

**GCE**

**Law**

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

Advanced GCE

**Mark Scheme for June 2015**

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 2015

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
	<b>Q2</b> AO2
	<b>Q1&amp;3</b> Critical Point <b>Q2</b> Case
	<b>Q2</b> Bald case <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> Synopticism
	<b>Q1</b> Use of 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> Explain that: The court imposed a duty of care on a local authority in relation to the negligent inspection of inadequate foundations resulting in structural damage to real property. (One notional mark for the facts of the case). The case set down a two-stage test for a duty of care: firstly, do the parties satisfy the neighbour test? (should D have reasonably foreseen risk of harm to C?), if the answer is yes then a <i>prima facie</i> duty exists. Then a second question must be answered: are there any policy considerations which mean that it would not be desirable to allow a duty of care in this situation? If not, then a duty of care exists. The significance of <i>Anns</i> is that before the case new duty situations had to be justified by the courts where they could show good policy reasons for creating them. After <i>Anns</i>, the neighbour test would apply unless there was a policy reason to exclude it. <i>Anns</i> resulted in a real expansion in the range of duty situations and a consequent increase in the breadth of negligence. Hence, <i>Anns</i> is sometimes said to represent the high-water mark of duty of care.</p> <p><b>LNK</b> Link to any other relevant case eg <i>Donoghue v Stevenson</i> – <i>Anns</i> accepts the neighbour test as first limb of two-stage test but wants to find a quicker and simpler formula than development of new duty situations incrementally based on foresight of harm <i>Home Office v Dorset Yacht</i> – as this case was part of the</p>	12	<table border="1" data-bbox="1276 239 1724 454"> <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 the 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.</p> <p><b>1,2,3,4,5,K</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 relevant linked cases. 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> <p><b>Level 5</b> Responses are unlikely to achieve Level 5 without discussing the CP, without using a linked case for the purpose of showing development, without making two analytical points and discussing the importance of the case</p> <p><b>Re: K</b> Please note credit can only be given for comment that has direct relevance to <i>Anns</i>. Hence any generic comment should not be credited.</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>expansion of Donoghue leading to <i>Anns</i>  <i>Junior Books v Veitchi</i> – probably the peak of post-<i>Anns</i> expansion as the case strayed into economic loss  <i>Rowling v Takaro Properties Ltd</i> and/or <i>Yuen Kun Yeu v Attorney General of Hong Kong</i> – Lord Keith (in both) was very critical of <i>Anns</i>  <i>Sutherland Shire Council v Heyman</i> – High Court of Australia refused to follow <i>Anns</i>  <i>Murphy v Brentwood District Council</i> (persuaded by <i>Sutherland</i>) eventually overruled <i>Anns</i> by invoking the use of the Practice Statement 1966  <i>Caparo Industries v Dickman</i> – laid down a new stricter three stage test</p> <p>Discuss the case analytically (<b>AP</b>), for example making points such as:</p> <p><b>1</b> Arguments against <i>Anns</i> – for example, fear of insuring against new duties of care as well as the potential encroachment into areas of law traditionally governed by contract law (eg economic loss) led to the judiciary starting to restrict new duties of care in the aftermath of <i>Anns</i></p> <p><b>2</b> Arguments in support of <i>Anns</i> – for example, they wanted to rationalize the developments since Donoghue and provide a framework within which judges could develop the law</p> <p><b>3</b> Any discussion of the role of judges. <i>Anns</i> gave judges too much discretion which could lead to criticisms on constitutional or pragmatic levels. Others might argue that some judges were wary of or even feared the discretion it gave them</p> <p><b>4</b> Some academics (<i>Conaghan &amp; Mansell</i>) argue that Lord Wilberforce’s formulation in <i>Anns</i> was widely misunderstood and that <i>Caparo</i> only makes cosmetic changes. They argue that the same outcomes could have been produced using <i>Anns</i> in most post- <i>Caparo</i> cases</p>		<p><b>Re: LNK</b></p> <p>Please note credit can only be given for the link case where there is a specific link to <i>Anns</i>.</p>

