

GCE

Law

H418/02: Law making and the law of tort

A Level

Mark Scheme for June 2025

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

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

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

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MARKING INSTRUCTIONS

PREPARATION FOR MARKING

RM ASSESSOR

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *RM Assessor Online Training: OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are available in RM Assessor
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **required number** of standardisation responses.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the RM Assessor 50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone, email or via the RM Assessor messaging system.
5. **Crossed-Out Responses**
Where a candidate has crossed out a response and provided a clear alternative then the crossed-out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed-out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM Assessor, which will select the highest mark from those awarded. (*The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.*)

Multiple-Choice Question Responses

When a multiple-choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only one mark per response)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. *(The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)*

Short Answer Questions (requiring a more developed response, worth two or more marks)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space).

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there, then add the annotation 'SEEN' to confirm that the work has been seen and mark any responses using the annotations in section 11.

7. There is a NR (**No Response**) option. Award NR (No Response):
- if there is nothing written at all in the answer space
 - OR if there is a comment which does not in any way relate to the question (e.g., 'can't do', 'don't know')
 - OR if there is a mark (e.g., a dash, a question mark) which is not an attempt at the question.
- Note: Award 0 marks – for an attempt that earns no credit (including copying out the question).
8. The RM Assessor **comments box** is used by your Team Leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.**
9. *Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.*
10. For answers marked by levels of response: Not applicable in F501
- To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- To determine the mark within the level**, consider the following

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

11. Annotations

Annotation	Meaning
Highlighter	Highlight
SEEN	Noted but limited credit given
	AO1 worthy of credit
APP	AO2 worthy of credit
P	AO3 evaluative point
DEV	AO3 developed point
E	AO3 well-developed point
	AO3 very well-developed point
CON	Conclusion - where appropriate
C	Relevant case or statutory authority
A	Basic application points at Level 1
NAQ	Not answered the question or issue
REP	Repetition
	Placeholder
 	Horizontal and vertical wavy line to note irrelevant or incorrect material

SUBJECT–SPECIFIC MARKING INSTRUCTIONS

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Questions that have an asterisk (*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

When there are 2 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Consistently meets the criteria for this level	At top of level

When there are 3 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Meets the criteria but with some slight inconsistency	Middle of level
Consistently meets the criteria for this level	At top of level

Section A

	Answer	Marks	Guidance
1	Describe overruling and reversing. Answers may include: Overruling - this is where a court in a later case makes a decision affecting the legal ruling decided in a different earlier case. It might be that a court higher up in the hierarchy overrules a legal ruling established in a lower court or it might be where a court has the power to overrule one of its own previous legal rulings. Examples of the former include: where the House of Lords in <i>Lister v Hesley Hall</i> overruled the Court of Appeal in <i>Trotman v North Yorkshire County Council</i> or where the House of Lords in <i>R v R</i> overruled the Queen's Bench Division in <i>R v Miller</i>. Examples of the latter include: where the UKSC (and formerly the House of Lords) use the Practice Statement 1966 (use in UKSC approved under Practice Direction 3 & <i>Austin v Southwark</i>) to overrule a past legal rule of their own (e.g. <i>Murphy v Brentwood</i> overruled <i>Anns v Merton</i>; <i>R v Shivpuri</i> overruled <i>Anderton v Ryan</i>; <i>Pepper v Hart</i> overruled <i>Davis v Johnson</i> and <i>Knauer v Ministry of Justice</i> overruled <i>Cookson v Knowles/Graham v Dodds</i>). Reversing - this is where a court higher up the hierarchy reverses the decision of a lower court on appeal in the same case. For example, the UKSC may disagree with the Court of Appeal's decision when the same case gets appealed up to the UKSC. The higher court 'reverses' the decision of the lower court. Examples include: <i>Robinson v CCWY</i>, <i>R v Kingston</i>, <i>Sweet v Parsley</i>, <i>Gillick v West Norfolk</i>, <i>Fitzpatrick v Sterling Housing Association Ltd</i> and <i>Barry Jehovah's Witnesses v BXB</i>. Note that reversing is where a superior court changes the decision or outcome of a lower court. A case is only 'overruled' when the ratio or legal principle in the earlier case was wrong and should not be followed. A new ratio is then set for future cases but the decision or outcome of the earlier case is left unaffected. Credit any other relevant point(s).	8 AO1	Use Levels of Response criteria Level 4 (7–8 marks) • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. Level 3 (5–6 marks) • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. Level 2 (3–4 marks) • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. Level 1 (1–2 marks) • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. Level 0 (0 marks) No response or no response worthy of credit. Levels are accessed based on the completeness of the response. For Level 4 there will be an excellent description of both terms, each supported with case examples.

