

**GCE**

**Law**

Unit **G157**: Law of Torts

Advanced GCE

**Mark Scheme for June 2018**

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

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

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

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

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## Annotations

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

Question	Indicative Content	Mark	Guidance												
1	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Identify that liability for dangerous and non-dangerous arises from the Animals Act 1971</p> <p>Explain that under 6(3) a person is the keeper of an animal if:</p> <ul style="list-style-type: none"> <li>• (a) he owns the animal or has it in his possession; or</li> <li>• (b) he is the head of a household of which a member under the age of sixteen owns the animal or has it in his possession</li> </ul> <p>Explain liability for dangerous animals:</p> <ul style="list-style-type: none"> <li>• By section 6(2) – animal not commonly domesticated in UK with characteristics that, unless restrained, are likely to cause severe damage or any damage caused is likely to be severe - <i>Tutin v Chipperfields</i></li> <li>• Dangerousness is a question of fact in each case - <i>Behrens v Bertram Mills Circus</i></li> <li>• Section 2(1) makes the keeper strictly liable for an animal defined as dangerous</li> </ul> <p>Explain section 2(2) liability for non-dangerous species – keeper will be liable if:</p> <ul style="list-style-type: none"> <li>• (a) Damage is of a kind likely to be caused unless the animal is restrained or if caused, is likely to be severe – <i>Cummings v Grainger, Curtis v Betts</i></li> <li>• (b) Likelihood or severity of damage was due to the characteristics of the animal or common in the species at a particular time – <i>Jaundrill v Gillett, Gloster v CC of Greater Manchester Police</i></li> <li>• (c) Keeper knows of those characteristics – <i>Draper v Hodder, McKenny v Foster</i></li> <li>• Explain that in section 2(2)(a) 'likely' means 'such as might well happen' rather than probable – <i>Smith v Ainger</i></li> <li>• Explain that 'severe' is a question of fact – <i>Curtis v Betts</i></li> </ul>	25	<table border="1" data-bbox="1480 236 2036 448"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p>	AO1 Level	AO1 Marks	5	21–25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> <li>• Explain that in section 2(2)(b) a characteristic is abnormal if not common in other animals – <i>Cummings v Grainger, Kite v Napp</i> but can include unforeseen circumstances where the keeper is not at fault – <i>Mirvahedy v Henley</i></li> <li>• Explain that the characteristic must be the same for both s2(2)(a) and (b) – <i>Clark v Bowlt</i></li> </ul> <p>Explain available defences:</p> <ul style="list-style-type: none"> <li>• Section 5(1) - Damage due entirely to fault of victim - <i>Sylvester v Chapman, Nelmes v CC of Avon and Somerset</i></li> <li>• Section 5(2) - Victim voluntarily accepted risk - <i>Turnbull v Warrener, Goldsmith v Patchcott, Dhesi v CC of West Midlands Police</i></li> <li>• Section 5(3) – Keeper is not liable to a trespasser if the animal is not kept for protection, or if it was for protection, it is reasonable to do so - <i>Cummings v Grainger</i></li> <li>• Section 10 – Contributory negligence</li> </ul> <p>Credit any other relevant point(s) Credit any other relevant case(s).</p>		<p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>												
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following areas:</p> <p><b>It is more difficult to prove liability for non-dangerous animals</b></p> <ul style="list-style-type: none"> <li>• Section 2(2) has led to difficulties in interpretation of liability for non-dangerous animals with each subsection having to be considered separately</li> <li>• The courts have given different interpretations of section 2(2) as shown in the contrasting approaches taken to dog bites and injuries caused by horses making liability for non-dangerous animals difficult to determine</li> <li>• The words ‘was likely’ in section 2(2)(a) are ambiguous in determining liability for non-dangerous animals</li> </ul>		<table border="1" data-bbox="1480 938 2047 1150"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p>	AO2 Level	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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	<ul style="list-style-type: none"> <li>• Under section 2(2)(b) it is difficult to distinguish between permanent or habitual characteristics and temporary characteristics</li> <li>• The outcome of <i>Clark v Bowlit</i> that requires the characteristics for s2(2)(a) and s(2)(b) makes it increasingly difficult to prove a claim for non-dangerous animals</li> <li>• For dangerous animals liability is strict, making the law simpler to apply as there is no requirement to prove fault</li> </ul> <p><b>It is not more difficult to prove liability for non-dangerous animals</b></p> <ul style="list-style-type: none"> <li>• Under section 2(2)(a) there is no requirement to show that the harm caused is severe</li> <li>• The outcome of <i>Mirvahedy</i> means that liability can be imposed for non-dangerous animals even where the defendant was unaware of the characteristics in that particular animal if they were common to the species</li> <li>• Animals are classified due to species and not necessarily the dangerousness of that particular animal</li> <li>• Defences are available in a claim for injury caused by both dangerous and non-dangerous animals, making it equally difficult to prove liability</li> </ul> <p>Credit any other relevant point(s) Reach a sensible conclusion.</p>		<p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>												