Question	Indicative Content	Mark	Guidance										
	<p>(including <i>Caparo</i> itself)</p> <p><b>5</b> The case represents a reflection of social, political and economic factors prevailing at the time. Many judges are uncomfortable about being seen to be making overt policy decisions and the move away from <i>Anns</i> could be argued as playing down any direct policy-making. The rhetoric of fairness is preferred to the language of policy-based choices</p> <p><b>K</b> Any 'principled' arguments such as those based on source 4. For some <i>Anns</i> represented the slippery slope towards social responsibility. This, in turn, would lead to an encroachment on personal liberty, individual freedom and the free market and an expansion of the 'compensation' or 'blame' culture. Others would argue that an overt regard for policy is an equally legitimate expression of the tortuous aims of loss distribution, deterrence and social justice. Consider any other relevant analytical comment(s)</p>												
	<p><b>Assessment Objective 3 - Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th data-bbox="1279 884 1503 924">AO2 Marks</th> <th data-bbox="1503 884 1727 924">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 924 1503 963">10–12</td> <td data-bbox="1503 924 1727 963">4</td> </tr> <tr> <td data-bbox="1279 963 1503 1003">7–9</td> <td data-bbox="1503 963 1727 1003">3</td> </tr> <tr> <td data-bbox="1279 1003 1503 1043">4–6</td> <td data-bbox="1503 1003 1727 1043">2</td> </tr> <tr> <td data-bbox="1279 1043 1503 1083">1–3</td> <td data-bbox="1503 1043 1727 1083">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> <ul style="list-style-type: none"> <li>• Explain that a condition of finding negligence is establishing a duty of care, establishing a duty of care is usually the most significant issue, duty of care is effectively a tool for widening or narrowing the scope of claimants in a negligence action</li> <li>• <i>Anns v London Borough of Merton</i> UKHL 4 (1977) – introduces a two-stage test explicitly recognising significance of policy considerations</li> <li>• <i>Caparo Industries plc v Dickman</i> (1990) – a three-stage test is set out: <ul style="list-style-type: none"> <li>○ foreseeable harm to the claimant; (<i>Topp v London Country Bus (SW) Lt, Gunn v Wallsend Slipway and Engineering Co, Margerson v JW Roberts Ltd, Bourhill v Young, Jolley v London Borough of Sutton</i>)</li> <li>○ proximity or neighbourhood between the claimant and defendant (<i>Hill v CC of West Yorkshire, Dorset Yacht v Home Office</i>); and</li> <li>○ that it is ‘fair, just and reasonable’ to impose a duty of care in this situation (<i>Hemmens v Wilson Browne, Ephraim v Newham LBC</i>)</li> </ul> </li> <li>• Decision in <i>Caparo</i> influenced by <i>Sutherland Shire Council v Heyman</i> (1985)</li> <li>• <i>Caparo</i> first seen applied in <i>Marc Rich &amp; Co v Bishop Rock Marine Co Ltd (The Nicholas H)</i> (1996)</li> <li>• Explain the law relating to special groups: <ul style="list-style-type: none"> <li>○ Lawyers – <i>Rondel v Worsley, Arthur JS Hall v Simmons</i></li> <li>○ Police – <i>Hill v CC of West Yorkshire, Reeves v</i></li> </ul> </li> </ul>	16	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14–16</td> </tr> <tr> <td>4</td> <td>11–13</td> </tr> <tr> <td>3</td> <td>8–10</td> </tr> <tr> <td>2</td> <td>5–7</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table>	AO1 Levels	AO1 Marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4	<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															