	Answer	Marks	Guidance
2	Explain the controls exercised over delegated legislation by the courts. Answers may include: Court control over delegated legislation (DL) is achieved through the process of judicial review which takes place in the Administrative Court of the King's Bench Division of the High Court. Judicial review is based on the doctrine of <i>ultra vires</i> which determines whether a decision made under the authority of the enabling Act has been made beyond the powers of the decision maker. If the decision is <i>ultra vires</i> it may be declared to be invalid. Procedural <i>ultra vires</i> - this is where the person or body exercising powers granted by the enabling Act have failed to follow certain procedures that were laid down in the Act. This often arises when a body has failed to consult with various parties before acting under enabling Act powers - <i>Agricultural Training Board v Aylesbury Mushrooms</i>. Substantive <i>ultra vires</i> - this is where a person or body has acted without or beyond their authority by going beyond the rules laid down in the enabling Act. It is not the way the decision has been made (procedural <i>ultra vires</i>) but the fact that the decision maker did not have sufficient authority under the enabling Act - <i>R v Secretary of State for Social Security ex parte Joint Council for the Welfare of Immigrants</i>. Substantive <i>ultra vires</i> for unreasonableness - there is a second type of substantive <i>ultra vires</i> sometimes known as irrationality or (Wednesbury) unreasonableness. This occurs where the decision made is so unreasonable that no reasonable body would have made it - <i>Associated Picture Houses v Wednesbury Corporation</i>. The Human Rights Act – allows for the judicial review of decisions made under an enabling Act where they are alleged to be incompatible with the rights protected by the Human Rights Act 1998 - <i>RR v Secretary of State for Work and Pensions</i>. Do not credit <i>locus</i> issues or remedies. Credit any other relevant point(s).	8 AO1	Use Levels of Response criteria Level 4 (7–8 marks) • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. Level 3 (5–6 marks) • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. Level 2 (3–4 marks) • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. Level 1 (1–2 marks) • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Level 0 (0 marks) No response or no response worthy of credit. Levels are accessed based on the completeness of the response. For Level 4 there will be an excellent explanation of all three heads of review supported with case examples.