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2	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain the basic principle of negligent misstatement – pure economic loss as a result of negligent statements or advice</p> <p>Explain that there was originally no liability for negligent misstatement causing a purely financial loss - <i>Candler v Crane Christmas</i></p> <p>Explain the court’s distinction between consequential and pure economic loss - <i>Spartan Steel v Martin</i></p> <p>Explain the court’s distinction between negligent misstatement and pure economic loss through a negligent act - <i>Murphy v Brentwood DC, Londonwaste v AMEC Civil Engineering</i></p> <p>Explain the criteria for a duty of care to arise under negligent misstatement arising from a special relationship under <i>Hedley Byrne</i>:</p> <ul style="list-style-type: none"> <li>• A ‘special relationship’ between the parties – <i>Esso Petroleum Co Ltd v Mardon, Lennon v Commissioner of the Metropolis</i></li> <li>• A voluntary assumption of responsibility – <i>Dean v Allin Watts, Henderson v Merrett Syndicates, Customs &amp; Excise Commissioners v Barclays Bank, Serbry v Companies House the Registrar of Companies</i></li> <li>• Reliance on the advice</li> <li>• Reasonableness of the reliance considering factors such as: <ul style="list-style-type: none"> <li>○ The purpose of the advice - <i>Caparo v Dickman, Law Society v KPMG Peat Marwick</i></li> <li>○ Social or business context - <i>Chaudhry v Prabhakar</i></li> <li>○ Whether the advice was aimed at the claimant - <i>Harris v Wyre Forest DC</i></li> </ul> </li> </ul>	25	<table border="1" data-bbox="1480 272 2038 485"> <thead> <tr> <th data-bbox="1480 272 1756 304">AO1 Level</th> <th data-bbox="1756 272 2038 304">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1480 304 1756 336">5</td> <td data-bbox="1756 304 2038 336">21–25</td> </tr> <tr> <td data-bbox="1480 336 1756 368">4</td> <td data-bbox="1756 336 2038 368">16-20</td> </tr> <tr> <td data-bbox="1480 368 1756 400">3</td> <td data-bbox="1756 368 2038 400">11-15</td> </tr> <tr> <td data-bbox="1480 400 1756 432">2</td> <td data-bbox="1756 400 2038 432">6-10</td> </tr> <tr> <td data-bbox="1480 432 1756 464">1</td> <td data-bbox="1756 432 2038 464">1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p>	AO1 Level	AO1 Marks	5	21–25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> <li>○ Knowledge by the defendant that the claimant will rely on the advice - <i>Smith v Eric S Bush</i>, <i>Yianni v Edwin Evans</i></li> </ul> <p>Explain the more restrictive approach adopted by the courts in <i>James McNaughten Paper Group v Hicks Anderson</i></p> <p>Explain situations where liability could not be found - <i>JEB Fasteners v Marks Bloom</i>, <i>Goodwill v British Pregnancy Advisory Service</i></p> <p>Explain the position in relation to:</p> <ul style="list-style-type: none"> <li>• Surveyors – usually liability even where no contractual relationship exists as long as it is reasonable to rely on the advice given – <i>Smith v Eric S Bush</i>, <i>Scullion v Bank of Scotland plc</i></li> <li>• Accountants and auditors – usually no liability towards potential investors in a company because the accounts have not been prepared for that purpose - <i>Caparo v Dickman</i></li> <li>• Wills – usually liability to beneficiaries - <i>Ross v Caunters</i>, <i>White v Jones</i>, <i>Carr-Glynn v Frearsons</i>, <i>Esterhuizen v Allied Dunbar</i></li> <li>• References – usually liability to the employee affected - <i>Spring v Guardian Assurance</i></li> <li>• Expert witnesses – <i>Jones v Kaney</i></li> </ul> <p>Credit any other relevant point(s) Credit any other relevant case(s).</p>		<p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>													
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following areas:</p> <p><b>The tort of negligent misstatement has become over-complex and illogical</b></p> <ul style="list-style-type: none"> <li>• Allowing a claim for economic loss that is caused by what someone said but not from what someone did (<i>Murphy v Brentwood District Council</i>) is illogical</li> </ul>	20	<table border="1" data-bbox="1480 1098 2038 1308"> <thead> <tr> <th data-bbox="1491 1106 1637 1129">AO2 Level</th> <th data-bbox="1765 1106 1928 1129">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1491 1137 1514 1161">5</td> <td data-bbox="1765 1137 1850 1161">17-20</td> </tr> <tr> <td data-bbox="1491 1169 1514 1193">4</td> <td data-bbox="1765 1169 1850 1193">13-16</td> </tr> <tr> <td data-bbox="1491 1201 1514 1225">3</td> <td data-bbox="1765 1201 1839 1225">9-12</td> </tr> <tr> <td data-bbox="1491 1233 1514 1257">2</td> <td data-bbox="1765 1233 1816 1257">5-8</td> </tr> <tr> <td data-bbox="1491 1265 1514 1289">1</td> <td data-bbox="1765 1265 1816 1289">1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p>		AO2 Level	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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	<ul style="list-style-type: none"> <li>• Despite the law being restricted to claims for pure economic loss from negligent misstatements it has developed to allow claims where there has been economic loss from the provision of negligent services</li> <li>• In cases of negligent wills the solicitors have not, strictly speaking, assumed responsibility to the beneficiaries under the will and at the time the will is drafted there is no reliance on the will by the beneficiaries</li> <li>• The courts have taken different approaches to liability to surveyors who have given valuations to homebuyers compared to the purchaser of a buy-to-let</li> <li>• The decision in <i>Barclays Bank</i> further complicates the law relating to 'voluntary assumption' as it was held that rather than being decisive the concept should be treated with flexibility and take into account policy considerations</li> <li>• Allowing claims for negligent references complicates the law as a claim could be made in both negligent misstatement and defamation</li> <li>• There is an overlap between negligent misstatement and contract law, which causes complexity</li> <li>• The courts' concerns about opening the floodgates balanced against the need to extend the tort where justice demands which has led to complex and illogical decisions</li> </ul> <p><b>The tort of negligent misstatement has not become over-complex and illogical</b></p> <ul style="list-style-type: none"> <li>• Limiting the 'special relationship' to a business context is logical, although advice given in a social context has given rise to liability</li> <li>• Allowing claims to be made by beneficiaries for negligently made wills is logical because these parties would not be able to claim under contract law. Furthermore, the courts have emphasised that solicitors insure against such a loss whereas those who should benefit under a will are unlikely to be able to do so</li> </ul>		<p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>