Question	Indicative Content	Mark	Guidance
	<p><i>MPC</i></p> <ul style="list-style-type: none"> <li>○ Coastguards – <i>OLL Ltd</i></li> <li>○ Judges – <i>Sirros v Moore</i></li> <li>○ Firefighters – <i>Capital and Counties v Hampshire CC</i></li> <li>○ Public Bodies – <i>Clunnis v Camden and Islington HA, Z v UK, McKay v Essex Area Health Authority</i></li> <li>○ MoD - <i>Mulcahy v MOD</i></li> <li>● Explain the impact of any statutory intervention <ul style="list-style-type: none"> <li>○ Criminal Injuries Compensation Scheme</li> <li>○ Compensation Act 2006</li> <li>○ Law Reform (Contributory Negligence) Act 1945</li> <li>○ The Congenital (Civil Liabilities) Act 1976</li> </ul> </li> <li>● Explain the significance of the Human Rights Act 1998 <ul style="list-style-type: none"> <li>○ <i>Osman v UK, Z v UK</i></li> </ul> </li> </ul> <p>Describe (AO1) influential factors</p> <ul style="list-style-type: none"> <li>● Wider benefit to society – <i>Hill v CC of West Yorks</i></li> <li>● Loss allocation</li> <li>● Practical considerations and future benefits – <i>Smolden v Whitworth &amp; Nolan</i></li> <li>● Moral considerations – <i>McKay v Essex Area Health Authority</i></li> <li>● Protecting professionals – <i>Rondel v Worsley, Hall v Simmons, Reeves v Commissioner of the Metropolitan Police, Osman v UK, Brooks v Commissioner of Police for the Metropolis</i></li> <li>● Availability of other remedies – <i>Matthews v MOD, Phelps v London Borough of Hillingdon</i></li> <li>● Constitutional considerations</li> <li>● The floodgates argument – <i>Alcock v CC of West Yorks</i></li> </ul> <p>Credit any other relevant point of knowledge and understanding.</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> 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> 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><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Discuss (AO2) influential factors</p> <ul style="list-style-type: none"> <li>• Loss allocation – distributive justice (could discuss role of existing or interventionist statutory provisions or the role of insurance)</li> <li>• The ‘floodgates’ argument ... fear of a rush of claims</li> <li>• Moral considerations (for example, cases involving vulnerable victims)</li> <li>• Practical considerations (for example, is an incremental approach a good or bad thing?)</li> <li>• Public policy considerations (for example, see especially the ‘compensation/blame culture’ arguments)</li> <li>• The role of insurance and its effect on loss distribution</li> <li>• Political motivations – do decisions mirror political atmosphere of the time (see Hayek in Source 4)</li> <li>• Constitutional arguments – judicial discretion or judicial law-making? Unwilling to get involved in policy-making?</li> <li>• Reluctance to create new restrictions on the behaviour of individuals</li> <li>• The idea that the claimant is a member of an ‘indeterminate class’</li> <li>• Whether imposing a duty would encourage others to take care</li> <li>• Impact of statutory intervention such as the Compensation Act 2006</li> <li>• Implications of the Human Rights Act 1998</li> <li>• Credit any other relevant comment</li> <li>• Reach any sensible and reasoned conclusion on the relationship between the tests for a duty of care and social policy.</li> </ul>	14	<table border="1" data-bbox="1279 240 1731 456"> <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 adequate 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> <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 the</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										
	Credit any other relevant comment. Reach any sensible conclusion.		answer (NB conclusion does not need to appear at end).										
	<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" data-bbox="1279 347 1731 523"> <thead> <tr> <th data-bbox="1279 347 1563 379">AO1 + AO2 Marks</th> <th data-bbox="1563 347 1731 379">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 379 1563 416">24–30</td> <td data-bbox="1563 379 1731 416">4</td> </tr> <tr> <td data-bbox="1279 416 1563 453">17–23</td> <td data-bbox="1563 416 1731 453">3</td> </tr> <tr> <td data-bbox="1279 453 1563 489">9–16</td> <td data-bbox="1563 453 1731 489">2</td> </tr> <tr> <td data-bbox="1279 489 1563 523">1–8</td> <td data-bbox="1563 489 1731 523">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>Define the relevant rules and use any relevant cases as authorities for those rules.</p>	10	<table border="1" data-bbox="1276 231 1870 446"> <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>1</b> Recognise that if no precedents apply a duty of care will need to be established. This is despite any apparent similarity to an existing precedent (<i>Latimer v AEC</i>). A duty of care will therefore have to be established based on the three-stage test in <i>Caparo</i>. Marks are also awarded for accurate identification of the relevant parties</p> <p><b>2</b> It would be reasonably foreseeable that a risk of harm would exist in a large muddy site with lots of people who are unaware of their surroundings. This is evidenced by the fact that they have used a large quantity of straw to try and contain the situation. So, it was foreseeable that the defendant’s action would cause loss or damage to someone in the claimant’s position</p> <p><b>3</b> The fact that Adam is a guest means there is definitely enough proximity between the claimant and the defendant</p> <p><b>C</b> Given the fact that the safety of the public at events like this would have public policy implications and the conditions and their precautions were not onerous it is fair, just, and reasonable to impose a duty on the defendant in the circumstances</p> <p><b>4</b> Has the Summer Music Festival fallen below the standard of the reasonable Festival organiser? The key issue here will be the reasonableness/practicalities of</p>	20	<p>Marks should be awarded as follows (per part question):</p> <table border="1" data-bbox="1276 550 1747 766"> <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>	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>taking precautions to prevent the harm. It is submitted that the festival had done all they could reasonably do. Short of closing down the festival, they did all that was reasonable. Given the social utility of the festival this would have been unreasonable (<i>Latimer v AEC</i>). If the Compensation Act 2006 has any application here it would seek to avoid preventing desirable activities taking place</p> <p><b>K</b> Conclude that there is a duty of care but it has not been breached as the precautions taken were adequate in the circumstances.</p>		
	<p>In the case of <b>(b)</b>:</p> <p><b>1</b> Recognise that if no precedents apply a duty of care will need to be established. This is despite any apparent similarity to an existing precedent (<i>Watt v Hertfordshire</i>). A duty of care will therefore have to be established based on the three-stage test in <i>Caparo</i>. Marks are also awarded for accurate identification of the relevant parties</p> <p><b>2</b> It would be reasonably foreseeable that a risk of harm would exist in a situation where something large and heavy might fall on someone. This is evidenced by the fact that they normally secure the item when transporting it in a truck but left it loose in the helicopter. So, it was foreseeable that the defendant's action would cause loss or damage to someone in the claimant's position</p> <p><b>3</b> Whether they are a professional service or a voluntary organisation, it is submitted that there would be proximity between Cornshire Cliff Rescue Service and Bob as they are either his employer and/or responsible for his recruitment, training and welfare whilst under their control</p> <p><b>C</b> It would be fair, just, and reasonable to impose a duty on the defendant in this situation as there would be such a high public policy, health and safety or human rights impetus to ensure employers of employees in high risk situations are adequately protected which would mean that</p>		

