

**GCE**

**Law**

Unit **G158**: Law of Torts Special Study

Advanced GCE

**Mark Scheme for June 2016**

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.

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

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















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

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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

© OCR 2016

1. These are the annotations, (including abbreviations), including those used in scoris, which are used when marking

Annotation	Meaning
	<b>Q1&amp;3</b> AP1
	<b>Q1&amp;3</b> AP2
	<b>Q1&amp;3</b> AP3
	<b>Q1&amp;3</b> AP4
	<b>Q1</b> AP5 or <b>Q2</b> Synopticism
	<b>Q2</b> AO2
	<b>Q1&amp;3</b> Critical Point <b>Q2</b> Bald case
	<b>Q2</b> Conclusion <b>Q3</b> Conclusion
	<b>ALL</b> Not correct / Page checked for response
	<b>Q1</b> Linked case <b>Q2</b> Link to source
	<b>ALL</b> Not Relevant or Too vague Also no response or response achieves no credit
	<b>ALL</b> Repetition/or 'noted' where a case has already been used in the response
	<b>Q2</b> Developed case
	<b>Q1</b> Use of key word 'significance', 'importance' etc <b>Q2</b> AO1

**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.

### 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.



You must also check any additional pages eg A, A1 etc, which the candidate has chosen to use. Before you begin marking, use the Linking Tool, to 'link' any additional page(s) to the relevant question(s) and mark the response as normal.

Question	Indicative Content	Mark	Guidance												
1*	<p>Potential answers may:</p> <p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>CP</b> The facts of this case involved Margaret Murray being taken into custody by the Army on suspicion of fund-raising for the IRA. She complained that she had been wrongfully arrested, since he had not been told explicitly that she was under arrest or given a proper reason for her detention despite being detained for half-an-hour</p> <p><b>CP1</b> The court held that where a person was detained or restrained by a police officer and knew that he was being detained or restrained, that amounted to an arrest even though no formal words of arrest were spoken by the officer. Since the plaintiff had been under restraint from the moment she was identified and must have realised that she was under restraint, she had been under arrest from that moment notwithstanding that D did not make a formal arrest until half an hour later.</p> <p><b>CP2</b> Furthermore, although in ordinary circumstances the police should tell a person the reason for his arrest at the time the arrest was made, the circumstances of the plaintiff's arrest were such that it was reasonable for D to delay speaking the words of arrest until the plaintiff and the soldiers were leaving the house and the failure to make a formal arrest did not render the plaintiff's arrest unlawful</p> <p><b>CP3</b> False imprisonment is actionable without proof of special damage and thus it is not necessary for a person unlawfully detained to prove that he knew that he was being detained or that he/she was harmed by his/her detention (although damages in such a case may be nominal)</p>	12	<table border="1" data-bbox="1279 245 1731 459"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11–12</td> </tr> <tr> <td>4</td> <td>9–10</td> </tr> <tr> <td>3</td> <td>7–8</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p><b>CP</b> – Max 3 marks Linked to the material point/ratio – 1 mark is available for that facts of the case but these are not essential to get full marks. An accurate source <b>and</b> line reference is adequate for the facts of the case to receive the one mark. Where given, the ratio of the case needs to be given an AO2 slant to get a mark</p> <p><b>AP</b> – Max 6 marks for any Applied Point(s) These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks</p> <p><b>LNK</b> – Max 3 marks for a relevant, linked case The case must be linked for a particular point. Marks can be achieved as follows, for example: 1 mark for the name of the case, 1 mark for some development and 1 mark for a link to the question</p>	AO2 Levels	AO2 Marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3
AO2 Levels	AO2 Marks														
5	11–12														
4	9–10														
3	7–8														
2	4–6														
1	1–3														