	Answer	Marks	Guidance
3	Discuss the disadvantages of the Golden Rule of statutory interpretation. Answers may include: The rule operates where the literal rule would produce an absurd result but the definition of what is 'absurd' remains subjective with different judges taking different views – this can lead to inconsistency and unfairness. The rule allows judges too much discretion/power which goes against constitutional doctrines such as the supremacy of parliament, separation of powers and judicial independence. Words that were not in the original statute can be effectively added in such that judges are really re-writing statute law - <i>Re: Sigsworth</i>. The rule is limited in its use and is, therefore, only used on rare occasions making it an ineffective check on the literal rule. The rule can be unpredictable in its application. There is no clear guidance about how and when the rule should be used and no definition of what an absurd result is before deciding to use it. This unpredictability can make it hard for lawyers to predict the outcome of cases and advise clients accurately and reliably. It also undermines certainty in the law. The rule has been criticised as constituting little more than the literal rule and is therefore subject to similar criticisms regarding the reasonable expectations of the use of language and the associated limitations on drafting of legislation. Critics (e.g. Zander) have referred to the rule as a 'feeble parachute' and an 'unpredictable safety valve' meaning it provides an escape route from the literal rule but one with too little discretion and flexibility to be effective. The Law Commission has stated that the rule gives no clear meaning of an 'absurd result' and can allow the Golden Rule to be a less explicit form of the Mischief Rule. Credit any other relevant point(s).	12 AO3 1b	Use Levels of Response criteria Level 4 (10–12 marks) • Excellent analysis and evaluation of a wide range of legal concepts and issues. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed. Level 3 (7–9 marks) • Good analysis and evaluation of a range of legal concepts and issues. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed. Level 2 (4–6 marks) • Basic analysis and evaluation of legal concepts and issues. • The response is partially focused on the question. • Some of the key points are discussed and partially developed. Level 1 (1–3 marks) • Limited analysis of legal concepts and/or issues. • The response has limited focus on the question. • Discussion of any key points is minimal. Level 0 (0 marks) No response or no response worthy of credit. Level 3 good analysis will require at least one developed point and Level 4 excellent analysis will require at least one well-developed point among a range of relevant evaluative points. No conclusion is necessary or credited.

	Answer	Marks	Guidance
4	Discuss the disadvantages of the process by which an Act of Parliament is created. Answers may include: That the legislative process is undemocratic. The Lords and the Crown are unelected and unaccountable. In reality they are subservient to the will of the executive (the government of the day) who control the legislative programme. Individual MPs also have little discretion or independent influence because of the whipping system. The lack of time - the legislative process is lengthy and slow with multiple stages and the potential for constant delays. This limits legislative programmes as priority is given to manifesto promises leaving little time for pragmatic but useful legislation and reform. The way that Private Members' Bills offer MPs an opportunity to raise areas of personal interest, but few are successful as they depend on government time and support. The lack of expertise - MPs increasingly come from a relatively narrow background. They lack the technical and legal expertise to scrutinise specialised legislation properly. Problems that arise when 'knee-jerk' legislation is rushed through. It can lead to badly drafted law such as the Dangerous Dogs Act 1991. Consequently, amending legislation is required which then adds to the already heavy burden on Parliament. The issues raised by disagreement between the House of Commons and the House of Lords (ping pong) which raises issues of democratic legitimacy and credibility. Although it is right that the elected Commons have the most power, this can lead to a lack of proper scrutiny and accountability as seen with the Rwanda Bill. That the process is complicated with much scope for delay and confusion. The Renton Committee identified four main categories of complaint: • The language used in many Acts is obscure and complex. • Acts are 'over-elaborate' because draftsmen try to provide for all contingencies. • The structure of many Acts is illogical with sections appearing to be out of sequence, making it difficult to find relevant sections. • There is a lack of 'connection' between Acts making it difficult to reference all the Acts that might affect one particular area. Credit any other relevant point(s).	12 AO3 1b	Use Levels of Response criteria Level 4 (10–12 marks) • Excellent analysis and evaluation of a wide range of legal concepts and issues. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed. Level 3 (7–9 marks) • Good analysis and evaluation of a range of legal concepts and issues. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed. Level 2 (4–6 marks) • Basic analysis and evaluation of legal concepts and issues. • The response is partially focused on the question. • Some of the key points are discussed and partially developed. Level 1 (1–3 marks) • Limited analysis of legal concepts and/or issues. • The response has limited focus on the question. • Discussion of any key points is minimal. Level 0 (0 marks) No response or no response worthy of credit. Level 3 good analysis will require at least one developed point and Level 4 excellent analysis will require at least one well-developed point among a range of relevant evaluative points. No conclusion is necessary or credited.

