p> <p><b>Level 3</b> – a discussion of at least 3 points and making</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>very hard to avoid liability</p> <ul style="list-style-type: none"> <li>• The employer may be liable for mindless carelessness on the employee's part which the employer is powerless to prevent which is very hard for an employer to manage</li> <li>• The "close connection" test is vague and can lead to unpredictable decisions which makes life hard for an employer</li> </ul> <p><b>Discuss the reasons why a lack of fault is fair:</b></p> <ul style="list-style-type: none"> <li>• The claimant is the truly innocent party and cannot be left without a remedy</li> <li>• The employee may be a 'man of straw'</li> <li>• The employer benefits from the work and so has to take responsibility</li> <li>• If the employer is responsible for the employee's work they should ensure that it is carried out safely</li> <li>• Employer can more easily bear any loss than the employee</li> <li>• Employer is subject to compulsory insurance – so pays only the premiums not the actual damages</li> <li>• Insurers will spread the cost amongst all policy holders making the burden of compensation manageable</li> <li>• Increased premiums may act as a deterrent to poor employment practices and so prevent further claimants needing to claim</li> <li>• The employer is able to discipline employees for unsafe practices</li> </ul> <p>Reach any sensible conclusion. Credit any other relevant point.</p>		<p>reference to the cases which have been used for the area of law being considered</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question</p> <p>Candidates are unlikely to satisfy the descriptor for Level 5 AO2 without a discussion that considers carefully both the claimant's and the defendant's position and reaches a justifiable conclusion.</p>

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			<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37–45</td> <td>5</td> </tr> <tr> <td>28–36</td> <td>4</td> </tr> <tr> <td>19–27</td> <td>3</td> </tr> <tr> <td>10–18</td> <td>2</td> </tr> <tr> <td>1–9</td> <td>1</td> </tr> </tbody> </table>	AO1+AO2 marks	AO3 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1	
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3*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Explain the basic principle of negligent misstatement – pure economic loss as a result of negligent statements or advice</p> <p>Explain that there was originally no liability for negligent misstatement causing a purely financial loss <i>Candler v Crane Christmas</i></p> <p>Explain the court’s distinction between consequential and pure economic loss <i>Spartan Steel v Martin</i></p> <p>Explain the court’s distinction between negligent misstatement and pure economic loss through a negligent act <i>Murphy v Brentwood DC, Londonwaste v AMEC Civil Engineering</i></p> <p>Explain the criteria for a duty of care to arise under negligent misstatement arising from a special relationship under <i>Hedley Byrne</i>:</p> <ul style="list-style-type: none"> <li>• Possession (or implication) of specialist skill by the person giving the advice <i>Esso Petroleum v Mardon, Mutual Life and Citizens Assurance v Evatt</i></li> <li>• Reliance on the advice</li> <li>• Reasonableness of the reliance considering factors such as: <ul style="list-style-type: none"> <li>○ The purpose of the advice <i>Caparo v Dickman, Law Society v KPMG Peat Marwick</i></li> <li>○ Social or business context <i>Chaudhry v Prabhakar</i></li> <li>○ Whether the advice was aimed at the claimant <i>Harris v Wyre Forest DC</i></li> </ul> </li> </ul>	25	<table border="1" data-bbox="1115 344 1608 529"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> <li>• Knowledge by the defendant that the claimant will rely on the advice <i>Smith v Eric S Bush</i>, <i>Yianni v Edwin Evans</i></li> </ul> <p>Explain the subsequent additional / alternative requirement for liability:</p> <ul style="list-style-type: none"> <li>• Voluntary assumption of responsibility for advice by defendant <i>Henderson v Merritt Syndicates</i>, <i>Dean v Allin &amp; Watts</i>, <i>Calvert v William Hill</i></li> </ul> <p>Explain the more restrictive approach adopted by the courts in <i>James McNaughten Paper Group v Hicks Anderson</i></p> <p>Explain situations where liability could not be found <i>JEB Fasteners v Marks Bloom</i></p> <p>Explain the positions in relation to:</p> <ul style="list-style-type: none"> <li>• Surveyors – usually liability even where no contractual relationship exists as long as it is reasonable to rely on the advice given <i>Harris v Wyre Forest DC</i></li> <li>• Accountants and auditors – usually no liability towards potential investors in a company because the accounts have not been prepared for that purpose <i>Caparo v Dickman</i></li> <li>• Wills – usually liability to beneficiaries <i>Ross v Caunters</i>, <i>White v Jones</i>, <i>Clarke v Bruce, Lance &amp; Co</i></li> <li>• References – usually liability to the employee affected <i>Spring v Guardian Assurance</i></li> </ul> <p>Credit any other relevant point. Credit any other relevant cases.</p>		<p>Responses are unlikely to satisfy the descriptor for Level 5 without an explanation of the different types of pure economic loss, the requirements to establish a special relationship and the more recent position of the courts in respect of particular situations eg wills, references, provision of services.</p>