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			<ul style="list-style-type: none"> <li>Extending liability beyond solicitors, to other companies who make wills, is a logical development of the law</li> <li>It is logical that claims cannot be successful if reliance on the advice was unreasonable or where the claimants are unknown to the defendant</li> </ul> <p>Credit any other relevant point(s).</p>															
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3	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain the basic principle of vicarious liability – one party (usually an employer) is fixed with liability for the tort (and sometimes the crimes) of another party (usually an employee)</p> <p>Explain the main rules for imposing liability:</p> <ul style="list-style-type: none"> <li>• Tortfeasor commits an earlier tort</li> <li>• Tortfeasor must be an employee or in a position akin to an employee – <i>Woodland v Essex County Council, Cox v Ministry of Justice</i></li> <li>• Tort must occur in the course of employment</li> </ul> <p>Explain the basic tests for establishing that the tortfeasor is an employee:</p> <ul style="list-style-type: none"> <li>• Control test - <i>Mersey Docks &amp; Harbour Board v Coggins &amp; Griffiths</i></li> <li>• Integration test - <i>Stevenson, Jordan &amp; Harrison v Macdonald &amp; Evans</i></li> <li>• Economic reality (multiple) test - <i>Ready Mixed Concrete v MPNI</i></li> </ul> <p>Explain the circumstances where the tort falls within the course of employment:</p> <ul style="list-style-type: none"> <li>• Expressly or impliedly authorised acts - <i>Poland v Parr</i></li> <li>• Acting in an unauthorised manner - <i>Limpus v London General Omnibus</i></li> <li>• Acting in a purely careless manner - <i>Century Insurance v Northern Ireland Transport Board</i></li> <li>• Where the employer benefits from the tort - <i>Rose v Plenty</i></li> <li>• Paid travelling time - <i>Smith v Stages</i></li> </ul>	25	<table border="1" data-bbox="1480 272 2038 485"> <thead> <tr> <th data-bbox="1480 272 1756 304">AO1 Level</th> <th data-bbox="1756 272 2038 304">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1480 304 1756 336">5</td> <td data-bbox="1756 304 2038 336">21–25</td> </tr> <tr> <td data-bbox="1480 336 1756 368">4</td> <td data-bbox="1756 336 2038 368">16-20</td> </tr> <tr> <td data-bbox="1480 368 1756 400">3</td> <td data-bbox="1756 368 2038 400">11-15</td> </tr> <tr> <td data-bbox="1480 400 1756 432">2</td> <td data-bbox="1756 400 2038 432">6-10</td> </tr> <tr> <td data-bbox="1480 432 1756 464">1</td> <td data-bbox="1756 432 2038 464">1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p>	AO1 Level	AO1 Marks	5	21–25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>Explain circumstances that are not within the course of employment:</p> <ul style="list-style-type: none"> <li>• Activities not within the scope of employment - <i>Beard v London General Omnibus</i></li> <li>• A 'frolic of his own' - <i>Hilton v Thomas Burton</i></li> <li>• Giving unauthorised lifts - <i>Twine v Beans Express</i></li> </ul> <p>Explain there can be liability for the intentional torts / crimes of employees where these are:</p> <ul style="list-style-type: none"> <li>• Within the authorised scope of employment - <i>Lloyd v Grace Smith</i></li> <li>• Have a close enough connection with the employment - <i>Lister v Hesley Hall, Mohamud</i></li> </ul> <p>Credit any reference to the 'loaned car' cases - <i>Morgans v Launchbury</i></p> <p>Credit any reference to liability for violence between employees – <i>Weddall v Barchester Healthcare, Wallbank v Wallbank Fox Designs</i></p> <p>Credit any other relevant point(s) Credit any other relevant case(s).</p>		<p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>												
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following areas:</p> <p><b>Vicarious liability does achieve its aims</b></p> <ul style="list-style-type: none"> <li>• Vicarious liability means the tort of the employee is also the tort of the employer, indicating that the employer can be (jointly) held liable for the losses caused</li> <li>• Employers are more likely than employees to have insurance and so can meet the cost of losses claimed</li> <li>• Employers cannot avoid liability by claiming that the employees' acts were expressly prohibited when the employer</li> </ul>	20	<table border="1" data-bbox="1480 1027 2036 1241"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p>	AO2 Level	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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		<p>is benefitting from the tort</p> <ul style="list-style-type: none"> <li>The close connection test ensures employers are liable for the criminal acts of their employees when it is fair and just to do so</li> <li>Employers are unlikely to 'turn a blind eye' to negligent practices if they know they will be held responsible</li> </ul> <p><b>Vicarious liability does not achieve its aims</b></p> <ul style="list-style-type: none"> <li>Employers will only be responsible for losses caused by a tort or criminal action. They are not liable for any other losses caused by their employees whilst doing their jobs</li> <li>Employers will not normally be responsible for the losses caused by casual workers</li> <li>Vicarious liability is limited to employment situations so when loss occurs in a non-employment situation loss cannot be shifted to those better placed to meet it</li> <li>The close connection test is ambiguous and so it is unclear when vicarious liability will be imposed and liability shared by the employer</li> <li>Liability can be imposed on employers even when there is no evidence that this will lead to greater vigilance of employees</li> <li>Employers may have limited control over their employees due to the nature of the work so greater vigilance would be inappropriate</li> <li>Most cases arise from isolated or unpredictable events and so greater vigilance is unlikely to reduce future wrong-doing</li> <li>Employers have been held liable for actions of people who are not strictly their employees and so it is debatable whether greater vigilance would be achievable.</li> </ul>		<p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>												
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4	<p>Potential answers may include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define the basic elements of negligence:</p> <ul style="list-style-type: none"> <li>• Duty of care between defendant and claimant – <i>Donoghue v Stevenson, Caparo, Robinson v CC West Yorkshire</i></li> <li>• Breach of the duty – falling below the standard of the reasonable man test – <i>Blyth v Birmingham Waterworks</i></li> <li>• Foreseeable damage caused to claimant by defendant’s breach – <i>Kent v Griffiths</i></li> </ul> <p>Explain when a duty of care will exist:</p> <ul style="list-style-type: none"> <li>• Was the damage caused foreseeable – <i>Bhamra v Dubb</i></li> <li>• Was there a relationship of proximity between the claimant and defendant – <i>Muirhead v Industrial Tank Specialities</i></li> <li>• Is it fair, just and reasonable to impose a duty – <i>McFarlane v Tayside Health Board</i></li> </ul> <p>Explain breach of duty of care:</p> <ul style="list-style-type: none"> <li>• A breach occurs when the defendant’s behaviour has fallen below what can be reasonably expected</li> <li>• This does not mean an absolute duty to prevent harm but to do what any other reasonable person would do – <i>Holt v Edge</i></li> <li>• In deciding what behaviour would be reasonable the courts consider factors including: <ul style="list-style-type: none"> <li>○ Special characteristics of the claimant and defendant</li> <li>○ Size of the risk</li> <li>○ Common practice</li> </ul> </li> </ul> <p>Explain situation relating to doctors:</p> <ul style="list-style-type: none"> <li>• Professional and special skills of the defendant are considered – <i>Horton v Evans</i></li> <li>• The defendant is expected to exercise the particular skill to the standard of a reasonable person at the same level in the same</li> </ul>		<table border="1" data-bbox="1480 240 2033 453"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – Being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – Being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – Being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p>	AO1 Level	AO1 Marks	5	21–25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>field, regardless of actual experience – <i>Balamoan v Holden</i></p> <ul style="list-style-type: none"> <li>• Liability based on body of competent professional opinion – <i>Bolam v Friern HMC, Wilshire v Essex HA, Fairchild v Glenhaven Funeral Services, Bolitho, Defreitas v O'Brien</i></li> <li>• Doctors have a duty to explain – <i>May v Pettman Smith, Montgomery v Lanarkshire Health Board</i></li> </ul> <p>Explain damage:</p> <ul style="list-style-type: none"> <li>• The negligence must cause damage – if there is no damage then there can be no claim – <i>R v Croydon Health Authority, Rothwell Chemical Insulating</i></li> </ul> <p>Explain factors relating to causation:</p> <ul style="list-style-type: none"> <li>• But for test – <i>Barnett</i></li> <li>• Multiple causes – where there is more than one possible cause then it is considered whether the defendant's actions materially increased the risk of injury occurring – <i>McGhee v National Coal Board, Bailey v MoD</i></li> <li>• Break in the chain of causation – where there is a new intervening act by the claimant the courts will consider whether the claimant's actions were unreasonable – <i>McKew v Holland</i>, although unwise behaviour may not be enough to break the chain – <i>Spencer v Wincanton Holdings</i></li> <li>• Type of damage must be reasonably foreseeable – <i>Wagonmound (no1), Doughty v Turner Manufacturing</i>, although the principle may be applied broadly where there is personal injury - <i>Bradford v Robinson Rental</i></li> </ul> <p>Credit any other relevant case(s) Credit any other relevant point(s).</p>		<p><b>Level 1</b> – Some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>