Question	Indicative Content	Mark	Guidance
	<p><b>LC1</b> <i>Murray</i> can be linked to <i>Herring v Boyle</i> (which was 'doubted' by the House of Lords) where the court took the view that there was no false imprisonment where the victim was unaware of their detention</p> <p><b>LC2</b> The court preferred (and approved) the ruling in <i>Meering v Grahame-White Aviation Co Ltd</i> to that in <i>Herring</i>. Here it was held that a victim can be falsely imprisoned even though they are unaware of their detention</p> <p><b>LC3</b> <i>Murray</i> could be contrasted with <i>R v Bournewood</i> a case involving a claimant with a mental disorder who was viewed as incapable of consent. Here the court held that there was no false imprisonment when he was admitted (in a sedated state) to an unlocked ward even though he would have been stopped had he tried to leave. The distinction from <i>Murray</i> would seem to be that whilst it is not necessary for the victim to be aware of their detention in cases of false imprisonment, there must be an actual rather than a 'potential' restraint of the victim's liberty.</p> <p><b>AP1</b> The case shows that the House of Lords place great importance on the protection of liberty. Although the Northern Irish Court of Appeal had decided that there was no false imprisonment, the House of Lords disagreed. However, the damages in such cases may be nominal</p> <p><b>AP2</b> In contemporary law, the tort of false imprisonment is most commonly used where police officers are alleged to have exceeded their powers. Cases like <i>Murray</i> re-inforce this role as a fundamental means of protecting civil liberties</p>		

Question	Indicative Content	Mark	Guidance
	<p><b>AP3</b> When the Murray case was considered by the European Court of Human Rights (<i>Murray v UK</i>), the court held that there was no breach of Article 5 (1) which requires that deprivation of liberty can occur only if arising from a lawful arrest founded on reasonable suspicion or 5 (2) which provides that a person must be informed promptly of the reason for arrest</p> <p><b>AP4</b> It seems that, under UK law and under Article 5 ECHR, an arrest which does not comply with all the procedural requirements can still be an arrest as far as all the consequences arising from it are concerned, for a period of time. By comparison to an arrest which meets all the requirements, this is a precarious position as it means that the former situation will cease to be a lawful arrest at an uncertain point</p> <p><b>AP5</b> Legal certainty and the rule of law surely demand as a matter of principle that there should be a clear demarcation between the point at which the citizen is at liberty and the point at which his/her liberty is restrained</p> <p><b>AP6</b> Credit any other relevant point. Examples might include analysis of the judgment and its reasoning, any relevant links to civil liberty issues and police powers and any analysis of the circumstances of the arrest (against a backdrop of potential sectarian violence).</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>	4	<table border="1"> <thead> <tr> <th data-bbox="1279 240 1503 279">AO2 Marks</th> <th data-bbox="1503 240 1727 279">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 279 1503 317">10–12</td> <td data-bbox="1503 279 1727 317">4</td> </tr> <tr> <td data-bbox="1279 317 1503 355">7–9</td> <td data-bbox="1503 317 1727 355">3</td> </tr> <tr> <td data-bbox="1279 355 1503 394">4–6</td> <td data-bbox="1503 355 1727 394">2</td> </tr> <tr> <td data-bbox="1279 394 1503 432">1–3</td> <td data-bbox="1503 394 1727 432">1</td> </tr> </tbody> </table>	AO2 Marks	AO3 Mark	10–12	4	7–9	3	4–6	2	1–3	1
AO2 Marks	AO3 Mark												
10–12	4												
7–9	3												
4–6	2												
1–3	1												