Section B

5. Advise Amir whether Bigbildz would be liable if he sues them in negligence. Do not discuss occupier's liability, defences or remedies.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

Duty of care:

1. According to *Robinson v Chief Constable of West Yorkshire Police*, if there is an existing precedent, then it should be applied. There is a well-established duty of care between employers and employees with authorities at common law and statute such as: *Wilson & Clyde Coal Co v English*, *Wilson v Tyneside Window Cleaning Co*, *Walker v Northumberland*, *Latimer v AEC* and statutory authorities such as s.2(1) Health & Safety at Work Act 1974.

Breach:

2. The objective 'reasonable man' test: *Blyth v Birmingham Waterworks Company*, *Vaughan v Menlove*. Standard as applied to the reasonable person in that situation or, in this case, the reasonable employer: *Latimer v AEC*, *Walker v Northumberland*, *Wilson v Clyde Coal*.

3. Factors that can vary the standard of care applicable here: adequate precautions: *Latimer v AEC*; seriousness of risk: *Bolton v Stone*.

Damage:

4. Factual causation: *Barnett v Chelsea and Kensington Hospital Management Committee*.

5. Remoteness of damage: *The Wagon Mound*.

Credit any other relevant point(s).

Levels are accessed based on the completeness of the response. A Level 4 excellent response will fully explain all the elements of negligence and include at least two relevant cases.

AO2 Indicative content

Answers **may** include:

1. There is a duty of care between Bigbildz and Amir because there is a well-established duty of care between employers and employees with authorities at common law and statute. At the time of the alleged negligence 'Amir was an employee of Bigbildz Construction'.
2. Bigbildz have breached the duty owed to Amir. Bigbildz have fallen below the standard of the reasonable employer by failing to provide a safe system of work for their employees. In particular, they have failed to provide safe equipment (the scaffolding), undertake an assessment of the safety by carrying out an inspection and failed to identify and minimise or eliminate foreseeable hazards or risks.
3. Risk factors are likely to raise the standard of care in Amir's favour: The modest cost and practicality of taking precautions (providing better scaffolding and inspecting it) compared to the risk involved in not doing so mean that the standard of care might be varied in Amir's favour. Alternatively, weighing the potential seriousness of the risk (injuries caused by falling from height likely to be serious) against the likelihood of them arising (fairly high if providing faulty equipment) would also lead to the standard of care being varied in Amir's favour.
4. Bigbildz has caused harm: 'But for' their act (providing substandard scaffolding) and/or their omission (not inspecting the scaffolding), Amir would not have suffered personal injury and property harm so Bigbildz are the factual cause.
5. The harm caused by Bigbildz is not too remote from the act and/or omission since injury and property harm are a reasonably foreseeable consequence of providing substandard equipment and not carrying out a safety inspection.

Credit any other relevant point(s).

Levels are accessed based on the completeness of the response. A Level 4 excellent response will fully apply all the elements of negligence making good use of the facts in the scenario to show liability.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	7–8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10–12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	5–6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7–9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to case law.	3–4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4–6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of case law is limited.	1–2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6. Advise Amir what remedies he might expect if successful in his claim and whether Bigbildz has any defences available.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

Remedies

1. General damages:

Cannot be quantified precisely; usually looking forward from the trial; direct result of the harm.

They are usually non-pecuniary losses such as primary injuries, prospective medical and care costs, pain and suffering and loss of amenity but can include pecuniary losses such as future loss of earnings.

2. Special damages:

Quantifiable financial losses; consequential to the harm; up to the date of the trial/settlement.

They are usually pecuniary losses such as pre-trial expenses (loss of or damage to property and medical expenses), expenses incurred by others, pre-trial loss of earnings and travel expenses.

3. Payments:

Lump sums are one-off payments of the entire sum of damages.

Structured settlements: under the Damages Act 1996 damages can be settled so that they are paid out incrementally.

Periodic payments are made for life or a specified period in order to overcome potential future uncertainty.