Question	Indicative Content	Mark	Guidance
	<p>it is fair, just and reasonable to impose a duty on Cornshire Cliff Rescue Service who are well aware of potential threats. Social policy suggests that people will be less willing to undertake (or volunteer) for such altruistic work if they were left unprotected by some emergency services immunity</p> <p><b>4</b> Has D fallen below the standard of the reasonable rescue service? Recognise that on a practical level it may appear that Cornshire Cliff Rescue Service has, indeed, fallen below the standard of the reasonable rescue service. However, one of the considerations taken into account when identifying a breach is the value to society or the social usefulness of what the defendant was attempting to achieve. It is submitted that the social utility in attending the scene of the accident quickly would outweigh the need to secure the lifting equipment (<i>Watt v Hertfordshire</i>). Furthermore, the Compensation Act 2006 might well apply here. The Act seeks to discourage actions where there is a public benefit to the activity concerned – which is the case here</p> <p><b>K</b> Conclude that there is a duty of care but it has not been breached as there was social utility in the risk taken</p>		
	<p>In the case of <b>(c)</b>:</p> <p><b>1</b> Recognise that if no precedents apply a duty of care will need to be established. This is despite any apparent similarity to an existing precedent (<i>Mullin v Richards</i>). A duty of care will therefore have to be established based on the three-stage test in <i>Caparo</i>. Marks are also awarded for accurate identification of the relevant parties</p> <p><b>2</b> It would be reasonably foreseeable that a risk of 'some' harm would exist in a situation where something Eddie will have seen done to others results in falling backwards. This is evidenced by the fact that Eddie wouldn't have done it had he not expected an incident to result. So, it was</p>		

Question	Indicative Content	Mark	Guidance
	<p>foreseeable that the defendant's action would cause possible loss or damage to someone in the claimant's position</p> <p><b>3</b> There would be sufficient proximity between the Eddie and Fred based on their shared experience of witnessing the craze performed on others. Both boys would be aware of the likely outcome</p> <p><b>C</b> It would be fair, just, and reasonable to impose a duty on the defendant in the circumstances as social policy alone dictates that health and safety considerations should be taken into account. Quite apart from this, the practice has no place (and no social usefulness) in what should be a purposeful learning environment</p> <p><b>3a</b> Credit 'reasoned' consideration of the school's liability</p> <p><b>4</b> Has Eddie fallen below the standard of the reasonable schoolboy? The standard of care to be expected of Eddie is that of the reasonable Year 9 schoolboy. On the facts, the school had not intervened to stop the practice, Eddie and Fred had not seen anyone injured by it and the average Year 9 schoolboy would, no doubt, find this sort of thing very amusing. Therefore, it is unlikely that the courts would find a breach where such serious injury was not obvious to the average Year 9 schoolboy. The Compensation Act would have no relevance here</p> <p><b>K</b> There is a duty of care but it has not been breached as the standard of care was adjusted to the reasonable Year 9 schoolboy.</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 2015