Question	Indicative Content	Mark	Guidance													
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Discuss why the courts may be seen to be making the tort too available:</b></p> <ul style="list-style-type: none"> <li>• The role of contractual claims</li> <li>• The importance of the floodgates argument</li> <li>• The contradictory positions regarding architects / surveyors and builders</li> <li>• Uncertainty over the law on social situations</li> <li>• The expansion of the law into negligent provision of services can be viewed as a step too far</li> <li>• The lack of clarity on the law on beneficiaries of wills eg <i>Carr-Glynn v Frearsons</i>, <i>Worby v Rosser</i></li> <li>• The extension of the law into references can be viewed as too wide</li> </ul> <p><b>Discuss why the courts may not be seen to be making the tort too available:</b></p> <ul style="list-style-type: none"> <li>• The original reluctance of judges to accept liability for economic loss arising from a negligently made statement</li> <li>• The limited expansion of claims allowed by <i>Hedley Byrne v Heller</i></li> <li>• The courts' distinction between pure economic loss and consequential economic loss</li> <li>• The move to allow claims for pure economic loss through negligent act <i>Anns v London Borough of Merton</i>, <i>Junior Books v Veitchi</i> and the subsequent retreat</li> <li>• The general bar on actions taken over social situations</li> </ul>	20	<table border="1" data-bbox="1115 284 1608 472"> <thead> <tr> <th data-bbox="1115 284 1346 316">AO2 Levels</th> <th data-bbox="1346 284 1608 316">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1115 316 1346 347">5</td> <td data-bbox="1346 316 1608 347">17–20</td> </tr> <tr> <td data-bbox="1115 347 1346 379">4</td> <td data-bbox="1346 347 1608 379">13–16</td> </tr> <tr> <td data-bbox="1115 379 1346 411">3</td> <td data-bbox="1346 379 1608 411">9–12</td> </tr> <tr> <td data-bbox="1115 411 1346 443">2</td> <td data-bbox="1346 411 1608 443">5–8</td> </tr> <tr> <td data-bbox="1115 443 1346 472">1</td> <td data-bbox="1346 443 1608 472">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question</p> <p>Responses are unlikely to achieve the descriptor for Level 5 without a discussion that focuses on both the initial position and the later widening of the law in particular areas.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			<ul style="list-style-type: none"> <li>The difficulties that claimants in certain situations - eg wills, references - would be left without a remedy</li> <li>The problems of claimants not known to the defendant not having a claim <i>Goodwill v British Pregnancy Advisory Services</i></li> </ul> <p>Reach any sensible conclusion. Credit any other relevant comment.</p>															
			<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO1+AO2 marks	AO3 mark	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1	
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## SECTION B