Question	Indicative Content	Mark	Guidance													
2*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p><b>Describe trespass to the person</b></p> <p><b>Assault</b>            Placing the victim in immediate apprehension of a battery            Traditionally required an 'active threat' <i>Read v Coker</i>            Words alone were thought to be insufficient <i>Meade &amp; Belt's Case</i> but more recently accepted <i>R v Ireland &amp; R v Burstow</i>, although words can negate what would otherwise be an assault <i>Tuberville v Savage</i> and there must be an intention to frighten the victim even though there need be no need to 'use' the threatened violence <i>R v St George, Blake v Barnard</i>            Assault must produce (and be intended to produce) reasonable apprehension in the victim <i>Stephen v Myers</i> and the fear should be of immediate violence <i>Thomas v NUM, Smith v CC of Woking</i>            Where the behaviour takes the form of harassment or stalking then statutory protection may be available through the Protection from Harassment Act 1997 as amended by the Protection of Freedoms Act 2012 <i>Majrowski v Guy's and St Thomas' NHS Trust, Plavelil v Director of Public Prosecutions</i></p> <p><b>Battery</b>            Direct and intentional application of unwanted force            Direct has been interpreted broadly <i>Gibbons v Pepper, Scott v Shepherd, Pursell v Horn, Nash v Sheen, DPP v Haystead</i>            Must involve intention <i>Letang v Cooper</i> not carelessness or strict liability <i>Fowler v Lanning</i></p>	16	<table border="1" data-bbox="1279 245 1729 459"> <thead> <tr> <th data-bbox="1279 245 1503 282">AO1 Levels</th> <th data-bbox="1503 245 1729 282">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 282 1503 319">5</td> <td data-bbox="1503 282 1729 319">14–16</td> </tr> <tr> <td data-bbox="1279 319 1503 355">4</td> <td data-bbox="1503 319 1729 355">11–13</td> </tr> <tr> <td data-bbox="1279 355 1503 392">3</td> <td data-bbox="1503 355 1729 392">8–10</td> </tr> <tr> <td data-bbox="1279 392 1503 429">2</td> <td data-bbox="1503 392 1729 429">5–7</td> </tr> <tr> <td data-bbox="1279 429 1503 459">1</td> <td data-bbox="1503 429 1729 459">1–4</td> </tr> </tbody> </table> <p><b>Level 5</b>            Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed*. Responses are likely to use material both from within the pre-release materials (LNK) and from beyond the pre-release materials which have a specific link to the area of law.</p> <p><b>Level 4</b>            Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed*.</p> <p><b>Level 3</b>            Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant</p>		AO1 Levels	AO1 Marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4
AO1 Levels	AO1 Marks															
5	14–16															
4	11–13															
3	8–10															
2	5–7															
1	1–4															

Question	Indicative Content	Mark	Guidance
	<p>Previous doubts about requirement of hostility, <i>Cole v Turner</i>, <i>Collins v Wilcock</i>, <i>Wilson v Pringle</i>, now resolved in <i>F v West Berkshire HA &amp; R v Brown</i></p> <p>Limited right of privacy in relation to searches <i>Wainwright v Home Office</i></p> <p><b>False Imprisonment</b></p> <p>Deprivation of personal liberty</p> <p>Deprivation can occur by different means <i>Bird v Jones</i> but any means of escape must be safe and lawful <i>Wright v Wilson</i></p> <p>Deprivation must arise through a positive act not carelessness <i>Sayers v Harlow UDC</i></p> <p>The victim need not be aware of their imprisonment <i>Herring v Boyle</i>, <i>Meering v Grahame White</i>, <i>Murray v MOD</i> and there are time limits <i>White v WP Brown</i></p> <p>Restraint may be justified by a contractual/legal obligation <i>Robinson v Balmain Ferry</i>, <i>Herd v Weardale Steel</i> or by police necessity <i>Austin v UK</i>, <i>Iqbal v Prison Officers Association</i></p> <p>False imprisonment may be a tort of strict liability <i>R v Governor of Brockhill Prison ex parte Evans</i>, <i>Quinland v Governor of Swaleside Prison</i>, <i>Iqbal v Prison Officers Association</i>, <i>R v Bournemouth Community &amp; Mental Health NHS Trust</i></p> <p><b>Possible defences</b></p> <p>Consent to: everyday jostlings <i>Collins v Wilcock</i>, limited to act for which permission is given <i>Nash v Sheen</i>, sexual acts up to a limit <i>R v Brown</i>, sports within the rules <i>Simms v Leigh Rugby</i>, <i>Condon v Basi</i>, <i>R v Billinghamurst</i>, <i>Wooldridge v Summner</i>, medical procedures when 'informed' <i>Sidway v Board of Governors of Bethlem Royal Hospital</i>, <i>Chatterton v Gerson</i> and where necessary <i>Re T</i>, <i>Re F</i>, <i>Ms B v NHS Trust</i></p>		<p>concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed*.</p> <p><b>Level 2</b></p> <p>Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without 2 relevant cases, neither of which are required to be developed.</p> <p><b>Level 1</b></p> <p>Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p> <p>*Developed = case name + facts (minimal) or ratio (minimal)</p>