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	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>Duty of Care owed by Dr Hooper to Frieda</b></p> <ul style="list-style-type: none"> <li>• Discuss that it is likely that Dr Hooper will owe a duty of care to Frieda because it is reasonably foreseeable that any negligence by Dr Hooper could cause harm to Frieda's health</li> <li>• Discuss that Frieda and Dr Hooper have a proximate relationship as patient and doctor</li> <li>• Consider whether it is fair, just and reasonable to impose a duty</li> <li>• Conclude that a duty is owed</li> </ul> <p><b>Breach of duty by Dr Hooper</b></p> <ul style="list-style-type: none"> <li>• Identify that Dr Hooper will be expected to have the same level of expertise and skill as any other reasonable doctor</li> <li>• Discuss that Dr Hooper has not breached his duty of care when he fails to correctly diagnose Frieda's condition as another competent doctor would have made the same error</li> <li>• Discuss that Dr Hooper has breached his duty of care when he fails to explain the risks of the operation</li> <li>• Discuss that the risk of blindness is a large risk</li> <li>• Discuss that Dr Hooper has breached his duty of care when making a mistake whilst carrying out the operation</li> <li>• Discuss that Dr Hooper cannot use his lack of experience as an excuse as he is judged by the standard of a competent surgeon</li> <li>• Conclude that Dr Hooper has breached his duty of care</li> </ul> <p><b>Damage caused to Frieda</b></p> <ul style="list-style-type: none"> <li>• Identify that there are potentially multiple causes for Frieda's loss of sight</li> <li>• Discuss that the operation does not need to be the sole cause but probably did materially increase the risk of blindness</li> <li>• Discuss that the loss of sight is a foreseeable type of damage</li> <li>• Conclude that Dr Hooper fulfils all the requirements of this tort</li> </ul>	20	<table border="1" data-bbox="1480 236 2040 451"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well informed conclusion.</p> <p><b>Level 4</b> – identification of most of the relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p><b>Level 3</b> - identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p><b>Level 2</b> – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p><b>Level 1</b> – identification of at least one of the points of law in issue but with limited</p>	AO2 Level	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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		<p>and is liable in negligence for the blindness caused to Frieda</p> <ul style="list-style-type: none"> <li>• Consider whether Frieda getting out of bed is an intervening act</li> <li>• Discuss that the loss of hearing may be too remote</li> <li>• Conclude that the deafness suffered is too remote and a claim under Dr Hooper is unlikely to be successful, but credit any other sensible conclusion</li> </ul> <p>Credit any other relevant point(s).</p>		<p>ability to apply points of law or to use an uncritical and/or unselective approach.</p> <p>Responses are unlikely to satisfy the descriptor for Level 5 without a discussion of all of the issues raised in the scenario.</p>												
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5	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define assault – intentionally and directly causing a person to apprehend immediate battery – <i>Collins v Wilcock</i></p> <p>Explain the elements of an assault:</p> <ul style="list-style-type: none"> <li>• Intention concerns the effect produced (and intended to be produced) in the claimant – <i>Blake v Barnard, R v St George</i></li> <li>• Subjective recklessness potentially will suffice – <i>Iqbal v Prison Officers Association</i></li> <li>• Traditionally, an active threat was required – <i>Read v Coker</i></li> <li>• Words alone were insufficient but can negate an assault - <i>Tuberville v Savage</i>, however, see also the criminal cases - <i>R v Ireland, R v Burstow</i> where silence and words only were accepted</li> <li>• There can be an assault if the claimant mistakenly believes there will be immediate violence as long as the apprehension is reasonable – <i>Stephens v Myers</i></li> </ul> <p>Define battery – the direct and intentional application of physical force to the person of another without lawful justification</p> <p>Explain the elements of a battery:</p> <ul style="list-style-type: none"> <li>• No need to prove harm was caused, just that there was an invasion of the physical person – <i>Wainwright v Home Office</i></li> <li>• Must involve intention (or subjective recklessness) not carelessness – <i>Letang v Cooper, Iqbal v Prison Officers Association</i></li> <li>• Requires direct contact – <i>Scott v Shepherd, Nash v Sheen</i></li> <li>• Explain whether there is an extra requirement of hostility – <i>Wilson v Pringle, Re F</i></li> </ul>	25	<table border="1" data-bbox="1480 240 2033 453"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16-20</td> </tr> <tr> <td>3</td> <td>11-15</td> </tr> <tr> <td>2</td> <td>6-10</td> </tr> <tr> <td>1</td> <td>1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – Being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – Being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – Being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p>	AO1 Level	AO1 Marks	5	21–25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>Define false imprisonment: an act which directly and intentionally places a total restraint upon the claimant's freedom of movement without lawful justification</p> <p>Explain the elements of false imprisonment:</p> <ul style="list-style-type: none"> <li>• Requires total bodily restraint – <i>Bird v Jones, Hicks v Young</i></li> <li>• Can be for a short period – <i>White v WP Brown, Walker v Police Commissioner</i></li> <li>• Will not matter if the claimant is unaware of the false imprisonment – <i>Meering v Grahame-White Aviation</i></li> </ul> <p>Explain relevant defences:</p> <ul style="list-style-type: none"> <li>• <i>Volenti</i> - rough horseplay – <i>Blake v Galloway</i></li> <li>• Self-defence - where the defendant has an honest and reasonable belief that they are about to be attacked – <i>Ashley v Chief Constable of West Sussex Police</i> and acts proportionately – <i>Lane v Holloway, Cross v Kirby</i></li> </ul> <p>Credit any other relevant case(s) Credit any other relevant point(s).</p>		<p><b>Level 1</b> – Some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>												
	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p><b>In relation to Elsie raising her fist</b></p> <ul style="list-style-type: none"> <li>• Identify that Elsie has raised her fist and this could amount to an assault</li> <li>• Discuss that this action could cause Alex to apprehend immediate violence</li> <li>• Discuss that Elsie has negated the threat by saying that she is not going to hit Alex</li> <li>• Conclude that there is no assault</li> </ul> <p><b>In relation to Alex prodding Elsie</b></p> <ul style="list-style-type: none"> <li>• Identify that Alex has directly touched Elsie and so this could amount to a battery</li> </ul>	20	<table border="1" data-bbox="1480 962 2040 1174"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given</p>	AO2 Level	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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	<ul style="list-style-type: none"> <li>• Discuss that Alex has done this intentionally</li> <li>• Discuss that the actions may have been done with hostility as they are arguing</li> <li>• Alternatively consider that Alex may try to plead <i>volenti</i> as they are flatmates and just messing around, so this amounts to horseplay</li> <li>• Conclude that this is most likely a battery, but credit any other sensible conclusion</li> </ul> <p><b>In relation to Alex locking Elsie inside her bedroom</b></p> <ul style="list-style-type: none"> <li>• Identify that Elsie’s freedom of movement is restricted so this could amount to false imprisonment</li> <li>• Discuss whether there is total bodily restraint as although the door is locked she may be able to exit from a window as the room is on the ground floor</li> <li>• Discuss that it is irrelevant that Elsie is only imprisoned for 10 minutes as false imprisonment can be for a short period</li> <li>• Discuss that it is also irrelevant that Elsie does not realise that she is locked in</li> <li>• Conclude that this does amount to false imprisonment if there are no other reasonable means of escape</li> </ul> <p><b>In relation to Elsie threatening Alex with a shoe</b></p> <ul style="list-style-type: none"> <li>• Identify that Elsie has potentially committed an assault by threatening Alex with her shoe</li> <li>• Discuss that Elsie has done a direct and intentional act which placed Alex in immediate apprehension of a battery</li> <li>• Discuss that, given the circumstances, it is reasonable for Alex to take the threat seriously and Elsie could not claim this was consensual horseplay</li> <li>• Discuss that there is immediacy and that Elsie is in a position to carry out her threat as they are both in the same room at the same time</li> <li>• Conclude that threatening Alex with the shoe is likely to be an assault</li> </ul>		<p>factual situation, and reaching a cogent, logical and well informed conclusion</p> <p><b>Level 4</b> – identification of most of the relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p><b>Level 3</b> - identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p><b>Level 2</b> – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p><b>Level 1</b> – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p> <p>Responses are unlikely to satisfy the descriptor for Level 5 without a discussion of all of the issues raised in the scenario.</p>