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4*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Outline the requirements for a successful claim under the Animals Act 1971</p> <p>Explain that a keeper of an animal may be liable under section 6(3):</p> <ul style="list-style-type: none"> <li>The keeper is either the owner of the animal or the head of a household in which a person under the age of 16 is the owner</li> </ul> <p>Define a dangerous species under the Act:</p> <ul style="list-style-type: none"> <li>Under section 6(2) an animal not commonly domesticated in the UK with characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe</li> <li>Dangerous is a question of fact in each case <i>Behrens v Bertram Mills Circus, Tutin v Chipperfield Promotions</i></li> </ul> <p>Explain that liability for dangerous species exists under section 2(1) - the keeper is strictly liable for any animal defined as dangerous</p> <p>Define a non-dangerous species as any species that is not classified as dangerous</p> <p>Explain that liability for non-dangerous species exists under section 2(2) of the Act and that a keeper will be liable if:</p> <ul style="list-style-type: none"> <li>(a) The damage is of a kind the animal is likely to cause unless restrained or if caused by the animal</li> </ul>	25	<table border="1" data-bbox="1115 403 1608 587"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>is likely to be severe and;</p> <ul style="list-style-type: none"> <li>• (b) The likelihood of severity of damage is due to abnormal characteristics of the individual animal or species or of species at specific times and;</li> <li>• (c) The keeper knows of the characteristics</li> </ul> <p>Explain in section 2(2)(a) 'likely' means possible rather than probable <i>Smith v Ainger, Gloster v Chief Constable of GMP</i> and 'severe' is a question of fact <i>Curtis v Betts</i></p> <p>Explain in section 2(2)(b) a characteristic is abnormal if not common in other animals <i>Cummings v Grainger, Kite v Napp</i></p> <p>Explain that the keeper can be liable, even if the event is unforeseeable and not the keeper's fault, for damage caused by characteristics that only arise in certain circumstances <i>Mirvahedy v Henley</i></p> <p>Explain that relevant defences include:</p> <ul style="list-style-type: none"> <li>• Section 5(2) – victim voluntarily accepts the risk <i>Cummings v Grainger</i></li> <li>• Section 5(3) – a trespasser was caused damage by an animal either not kept for protection or if so then it was reasonable to do so</li> <li>• Section 10 - contributory negligence <i>Cummings v Grainger</i></li> </ul> <p>Credit any other relevant point. Credit any other relevant cases.</p>		<p>Responses are unlikely to satisfy the descriptor for Level 5 AO1 without an explanation of dangerous and non-dangerous animals, who is a keeper and defences.</p>

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	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>In relation to any claim by Iain against Alexandra:</b></p> <ul style="list-style-type: none"> <li>• Identify that Alexandra is the keeper of the pony for the purposes of the Animals Act 1971</li> <li>• Identify that a pet pony is domesticated and would be classed as a non-dangerous species on which basis section 2(2) applies</li> <li>• Discuss section 2(2)(a) - bruising is harm of a kind a pony is likely to cause unless restrained</li> <li>• Discuss section 2(2)(b) – the pressures of a race may suggest abnormal characteristics at a specific time</li> <li>• Discuss section 2(2) (c) – it is likely that Alexandra is aware of the characteristics given that the pony is young and nervous</li> <li>• Conclude that Iain is likely to be successful</li> </ul> <p><b>In relation to any claim by Rebecca against John / Jennifer:</b></p> <ul style="list-style-type: none"> <li>• Identify that John, who owns the alligator is under sixteen and so under section 6(3) Jennifer is the keeper and so will be the defendant</li> <li>• Identify that an alligator is a dangerous species – it is not a species commonly domesticated in UK and that it has characteristics that, unless restricted, would be likely to cause severe damage or that any damage caused is likely to be severe</li> <li>• Discuss the fact that an alligator should not have been left unrestrained</li> <li>• Discuss whether Rebecca is contributory negligent (under section 10) by choosing to hold an unrestrained alligator given to her by John</li> <li>• Discuss whether Jennifer has a defence under</li> </ul>	20	<table border="1" data-bbox="1115 284 1608 469"> <thead> <tr> <th data-bbox="1115 284 1346 316">AO2 Levels</th> <th data-bbox="1352 284 1608 316">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1115 316 1346 347">5</td> <td data-bbox="1352 316 1608 347">17–20</td> </tr> <tr> <td data-bbox="1115 347 1346 379">4</td> <td data-bbox="1352 347 1608 379">13–16</td> </tr> <tr> <td data-bbox="1115 379 1346 411">3</td> <td data-bbox="1352 379 1608 411">9–12</td> </tr> <tr> <td data-bbox="1115 411 1346 443">2</td> <td data-bbox="1352 411 1608 443">5–8</td> </tr> <tr> <td data-bbox="1115 443 1346 469">1</td> <td data-bbox="1352 443 1608 469">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation and reaching a cogent, logical and well-informed conclusion</p> <p><b>Level 4</b> – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p><b>Level 3</b> – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p><b>Level 2</b> – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p><b>Level 1</b> – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>section 5(2) as Rebecca voluntarily accepted the risk by holding the alligator</p> <ul style="list-style-type: none"> <li>• Reach any sensible conclusion based on whether the defence of voluntary acceptance will be allowed or not</li> </ul> <p><b>In relation to any claim by Vicky against Andrew:</b></p> <ul style="list-style-type: none"> <li>• Identify that Andrew is the keeper of the dog for the purposes of the Animals Act 1971</li> <li>• Identify that a dog is domesticated and would be classed as a non-dangerous species on which basis section 2(2) applies</li> <li>• Discuss section 2(2)(a) – bites are of a kind a dog is likely to cause unless restrained</li> <li>• Discuss section 2(2)(b) – the aggressiveness of a guard dog is an abnormal characteristic of a specific animal</li> <li>• Discuss section 2(2)(c) – it is likely that Andrew is aware of the characteristics given that he uses the dog for security purposes</li> <li>• Discuss whether Vicky is contributory negligent (under section 10) by choosing to stroke the guard dog</li> <li>• Discuss whether Andrew has a defence under section 5(2) as Vicky voluntarily accepted the risk by stroking the dog</li> <li>• Discuss the defence of section 5(3) – Vicky may be viewed as a trespasser, the dog is being kept for protection but it does appear reasonable to keep it for this</li> <li>• Reach any sensible conclusion based on whether Vicky is viewed as a trespasser or not.</li> </ul>		