Possible defence

4. Contributory negligence:

A partial defence where there is a reduction in damages if C has contributed to their own injuries - Law Reform (Contributory Negligence) Act 1945, *Sayers v Harlow UDC*, *Froom v Butcher*.

Credit any other relevant point(s).

Levels are assessed based on the completeness of the response. A Level 4 excellent response will fully explain damages, payments and contributory negligence and include at least one relevant authority.

AO2 Indicative content

Answers **may** include:

Possible damages for Amir:**1. General damages:**

- Compensation for the primary injury – Amir has ‘serious leg injuries’.
- Compensation for the pain and suffering – Amir can be assumed to have experienced pain and suffering as a result of the ‘serious leg injuries’.
- Loss of amenity because Amir enjoyed playing amateur football but ‘can no longer play’.
- Amir may also be compensated for estimated future loss of earnings (as ‘he can no longer work as a builder’) or medical expenses such as physiotherapy (as ‘he has been left with a permanent disability’).

2. Special damages:

- Loss of pre-trial earnings – pre-trial loss of pay at ‘£1000 a week’.
- Property damage – Amir’s £1000 phone is ‘broken beyond repair’.
- Amir may also claim for pre-trial medical and travel expenses.

3. Payments:

Credit any relevant discussion of the lump sum or structured settlement options as they might relate to Amir’s circumstances.

Possible defence for Bigbildz**4. Contributory negligence:**

If Amir is considered to have contributed to his own injuries by wearing inappropriate footwear, his damages may be reduced accordingly. Note that Amir cannot be *volenti* as he was not even aware of the risk let alone accepting it.

Credit any other relevant point(s).

Levels are assessed based on the completeness of the response. A Level 4 excellent response will fully apply the law on damages, payments and contributory negligence and make good use of the facts provided in the scenario.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7–8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10–12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5–6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7–9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4–6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1–2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7 & 10* Discuss whether the Occupiers' Liability Act 1957 is fair on adult visitors.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

1. General features:

The law relating to liability of occupiers for lawful visitors on their premises is covered by the Occupiers' Liability Act (1957) - (OLA 57).

An occupier is a person with a sufficient degree of control or possession of the premises and there can be more than one occupier - *Wheat v Lacon*.

A lawful visitor includes those with permission (express licence, implied licence and legal rights of entry) – 1(2) & (4) OLA 57; 2(6) OLA 57; *Lowery v Walker*.

Premises are broadly defined in section 1(3)(a) OLA 57 as any 'fixed or movable structure' - *Wheeler v Copas*.

2. Liability:

The basic duty in section 2(1) OLA 57 is the 'common duty of care' owed to all lawful visitors – *Laverton v Kipasha*. The section also allows the occupier to extend, restrict, modify or exclude his duty.

The scope of the duty under 2(2) OLA 57 is to 'take reasonable care to keep the visitor safe for the purposes for which the visitor is permitted on the premises'.

3. Avoiding liability:

Under 2(3)(b) OLA 57 the occupier is entitled to expect a person entering to carry out a trade, to guard against risks associated with the trade - *Roles v Nathan*, *Ogwo v Taylor*.

Under 2(4)(b) OLA 57 the occupier can avoid liability where the damage is caused by work negligently done by an independent contractor if: (i) it was reasonable to hire a contractor for the work – *Ferguson v Welsh*; (ii) a competent contractor was chosen; & (iii) the work was inspected if appropriate - *Woodward v Mayor of Hastings* cf: *Haseldine v Daw*.

An occupier can avoid liability by giving sufficient warnings - 2(4)(a) OLA 57 but they must be sufficient to protect the visitor - *Rae v Mars*, *Roles v Nathan*. There is no duty to warn against obvious risks – 2(5) OLA 57; *Darby v National Trust*.