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		<p><b>In relation to Alex hitting Elsie in possible self-defence</b></p> <ul style="list-style-type: none"> <li>Identify that Alex has clearly committed a battery as Elsie was hit so hard it rendered her unconscious</li> <li>Discuss that Alex clearly hit Elsie both directly and intentionally</li> <li>Discuss whether Alex could claim self-defence based on his impression of Elsie's threat with the shoe</li> <li>Discuss that, in the circumstances, it would be reasonable for Alex to act in self-defence</li> <li>Discuss, however, that the force used by Alex is not proportionate</li> <li>Conclude that a claim of self-defence is unlikely to be successful</li> </ul> <p>Credit any other relevant point(s).</p>															
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6	<p>Potential answers <b>may</b> include:</p> <p><b>Assessment Objective 1 - Knowledge and understanding</b></p> <p>Define occupiers' liability – liability owed by occupiers to lawful visitors and trespassers due to harm arising from the state of the premises</p> <p>State that liability arises from OLA 1957 for lawful visitors and OLA 1984 for unlawful visitors</p> <p>Explain that:</p> <ul style="list-style-type: none"> <li>• An occupier is someone in control of the premises - <i>Wheat v Lacon</i></li> <li>• Premises includes land, buildings and any fixed or movable structure and is broadly defined - <i>Wheeler v Copas</i></li> <li>• A lawful visitor may be an invitee, a licensee or someone with a contractual or legal right to enter; an unlawful visitor is everyone else</li> </ul> <p>Explain OLA 1957:</p> <ul style="list-style-type: none"> <li>• Section 2(1) common duty of care owed to all lawful visitors</li> <li>• Scope is to keep visitor reasonably safe for the purpose for which he is invited to be there under section 2(2)</li> <li>• The extent of this duty depends on the nature of the visitor - children are owed a higher duty of care under section 2(3)(a) - <i>Glasgow Corporation v Taylor, Moloney v Lambeth LBC</i>, but occupiers are entitled to assume that very young children are being supervised by someone - <i>Phipps v Rochester Corporation, Bourne Leisure v Marsden</i></li> <li>• Occupier can prevent breach of the duty under section 2(4)(a) if a warning does enough in the circumstances to comply with the duty - <i>Rae v Mars Ltd, Cotton v Derbyshire Dales</i></li> <li>• Occupier can prevent breach of the duty under section 2(4)(b)</li> </ul>	25	<table border="1" data-bbox="1487 272 2033 485"> <thead> <tr> <th data-bbox="1487 272 1760 304">AO1 Level</th> <th data-bbox="1760 272 2033 304">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1487 304 1760 336">5</td> <td data-bbox="1760 304 2033 336">21–25</td> </tr> <tr> <td data-bbox="1487 336 1760 368">4</td> <td data-bbox="1760 336 2033 368">16-20</td> </tr> <tr> <td data-bbox="1487 368 1760 400">3</td> <td data-bbox="1760 368 2033 400">11-15</td> </tr> <tr> <td data-bbox="1487 400 1760 432">2</td> <td data-bbox="1760 400 2033 432">6-10</td> </tr> <tr> <td data-bbox="1487 432 1760 464">1</td> <td data-bbox="1760 432 2033 464">1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – Being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p><b>Level 4</b> – Being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p><b>Level 3</b> – Being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p><b>Level 2</b> – Being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p>	AO1 Level	AO1 Marks	5	21–25	4	16-20	3	11-15	2	6-10	1	1-5
AO1 Level	AO1 Marks														
5	21–25														
4	16-20														
3	11-15														
2	6-10														
1	1-5														