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5*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Define the tort of trespass to land – an intentional and direct entry onto land in another person’s possession            Explain that there only needs to be intention as to the defendant’s act and not the trespass itself <i>Basely v Clarkson</i>            Explain that the tort is actionable per se (without proof of damage)            Explain the need to show an interest in land to claim <i>Hunter v Canary Wharf</i>            Explain the ways in which the tort can be committed:</p> <ul style="list-style-type: none"> <li>• Entering land voluntarily and intentionally <i>League Against Cruel Sports v Scott</i></li> <li>• Placing things on the land <i>Smith v Stone, Westripp v Baldock</i></li> <li>• Taking things away from the land <i>Basely v Clarkson</i></li> <li>• Going beyond what has been permitted</li> </ul> <p>Explain how land is defined for liability under the tort:</p> <ul style="list-style-type: none"> <li>• Covers the land itself and anything on the land such as buildings</li> <li>• Extends to the airspace above to a reasonable height <i>Kelsen v Imperial Tobacco, Bernstein v Skyways, Anchor Brewhouse Developments Ltd v Berkley House Ltd</i>, Civil Aviation Act 1982</li> <li>• Extends to the subsoil below <i>Harrison v Duke of Rutland</i></li> </ul> <p>Explain the defence of consent (express &amp; implied)            Explain the defence of lawful authority under PACE 1984            Explain the concept of trespass <i>ab initio</i> where a lawful visitor abuses the proper limits on their right to enter <i>The</i></p>	25	<table border="1" data-bbox="1115 344 1608 529"> <thead> <tr> <th data-bbox="1115 344 1346 376">AO1 Levels</th> <th data-bbox="1346 344 1608 376">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1115 376 1346 408">5</td> <td data-bbox="1346 376 1608 408">21-25</td> </tr> <tr> <td data-bbox="1115 408 1346 440">4</td> <td data-bbox="1346 408 1608 440">16–20</td> </tr> <tr> <td data-bbox="1115 440 1346 472">3</td> <td data-bbox="1346 440 1608 472">11–15</td> </tr> <tr> <td data-bbox="1115 472 1346 504">2</td> <td data-bbox="1346 472 1608 504">6–10</td> </tr> <tr> <td data-bbox="1115 504 1346 529">1</td> <td data-bbox="1346 504 1608 529">1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p>	AO1 Levels	AO1 Marks	5	21-25	4	16–20	3	11–15	2	6–10	1	1–5
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	<p><i>Six Carpenters' Case, Cinnamond v British Airport Authority</i> Credit any other relevant point. Credit any other relevant cases.</p>		Responses are unlikely to satisfy the descriptor for Level 5 without an explanation of all of the elements of the tort and the defences available.												
	<ul style="list-style-type: none"> <li>• <b>Assessment Objective 2 - Analysis, evaluation and application</b> Identify that Betty is the owner of the house and therefore does have a proprietary interest and may have a right to claim for trespass to land</li> </ul> <p><b>In relation to the model helicopters:</b></p> <ul style="list-style-type: none"> <li>• Discuss that the airspace above Betty's house to a reasonable height is included within the definition of her land</li> <li>• Discuss that the height the helicopter was flying at over Betty's garden will be crucial – as a model helicopter this is likely to be fairly low</li> <li>• Discuss that Desmond has intentionally and voluntarily entered Betty's land by flying his helicopter over her garden</li> <li>• Conclude that this is likely to amount to a trespass but any sensible conclusion can be credited</li> </ul> <p><b>In relation to the advertising board on the fence post:</b></p> <ul style="list-style-type: none"> <li>• Discuss that Betty's fence post is considered as her land</li> <li>• Discuss that Desmond has intentionally attached the advertising board on to the fence post</li> <li>• Conclude that this is likely to amount to a trespass</li> </ul> <p><b>In relation to the fence panel and walking on the flower bed:</b></p> <ul style="list-style-type: none"> <li>• Discuss that Betty's fence panel and the flower bed are considered as land</li> </ul>	20	<table border="1" data-bbox="1115 437 1608 619"> <thead> <tr> <th data-bbox="1115 437 1346 469">AO2 Levels</th> <th data-bbox="1346 437 1608 469">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1115 469 1346 496">5</td> <td data-bbox="1346 469 1608 496">17–20</td> </tr> <tr> <td data-bbox="1115 496 1346 523">4</td> <td data-bbox="1346 496 1608 523">13–16</td> </tr> <tr> <td data-bbox="1115 523 1346 550">3</td> <td data-bbox="1346 523 1608 550">9–12</td> </tr> <tr> <td data-bbox="1115 550 1346 577">2</td> <td data-bbox="1346 550 1608 577">5–8</td> </tr> <tr> <td data-bbox="1115 577 1346 619">1</td> <td data-bbox="1346 577 1608 619">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation and reaching a cogent, logical and well-informed conclusion</p> <p><b>Level 4</b> – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p><b>Level 3</b> – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p><b>Level 2</b> – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p><b>Level 1</b> – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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2	5–8														
1	1–4														