4. Possible defences:

Consent (*volenti non fit injuria*) under 2(5) OLA 57; *White Lion Hotel v James* – but not if the visitor had no choice other than to enter the premises - *Burnett v British Waterways Board*. Contributory negligence under the Law Reform (Contributory Negligence) Act 1945. Consider also, the use of exclusion clauses in certain circumstances under s.2(1) Unfair Contract Terms Act 1977.

Credit any other relevant point(s). Level 4 excellent responses will fully explain all key areas identified above including at least two relevant cases.

AO3 Indicative content

Answers **may** include:

The major purpose in passing the Act was to create a common duty of care to all lawful visitors because prior to the Act, different duties were owed to different types of lawful visitors. This has obviously had the effect of being fairer and more consistent to different lawful visitors. However, it could be argued as unfair if the statute proved more restrictive compared to the previous common law provisions.

There is no definition of occupier in the Act so common law definitions apply – this includes people in actual control of the premises and those in possession (*Wheat v Lacon*) or even dual liability (*Stevens v Anglia Water Authority*). This certainly seems to be fair to the adult visitor as it broadens the possibility of a successful claim by offering a choice of potential defendants. Claimants can then sue the occupier best placed to pay their damages. However, in unclear cases the visitor may be unfairly left without a remedy.

Premises are very broadly defined in both s.1(3) OLA 57 and at common law (*Wheeler v Copas*). This is fair to adult visitors as it clearly increases the possibility of claiming successfully.

It could be argued that the rules on those carrying out a trade under s.2(3)(b) OLA 57 (which can relieve the occupier of liability), whilst fair to the occupier, operate unfairly on the adult visitor who has still been injured on the occupiers' premises but an alternative action against the tradesman in negligence may alleviate this unfairness.

In the same way, the special rules on the work of independent contractors under section s.2(4)(b) OLA 57 (which can also relieve the occupier of liability) can be argued to operate fairly on both parties. The occupier who is not at fault is relieved of liability but the adult visitor (claimant) may still have an action against the contractor in negligence.

The OLA 57 is fair on adult visitors (claimants) as it adopts the objective standards common to tort law in general. Occupiers only have to do what is 'reasonable' to keep visitors 'reasonably safe' ensuring just and fair outcomes. However, the numerous means available to the occupier for avoiding liability are more extensive than under common law and so possibly not so fair to potential claimants.

Credit any discussion of 'principled' arguments such as:

- Whether the Act is too fair to adult visitors and has contributed to the compensation culture and whether judicial responses have made this less unfair on occupiers (see for example the approach to 'obvious dangers' in *Laverton v Kipasha & The Dean and Chapter of Rochester Cathedral v Debell*).
- Whether the Act is striking the correct balance between being fair on adult visitors without having an adverse deterrent effect on businesses in relation to burdensome costs and insurance premiums.
- Whether it could be argued as only fair on adult visitors for occupiers to expect them to take responsibility for themselves and not to have to second guess what they might do or what state they may be in.
- Critically consider fairness in light of the reality of levels of protection that can be offered by occupiers and the practical effect of any warnings. Comment on the influence of policy – can or should the law protect everyone from everything?

Credit any other relevant point(s). Level 4 excellent responses will cover a range of evaluative points focused on the question including at least one well-developed point and a conclusion.

	AO1	Mark	AO3 1a	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7–8	- Excellent analysis and evaluation of a wide range of legal rules and principles. - The response is wide ranging and has a well sustained focus on the question. - The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	10–12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5–6	- Good analysis and evaluation of a range of legal rules and principles. - The response has a mainly consistent focus on the question. - Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	7–9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–4	- Basic analysis and evaluation of legal rules and principles. - The response is partially focused on the question. - Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	4–6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1–2	- Limited analysis of legal rules and principles. - The response has limited focus on the question. - Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

8. Advise Dev whether he will be successful if he sues Charlie in Rylands v Fletcher. Do not discuss any remedies.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

1. D must bring on and accumulate the thing on their land – *Giles*.
2. The thing must be likely to cause mischief if it escaped – *Hale*.
3. The defendant's use of land must be extraordinary and unusual in the time and place (*Transco*); and
4. The thing does escape from land in the control and possession of the defendant to land in the control and possession of the claimant (*Hale*) **and** causes reasonably foreseeable harm – *Cambridge*.
5. Defence: Act of a stranger – if a stranger over whom D has no control, causes the escape there may be a defence – *Perry*.