Question	Indicative Content	Mark	Guidance
	<p>if an independent contractor can be blamed instead Occupier must show:</p> <ul style="list-style-type: none"> <li>○ It was reasonable to hire a contractor - <i>Haseldine v Daw</i></li> <li>○ Reasonable precautions have been taken to ensure the contractor is competent - <i>Bottomley v Todmorden Cricket Club</i></li> <li>○ Reasonable checks have been made to inspect the work - <i>Woodward v Mayor of Hastings</i></li> </ul> <ul style="list-style-type: none"> <li>• Claimants can claim for death, personal injury and property damage under section 1(3)</li> </ul> <p>Explain OLA 1984:</p> <ul style="list-style-type: none"> <li>• Lesser duty of care owed to keep the unlawful visitor free from injury under section 1(4) building on the duty of common humanity - <i>Addie v Dumbreck, BRB v Herrington</i></li> <li>• A person can be a trespasser if they are a lawful visitor to the premises but then enter a specific area where they are not allowed – <i>The Calgarth</i></li> <li>• Duty arises under section 1(3) if: <ul style="list-style-type: none"> <li>○ The occupier has reasonable grounds to believe that the danger exists - <i>Rhind v Astbury Water Park</i></li> <li>○ The occupier has reasonable grounds to believe that there are trespassers in the vicinity - <i>Swain v Natui Ram Pun, Higgs v Foster</i></li> <li>○ The danger is one against which the occupier can be reasonably expected to provide some protection - <i>Tomlinson v Congleton BC</i></li> </ul> </li> <li>• An occupier is liable for foreseeable harm even if the precise damage or the precise circumstances in which the harm occurs are not foreseeable - <i>Jolley v London Borough of Sutton</i></li> <li>• A warning sign may be effective to prevent liability under section 1(5) - <i>Westwood v Post Office, Rae v Mars</i></li> <li>• Covers personal injury and death under sections 1(1) and 1(9) but not damage to property under section 1(8)</li> </ul>		<p><b>Level 1</b> – Some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>