Question	Indicative Content	Mark	Guidance
	<ul style="list-style-type: none"> <li>• Discuss that Desmond has intentionally moved the fence panel and intentionally and voluntarily entered Betty's land by walking on the flower bed</li> <li>• Discuss that Betty has given express consent for the fence panel to be removed</li> <li>• Discuss that Betty has given implied consent for Desmond to walk on the flower bed</li> <li>• Conclude that this is unlikely to amount to a trespass but credit trespass <i>ab initio</i> given what happens with the plants</li> </ul> <p><b>In relation to the moving of the plants:</b></p> <ul style="list-style-type: none"> <li>• Discuss that the plants are considered as Betty's land</li> <li>• Discuss that the removal of Betty's plants can amount to the tort of trespass to land</li> <li>• Discuss that Desmond intentionally removed the plants</li> <li>• Discuss that Desmond has gone beyond his permission for access</li> <li>• Conclude that this will amount to a trespass</li> </ul> <p><b>In relation to Lilly going into the garden to arrest Betty:</b></p> <ul style="list-style-type: none"> <li>• Discuss that Lilly has intentionally and voluntarily entered Betty's land by going into the garden</li> <li>• Discuss that Lilly has lawful authority so this is a full defence to trespass provided that the provisions of the authority are adhered to</li> <li>• Discuss that PACE 1984 gives a police officer lawful authority to enter the land to arrest a suspect for, <i>inter alia</i>, public order offences, such as Betty making threats</li> <li>• Conclude that this will not amount to a trespass.</li> </ul> <p>Credit any other relevant comment.</p>		<p>Responses are unlikely to satisfy the descriptor for Level 5 without a discussion of all of the issues raised in the scenario.</p>