Question	Indicative Content	Mark	Guidance												
	<p>Self-defence <i>Lane v Holloway, Ashley v CC of Sussex Police</i></p> <p>Lawful Arrest and Detention under statutory and common law PACE, Mental Health Act, Criminal Law Act</p>														
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Consider the ways that trespass to the person cases have dealt with civil liberties</b></p> <p><b>Assault</b> Cases which offer protection for individual liberty (of victims) in circumstances such as stalking that were decided under criminal law are also widely viewed as applicable in tort law <i>R v Ireland &amp; R v Burstow</i> Lack of provision at common law has been supplemented and enhanced by the creation of statutory provisions for harassment and stalking through the Protection from Harassment Act 1997 as amended by the Protection of Freedoms Act 2012 <i>Majrowski v Guy's and St Thomas' NHS Trust, Plavelil v Director of Public Prosecutions</i> However, some cases fail to recognise effect on the victim <i>Thomas v NUM</i> especially when compared to cases like <i>Smith v CC Woking</i> and, arguable, leaves liberty of some individuals under-protected</p> <p><b>Battery</b> The law protects the liberty of the individual by recognising a limited right of privacy when being searched for prison visits <i>Wainwright v Home Office</i> Narrow interpretation of intention protects individual liberty in a riot situation <i>Livingstone v MOD</i> <i>Collins v Wilcock</i> is an express recognition of the rights of the individual when balancing the powers of the police</p>	14	<table border="1" data-bbox="1279 411 1731 627"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13–14</td> </tr> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p><b>Level 5</b> Responses are unlikely to achieve level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion* with some synoptic content.</p> <p><b>Level 4</b> Responses are unlikely to achieve level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p><b>Level 3</b> Responses are unlikely to achieve level 3 without adequate analytical evaluation of the relevant areas of law and limited focus on the quote.</p> <p><b>Level 2</b> Responses are unlikely to achieve level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p>	AO2 Levels	AO2 Marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
AO2 Levels	AO2 Marks														
5	13–14														
4	10–12														
3	7–9														
2	4–6														
1	1–3														

Question	Indicative Content	Mark	Guidance
	<p>against the rights of the individual Case law on refusal of medical treatment seems to respect the autonomy of the individual <i>Re B (Adult, refusal of medical treatment)</i> but not where there is a lack of capacity <i>F v West Berkshire HA</i> or it is against the patient's best interests or those of a third party like an unborn child <i>Re: S, Re: MB (Medical Treatment)</i> However, in <i>Ashley v CC of Sussex Police</i> a police powers case raising issues of liberty of the individual, the court decided that self-defence to a battery should be measured by a lower standard than in criminal law In medical cases involving the right to life the courts have taken a cautious approach in recognising a limited right to passive euthanasia <i>Airedale NHS Trust v Bland</i> but not recognising the explicit right to die <i>R v DPP ex parte Dianne Pretty</i> Protection from torture, inhuman and degrading treatment (Article 3 HRA) receives limited protection in the context of reasonable chastisement see <i>A v UK</i></p> <p><b>False Imprisonment</b> There have been a number of cases recently involving prisoners who have been incarcerated longer than they should have due to miscalculations of their sentences. The courts have generally acted in favour of the liberties of the individuals by ruling that false imprisonment is a tort of strict liability <i>R v Governor of Brockhill Prison ex parte Evans</i> but not where the court are at fault <i>Quinland v Governor of Swaledale Prison</i> The law recognises the right to liberty by limiting the time one can be lawfully detained <i>White v WP Brown</i> In <i>Lumba v Secretary of State for the Home Department</i> the court recognised the primacy of the fundamental right to liberty where detained foreign nationals were detained based on a technical breach of public law but would have</p>		<p><b>Level 1</b> Responses are unlikely to achieve level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (NB conclusion does not need to appear at end).</p>