Question	Indicative Content	Mark	Guidance												
	Credit any other relevant point(s).														
6	<p><b>Assessment Objective 2 - Analysis, evaluation and application</b></p> <p>Identify that Tryevale is the occupier as it has control over the garden centre</p> <p>Identify that the garden centre is considered to be premises</p> <p><b>In relation to Serena and the poisonous berries</b></p> <ul style="list-style-type: none"> <li>• Discuss that Serena has permission to enter the Garden Centre and therefore OLA 1957 will apply and that a higher duty of care is owed to children s.2(3)(a)</li> <li>• Discuss that the illness from the berries could be claimed for</li> <li>• Discuss whether Tryevale can avoid liability through their use of a warning sign and whether this was sufficient warning considering the nature of the harm and the allurements for children</li> <li>• Discuss whether Tryevale can avoid liability as they are entitled to assume that very young children will have someone looking after them</li> <li>• Conclude that Tryevale is likely to be liable but credit any other sensible conclusion</li> </ul> <p><b>In relation to Dave and the electric shock</b></p> <ul style="list-style-type: none"> <li>• Discuss that Dave would be a 'visitor' as he has an implied licence to be on Tryevale premises</li> <li>• Discuss that since Dave is a visitor, his injuries from an electric shock could be claimed for under OLA 1957 but that Tryevale may try to avoid liability by blaming FoneFixersRus</li> <li>• Discuss whether Tryevale can avoid liability under section 2(4)(b): <ul style="list-style-type: none"> <li>○ It was reasonable that they used a professional contractor to maintain the emergency phone system</li> <li>○ FoneFixersRus are professional contractors which</li> </ul> </li> </ul>	20	<table border="1" data-bbox="1485 308 2047 520"> <thead> <tr> <th data-bbox="1485 308 1760 338">AO2 Level</th> <th data-bbox="1760 308 2047 338">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1485 338 1760 368">5</td> <td data-bbox="1760 338 2047 368">17-20</td> </tr> <tr> <td data-bbox="1485 368 1760 399">4</td> <td data-bbox="1760 368 2047 399">13-16</td> </tr> <tr> <td data-bbox="1485 399 1760 429">3</td> <td data-bbox="1760 399 2047 429">9-12</td> </tr> <tr> <td data-bbox="1485 429 1760 459">2</td> <td data-bbox="1760 429 2047 459">5-8</td> </tr> <tr> <td data-bbox="1485 459 1760 489">1</td> <td data-bbox="1760 459 2047 489">1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p><b>Level 4</b> – identification of most of the relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p><b>Level 3</b> - identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p><b>Level 2</b> – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p>	AO2 Level	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
AO2 Level	AO2 Marks														
5	17-20														
4	13-16														
3	9-12														
2	5-8														
1	1-4														