Question			Indicative Content	Mark	Guidance													
			<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37–45</td> <td>5</td> </tr> <tr> <td>28–36</td> <td>4</td> </tr> <tr> <td>19–27</td> <td>3</td> </tr> <tr> <td>10–18</td> <td>2</td> </tr> <tr> <td>1–9</td> <td>1</td> </tr> </tbody> </table>	AO1+AO2 marks	AO3 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1	
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Question	Indicative Content	Mark	Guidance												
6*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Define occupiers' liability - damage arising from the state of the premises State that liability arises from OLA 1957 for lawful visitors and OLA 1984 for unlawful visitors</p> <p>Explain that:</p> <ul style="list-style-type: none"> <li>• An occupier is someone in control of the premises <i>Wheat v Lacon</i></li> <li>• Premises includes land, buildings and any fixed or movable structure and is broadly defined <i>Wheeler v Copas</i></li> <li>• A lawful visitor may be an invitee, a licensee or someone with a contractual or legal right to enter; an unlawful visitor is everyone else</li> </ul> <p>Explain OLA 1957:</p> <ul style="list-style-type: none"> <li>• Section 2(1) common duty of care owed to all lawful visitors</li> <li>• Scope is to keep visitor reasonably safe for the purpose for which he is invited to be there under section 2(2)</li> <li>• The extent of this duty depends on the nature of the visitor - children are owed a higher duty of care under section 2(3)(a) <i>Glasgow Corporation v Taylor, Phipps v Rochester Corporation</i></li> <li>• Occupier can prevent breach of the duty under section 2(4)(a) if a warning does enough in the circumstances to comply with the duty <i>Rae v Mars Ltd, Cotton v Derbyshire Dales</i></li> </ul>	25	<table border="1" data-bbox="1115 344 1608 529"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21-25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p>	AO1 Levels	AO1 Marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> <li>• Occupier can prevent breach of the duty under section 2(4)(b) if an independent contractor can be blamed instead. Occupier must show:               <ul style="list-style-type: none"> <li>○ It was reasonable to hire a contractor <i>Haseldine v Daw</i></li> <li>○ Reasonable precautions have been taken to ensure the contractor is competent <i>Bottomley v Todmorden Cricket Club</i></li> <li>○ Reasonable checks to inspect the work have been taken <i>Woodward v Mayor of Hastings</i></li> </ul> </li> <li>• Claimants can claim for death, personal injury and property damage under section 1(3)</li> </ul> <p>Explain OLA 1984:</p> <ul style="list-style-type: none"> <li>• Lesser duty of care owed to keep the unlawful visitor free from injury under section 1(4) building on the duty of common humanity <i>Addie v Dumbreck, BRB v Herrington</i></li> <li>• Duty arises under section 1(3) if:               <ul style="list-style-type: none"> <li>○ The occupier has reasonable grounds to believe that the danger exists <i>Rhind v Astbury Water Park</i>, and</li> <li>○ The occupier has reasonable grounds to believe that there are trespassers in the vicinity <i>Swain v Natui Ram Pun</i>, and</li> <li>○ The danger is one against which the occupier can be reasonably expected to provide some protection <i>Tomlinson v Congleton BC</i></li> </ul> </li> <li>• An occupier is liable for foreseeable harm even if the precise damage or the precise circumstances</li> </ul>		<p>Responses are unlikely to satisfy the descriptor for Level 5 without a detailed explanation of the requirements of OLA 1957 and OLA1984 and how liability can be avoided.</p>