Question	Indicative Content	Mark	Guidance
	<p>remained detained despite this            However, the case of <i>Murray v MOD</i> ruled that it is not necessary for a detained person to be told in specific words that he/she was actually under arrest. This shows that courts can give narrow interpretations in favour of the police which, arguably, under-protect individual civil liberties            Furthermore, in <i>Austin v UK</i>, the court had to consider whether individual liberties under, <i>inter alia</i>, Article 5 (freedom of movement) had been interfered with by the police practice of 'kettling'. The court ruled that the practice itself did amount to false imprisonment but that it was necessary and proportionate in the circumstances. Again, this, arguably, leaves the civil liberties of lawful protesters under-protected            In <i>R v Bournemouth Community &amp; Mental Health NHS Trust</i>, the court ruled that a patient in an unlocked, open ward was not detained even though he was sedated and would have been prevented from leaving if he had attempted it. This also shows the primacy given to the needs of the detaining authorities (this time under the Mental Health Act)            See also <i>Iqbal v Prison Officers Association</i> (prisoners' rights denied on the basis of the <i>Herd</i> omission principle)</p> <p><b>Credit general relevant points</b>            The role and usefulness of trespass to the person as a means of protecting civil liberties            The place of trespass to the person in regulating police powers            The way damages may be punitive or nominal to reflect relative seriousness            The interaction between the potential protection offered by the HRA and trespass to the person</p> <p><b>Reach any sensible conclusion</b></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>	4	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>24–30</td> <td>4</td> </tr> <tr> <td>17–23</td> <td>3</td> </tr> <tr> <td>9–16</td> <td>2</td> </tr> <tr> <td>1–8</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	24–30	4	17–23	3	9–16	2	1–8	1
AO1 + AO2 Marks	AO3 Mark														
24–30	4														
17–23	3														
9–16	2														
1–8	1														

Question	Indicative Content	Mark	Guidance																		
3	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Law on trespass to the person as stated above and particular cases of relevance as indicated</p>	10	<table border="1" data-bbox="1279 236 1865 448"> <thead> <tr> <th>Mark Levels</th> <th>AO1 Marks</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>7–8</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>5–6</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>3–4</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–2</td> <td>1–4</td> </tr> </tbody> </table>	Mark Levels	AO1 Marks	AO2 Marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4
Mark Levels	AO1 Marks	AO2 Marks																			
5	9–10	17–20																			
4	7–8	13–16																			
3	5–6	9–12																			
2	3–4	5–8																			
1	1–2	1–4																			
	<p><b>Assessment Objective 2 – Analysis, Evaluation and Application</b></p> <p>In the case of (a):</p> <p><b>AP1</b> Reason that Amanda has been falsely imprisoned by suffering a total loss of liberty (<i>Bird v Jones</i>). Possibly also recognising that Derek may not have ‘reasonable grounds’ for this detention as he has not done enough (asking to see the receipt) to ensure against this</p> <p><b>CP</b> Recognise that the fact that although the shed is unlocked Amanda is still falsely imprisoned because her means of escape is dangerous (<i>Wright v Wilson</i>)</p> <p><b>AP2</b> Recognise that five hours goes significantly beyond both common law and statutory time limits for detention without lawful arrest and that this is only made worse by the fact that the detention was not reasonable in the first place (<i>White v WP Brown</i>)</p> <p><b>AP3</b> Credit any other relevant point such as any speculation as to the effect on damages</p> <p><b>CON</b> Amanda has been falsely imprisoned</p>	20	<p>Marks should be awarded as follows (per part question):</p> <table border="1" data-bbox="1279 555 1749 767"> <thead> <tr> <th>Mark Levels</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> </tr> <tr> <td>4</td> <td>7–8</td> </tr> <tr> <td>3</td> <td>5–6</td> </tr> <tr> <td>2</td> <td>3–4</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p><b>NB A maximum of 3 marks can be allocated for AO1 for each part question.</b></p> <ul style="list-style-type: none"> <li>• Max 3 marks for the critical point (CP)</li> <li>• Max 6 marks for applied points (AP)</li> <li>• Max 1 mark for a logical conclusion*/assessment of the most likely outcome in terms of liability (CON)</li> </ul> <p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a conclusion*.</p> <p>Responses are unlikely to achieve level 5 if the conclusion* is incorrect <u>and</u> contradicted by the reason offered.</p> <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).</p>	Mark Levels	(a), (b) or (c)	5	9–10	4	7–8	3	5–6	2	3–4	1	1–2						
Mark Levels	(a), (b) or (c)																				
5	9–10																				
4	7–8																				
3	5–6																				
2	3–4																				
1	1–2																				