The cases mentioned above are: *Rylands v Fletcher*, *Transco v Stockport MBC*, *Cambridge Water v Eastern Counties Leather*, *Hale v Jennings Bros*, *Giles v Walker*, *Stannard v Gore*, *Perry v Kendrick's Transport*.

Credit any other relevant point(s).

Levels are assessed based on the completeness of the response. A Level 4 excellent response will fully explain all the key elements of Rylands including the relevant defence of act of a stranger and include at least two relevant cases.

AO2 Indicative content

Answers **may** include:

1. Charlie's actions in collecting acid from used car batteries meets the definition of 'bringing on and accumulating'.
2. Acid from multiple used car batteries would cause mischief if it escaped.
3. Charlie's use of an old oil drum as a storage facility for a large quantity of acid is most certainly 'extraordinary and unusual in the time and place' given the conventional expectations of use of garage premises and the potential for environmental damage and land contamination.
4. The thing (acid) did escape from land which was in Charlie's control and possession to land which was not in his control and possession and it caused reasonably foreseeable harm (in that acid would foreseeably cause harm if it escaped especially to organic matter like the plants).
5. Using the CCTV footage as proof, Charlie should be able to raise the defence of 'act of a stranger' and avoid liability. Alternatively, consider the possibility that Charlie might have reasonably guarded against the interference by not keeping the acid 'outside' in which case the defence might fail.

Conclude that it seems as though Dev has a good case against Charlie but Charlie has a valid defence and can avoid liability in *Rylands*. Also credit alternative conclusions which assert that there is no valid defence, where supported with suitable reasoning.

Credit any other relevant point(s).

Levels are accessed based on the completeness of the response. A Level 4 excellent response will fully apply all the key elements of *Rylands* including the relevant defence of act of a stranger and make good use of the facts in the scenario.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7–8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10–12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5–6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7–9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4–6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1–2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

9. Advise Crowan Computers whether they will be vicariously liable for the torts of Sam, Tom and Yana. Do not discuss employment status or remedies.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

1. Vicarious liability (VL) is where one party (usually an employer) is responsible for the torts of another party (usually an employee). In VL the claimant (C) is the party that suffers the harm, the tortfeasor (TF) is the party that commits the tort and causes the harm, and the defendant (D) is the third party being held liable for the TF's tort.
2. There are two requirements for vicarious liability: a) a relationship between D and TF which makes it proper for the law to make D pay for the fault of TF, and b) a connection between that relationship and the TF's wrongdoing - *Barry Congregation of Jehovah's Witnesses v BXB*.
3. The connection between the employment relationship and the TF's wrongdoing:
 - The test is whether the wrongful conduct of the employee was so closely connected with acts the employee was authorised to do that, for the purposes of the liability of the employer to third parties, it may fairly and properly be regarded as done by the employee while acting in the ordinary course of his employment - *WM Morrisons Supermarkets plc v Various Claimants* approving *Dubai Aluminium v Salaam*.
 - The application of the close connection test requires consideration of the link between the wrongful conduct and the TF's authorised activities but factual causation is not sufficient. Consideration of the policy of enterprise liability or risk may assist - *Barry Congregation of Jehovah's Witnesses v BXB*.
 - This principle must be applied with regard to the circumstances of the case and the assistance provided by previous relevant court decisions.
 - There is generally a close connection where the TF's tort falls within the 'field of activities' associated with the employment.
4. There is no liability where a TF is on a frolic of his own and intention and motive are key elements of determining this – *WM Morrisons Supermarkets plc v Various Claimants*; *Bellman v Northampton Recruitment*. Other relevant cases: *Hilton v Thomas Burton (cf: Smith v Stages)*; *Mohamud v WM Morrisons Supermarkets*; *Mattis v Pollock*; *N v Chief Constable of Merseyside*; *Gravil v Carroll*; *Barry Congregation of Jehovah's Witnesses v BXB*.