Question	Indicative Content	Mark	Guidance													
	<p>in which the harm occurs are not foreseeable <i>Jolley v London Borough of Sutton</i></p> <ul style="list-style-type: none"> <li>• A warning sign may be effective under section 1(5) <i>Westwood v Post Office</i></li> <li>• Covers personal injury and death under sections 1(1) and 1(9) but not damage to property under section 1(8)</li> </ul> <p>Explain contributory negligence:</p> <ul style="list-style-type: none"> <li>• Defined under section 1(1) Law Reform (Contributory Negligence) Act 1945 reducing damages in proportion to the claimant's fault for their losses <i>Sayers v Harlow Urban District Council</i></li> </ul> <p>Credit any other relevant point. Credit any other relevant cases.</p>															
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Identify Adrenalin as the occupier in all three claims:</p> <ul style="list-style-type: none"> <li>• Control will be a determining factor</li> <li>• Adrenalin as the owner has control over the premises</li> </ul> <p><b>In relation to Latisha's serious head injuries:</b></p> <ul style="list-style-type: none"> <li>• Discuss that as Latisha has paid she has permission to enter and therefore OLA 1957 will apply</li> <li>• Discuss that the amusement park is classed as premises so that Adrenalin has a duty to keep Latisha safe for the purpose of her visit</li> <li>• Discuss that serious head injuries are losses that can be claimed for</li> <li>• Discuss whether Adrenalin will be able to avoid</li> </ul>	20	<table border="1" data-bbox="1115 786 1608 970"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion</p> <p><b>Level 4</b> – identification of most of the relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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Question	Indicative Content	Mark	Guidance
	<p>liability under section 2(4)(b):</p> <ul style="list-style-type: none"> <li>○ It was reasonable that they used RideFixerz to safety-check the ride, and</li> <li>○ As RideFixerz is a well-known national company it appears that reasonable precautions have been taken to ensure the contractor is competent</li> <li>○ It appears likely that sufficient inspection of the work has been taken provided that the loose bolt was not obviously visible</li> </ul> <ul style="list-style-type: none"> <li>● Conclude that Adrenalin is unlikely to be liable to Latisha</li> </ul> <p><b>In relation to Roy's broken arm and a broken watch:</b></p> <ul style="list-style-type: none"> <li>● Discuss that when Roy sneaks into the amusement park he has no permission and is an unlawful visitor and therefore OLA 1984 will apply</li> <li>● Discuss that as only personal injury and death can be claimed for Roy cannot claim for his watch but may be able to claim for his broken arm</li> <li>● Discuss the effect of section 1(3) on whether Adrenalin owes Roy a duty: <ul style="list-style-type: none"> <li>○ Adrenalin are aware of the danger of the steep steps as there is a warning at the bottom</li> <li>○ Adrenalin know or have reasonable grounds to believe that there are trespassers in the vicinity as the gap in the fence is well-used</li> <li>○ The danger is one against which Adrenalin should reasonably afford some protection</li> </ul> </li> <li>● Discuss that Adrenalin has a duty to keep Roy free from injury</li> <li>● Discuss that the warning sign is unlikely to avoid breach under section 1(5) as it is at the bottom of</li> </ul>		<p><b>Level 3</b> – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p><b>Level 2</b> – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p><b>Level 1</b> – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>

Question	Indicative Content	Mark	Guidance
	<p>the steps and so does not warn of the danger</p> <ul style="list-style-type: none"> <li>• Discuss Roy's contributory negligence by running down the steps</li> <li>• Conclude that Adrenalin is likely to be liable to Roy but that damages will be reduced</li> </ul> <p><b>In relation to Jacob's liver damage:</b></p> <ul style="list-style-type: none"> <li>• Discuss that Jacob is a lawful visitor as he has permission to be on the premises and therefore OLA 1957 will apply</li> <li>• Discuss that Adrenalin has a duty to keep Jacob safe for the purpose of his visit</li> <li>• Discuss that liver damage is a loss that can be claimed for</li> <li>• Discuss that as Jacob is a young child section 2(3)(a) will apply and Adrenalin must take extra precautions</li> <li>• Discuss the effect of the warning sign under section 2(4)(a) and that given the allurements of the very colourful but poisonous berries and the presence of young children this is unlikely to be sufficient protection</li> <li>• Credit any discussion of contributory negligence</li> <li>• Conclude that Adrenalin is likely to be liable to Jacob.</li> </ul> <p>Credit any other relevant comment.</p>		



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			<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th>AO1+AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>37–45</td> <td>5</td> </tr> <tr> <td>28–36</td> <td>4</td> </tr> <tr> <td>19–27</td> <td>3</td> </tr> <tr> <td>10–18</td> <td>2</td> </tr> <tr> <td>1–9</td> <td>1</td> </tr> </tbody> </table>	AO1+AO2 marks	AO3 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1	
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## SECTION C