Question	Indicative Content	Mark	Guidance
	<p>In the case of <b>(b)</b>:</p> <p><b>AP1</b> Recognise the traditional position that an assault required an 'active threat' (<i>Read v Coker</i>)</p> <p><b>AP2</b> The traditional position was that words alone could not constitute an assault (<i>Meade &amp; Belt's case</i>)</p> <p><b>CP1</b> Recognise however that, in the light of highly persuasive authorities such as <i>R v Ireland &amp; R v Burstow</i>, the words spoken by Rafiq would be enough to constitute an active assault especially since they have produced in Shahida a mental breakdown (<i>Smith v CC Woking</i>)</p> <p><b>AP3 or CP2</b> Reason that an alternative statutory action may now exist under the Protection from Harassment Act 1997 (PHA) as amended by the Protection of Freedoms Act 2012 (PFA). The term <b>harassment</b> is relevant to this case and is used to cover the 'causing of alarm or distress' (an offence under section 2 of the PHA (as amended)), and 'putting people in fear of violence' is also an offence under section 4 of the PHA. Under the PFA, two new offences of stalking were brought in by inserting new sections 2A and 4A into the PHA. Whilst there is no strict legal definition of 'stalking', section 2A(3) of the PHA sets out examples of acts associated with stalking such as following a person, watching or spying on them or forcing contact with the victim through any means, including social media. Rafiq clearly meets these criteria (<i>Ferguson v British Gas</i>)</p> <p><b>CON</b> Conclude that Rafiq is liable for an assault at common law and, most likely, guilty of both stalking and harassment under the statutory provisions described above</p>		

Question	Indicative Content	Mark	Guidance
	<p>In the case of <b>(c)</b>:</p> <p><b>AP1</b> Reason that what Charlie has done to Dave is sufficiently direct (<i>Scott v Shepherd</i>) as clearly evidenced by the facts and would constitute a clear battery</p> <p><b>AP2</b> Furthermore, the facts clearly indicate that the act was intentional by stating that Charlie intends to 'take revenge' (<i>Letang v Cooper</i>)</p> <p><b>CP</b> Recognise that any attempt to claim the defence of sporting consent will fail since the battery arises outside the rules of the game (<i>Simms v Leigh RFC</i>)</p> <p><b>AP3</b> Note that although there is, strictly speaking, no longer a requirement of hostility (<i>F v West Berkshire; Wilson v Pringle</i>), there is clear evidence of such hostility in this case</p> <p><b>CON</b> Charlie will be liable for a battery</p>		

### 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)

[www.ocr.org.uk](http://www.ocr.org.uk)

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

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

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

© OCR 2016