Credit any other relevant point(s).

Levels are accessed based on the completeness of the response. A Level 4 excellent response will fully explain all the relevant elements of vicarious liability and include at least two relevant cases.

AO2 Indicative content

Answers **may** reason that:

1. Basic applied points:

Identify parties. In order for Crowan Computers to be vicariously liable, Sam, Tom and Yana will have to satisfy the two elements of vicarious liability. Identify correct outcomes but lacking sufficient support. The first element (status as an employee) has been given and is ruled out by the rubric:

2. In respect of **Sam**

- Recognise that Sam has committed the intentional tort of assault.
- *Element 1: Given - Sam is an employee as he is stated to be under a 'contract of service' – no credit.*
- Element 2: Sam's assault is closely connected to his employment because the assault arose within the field of activities of the job assigned to him by Crowan Computers (attending to customers). He is not on a frolic of his own.
- Recognise the similarity to *Mohamud v Morrisons* and the likely same outcome.
- Conclude that Crowan Computers will be vicariously liable for the assault on Heidi.

3. In respect of **Tom**

- Recognise that Tom has committed the intentional tort of assault.
- *Element 1: Given - Tom is an employee as he is stated to be under a 'contract of service' – no credit.*
- Element 2: Tom's assault is closely connected to his employment because the assault was the result of an altercation arising from a discussion about work (pay) and Tom was speaking in his capacity as manager of Crowan Computers (therefore within the field of activities assigned to him). He is not on a frolic of his own.
- Recognise the similarity to *Bellman v Northampton Recruitment* and the likely same outcome.
- Conclude that Crowan Computers will be vicariously liable for the assault on Ivan.

4. In respect of **Yana**

- Recognise that Yana has committed the intentional tort of breach of confidence/data protection.
- *Element 1: Given - Yana is an employee as she is stated to be under a 'contract of service' – no credit.*
- Element 2: Yana's breach of confidence/data is *not* closely connected to her employment because the breach was motivated by a desire for revenge and part of her personal vendetta. In that way, it was not within the field of activities of the job assigned to her by Crowan Computers and she was on a frolic of her own.
- Recognise the similarity to *WM Morrisons Supermarkets plc v Various Claimants* and the likely same outcome.
- Conclude that Crowan Computers will not be vicariously liable for the breach of Mia's data confidentiality/protection.

Credit any other relevant point(s).

Levels are accessed based on the completeness of the response. A Level 4 excellent response will fully apply the relevant law on vicarious liability to all three tortfeasors making good use of the facts provided in the scenario.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	- Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	7–8	- Excellent application of legal rules to a given scenario. - Excellent presentation of a legal argument which is accurate, fully developed and detailed. - Fully appropriate legal terminology is used.	10–12
Level 3	- Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	5–6	- Good application of legal rules to a given scenario. - Good presentation of a legal argument which is detailed but not fully developed in places. - Appropriate legal terminology is used.	7–9
Level 2	- Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–4	- Basic application of legal rules to a given scenario. - Basic presentation of a legal argument which may lack detail in places and is partially developed. - Some appropriate legal terminology is used.	4–6
Level 1	- Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law is limited.	1–2	- Limited application of legal rules to a given scenario. - Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. - Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

10* As per question 7*

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1–2	8	0	0	0	8
3–4	0	0	0	12	12
5 or 8	8	12	0	0	20
6 or 9	8	12	0	0	20
7* or 10*	8	0	12	0	20
Total	32	24	12	12	80

**AO2 elements 1a and 1b will be awarded jointly

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