Question		Indicative Content	Mark	Guidance	
7	(a)	Potential answers may:	5	<b>AO2 Levels</b>	<b>AO2 Marks</b>
		<b>Assessment Objective 2 – Analysis, evaluation and application</b>		5	5
		P1 Reason that duty of care needs to be established		4	4
		P2 Reason that Gary will have a duty to Hope and Faith as other road users		3	3
		P3 Reason that a breach of duty occurs when conduct falls below that of a reasonable person		2	2
P4 Reason that by failing to secure his load properly Gary's conduct falls below that of a reasonable lorry driver	1	1			
P5 Conclude that the statement is accurate.					
	(b)	P1 Reason that the defendant must be a factual cause of the claimant's loss P2 Reason that Hope's broken leg would not have occurred but for Gary's failure to secure the load properly P3 Reason that the claimant's loss must be a reasonably foreseeable consequence of the breach P4 Reason that Hope's broken leg is a reasonably foreseeable consequence of Gary's failure to secure the load properly P5 Conclude that the statement is accurate.	5		
	(c)	P1 Reason that the initial loss to the claimant has to be a reasonably foreseeable consequence of the breach P2 Reason that Faith's minor internal injuries is a reasonably foreseeable consequence of Gary's failure to secure the load properly P3 Reason that the thin skull rule states once the initial loss is foreseeable the defendant must take the victim as he finds him P4 Reason that Gary will be liable for the injuries being worse due to the heart condition P5 Conclude that the statement is inaccurate.	5		

Question	Indicative Content	Mark	Guidance
(d)	P1 Reason that contributory negligence is a partial defence P2 Reason that Hope has been careless by not concentrating whilst cycling P3 Reason that contributory negligence reduces damages in proportion to the claimant's fault for their loss P4 Reason that Gary will not have to pay the full amount of damages due to Hope's carelessness P5 Conclude that the statement is inaccurate.	5	

Question		Indicative Content	Mark	Guidance	
8	(a)	Potential answers may:	5	<b>AO2 Levels</b>	<b>AO2 Marks</b>
		<b>Assessment Objective 2 – Analysis, evaluation and application</b>		5	5
		P1 Reason that the illness must be due to a single shocking event		4	4
		P2 Reason that Anjum's disorder is due to witnessing the shocking event of Billy being seriously injured		3	3
		P3 Reason that nervous shock (psychiatric damage) requires a medically recognised condition		2	2
P4 Reason that Anjum's post-traumatic stress disorder is a medically recognised disorder	1	1			
P5 Conclude that the statement is accurate.					
	(b)	P1 Reason that a secondary victim is someone who is not directly involved in the incident P2 Reason that Pat was not directly involved in the accident because she was not injured or in danger P3 Reason that for a successful claim a secondary victim has to have direct perception of the incident or immediate aftermath P4 Reason that Pat learnt of the accident on the phone so did not have direct perception of the incident or immediate aftermath P5 Conclude that the statement is accurate.	5		
	(c)	P1 Reason that a primary victim is someone directly involved in the accident by being injured or in danger P2 Reason that Anjum is directly involved by being in danger because he was not supplied with a safety harness P3 Reason that the harm must be reasonably foreseeable P4 Reason that failing to provide Anjum with a safety harness on a high platform is reasonably foreseeable to cause harm P5 Conclude that the statement is inaccurate.	5		

Question	Indicative Content	Mark	Guidance
(d)	P1 Reason that a secondary victim is someone who is not directly involved in the incident P2 Reason that Claire was not directly involved in the accident because she was not injured or in danger P3 Reason that for a successful claim a secondary victim has to have close ties of love and affection with the injured victim P4 Reason that Claire is the next door neighbour of Billy so will not have close ties of love and affection P5 Conclude that the statement is inaccurate.	5	

### APPENDIX 1 – 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 Responses 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 Responses 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 Responses 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 Responses 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 Responses 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.

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

**OCR Customer Contact Centre**

**Education and Learning**

Telephone: 01223 553998

Facsimile: 01223 552627

Email: [general.qualifications@ocr.org.uk](mailto:general.qualifications@ocr.org.uk)

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