Question	Indicative Content	Mark	Guidance
	<p>suggests that it was reasonable to entrust the work to them and that their being 'approved' confirms that Tryevale had done enough to ensure they were competent</p> <ul style="list-style-type: none"> <li>○ Since an emergency telephone system involves complex electronics Tryevale would not be qualified to check the work and acted reasonably in entrusting this to FoneFixersRus</li> <li>● Conclude that Tryevale is unlikely to be liable to Dave</li> </ul> <p><b>In relation to Serena falling into the pond</b></p> <ul style="list-style-type: none"> <li>● Discuss that Serena is a lawful visitor and, as such, she falls under the OLA 1957 and that, as a child, she is owed a higher duty of care</li> <li>● Explain that a cut from falling into a pond is harm that can be claimed for under OLA 1957</li> <li>● Discuss whether the Tryevale can avoid liability through putting railings around the pond</li> <li>● Discuss that although an adult may not have fitted through the railings a higher standard of care is owed to children</li> <li>● Discuss whether Tryevale can avoid liability as they are entitled to assume that very young children will have someone looking after them</li> <li>● Conclude that Tryevale is likely to be liable but credit any other sensible conclusion</li> </ul> <p><b>In relation to Jane tripping on the uneven floor</b></p> <ul style="list-style-type: none"> <li>● Discuss that Jane goes 'beyond her permission' when she enters the area marked 'staff only' and therefore becomes a trespasser so that the OLA 1984 will apply</li> <li>● Discuss that only personal injury and death can be claimed for under OLA 1984 and therefore Jane can potentially claim for her broken wrist but not her broken bracelet</li> <li>● Discuss the effect of section 1(3) on whether Tryevale owes Jane a duty:</li> </ul>		<p><b>Level 1</b> – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p> <p>Responses are unlikely to satisfy the descriptor for Level 5 without a discussion of all of the issues raised in the scenario.</p>

Question			Indicative Content	Mark	Guidance													
			<ul style="list-style-type: none"> <li>○ Consider that Tryevale have reasonable grounds to believe the danger exists due to the uneven floor, untidy plant pots and lack of lighting</li> <li>○ Consider that it would need to be shown that Tryevale had reasonable grounds to believe there were trespassers in the area. The room has been left unlocked and is near an area open to the public</li> <li>○ Consider whether Tryevale should have placed a lock on the door or some other protection, and consider that the 'staff only' sign is likely to be insufficient to warn of the risk</li> </ul> <p>Conclude that Tryevale is likely to be liable if they are aware of the risk of trespassers entering the staff area but credit any other sensible conclusion</p> <p>Credit any other relevant comment.</p>															
			<p><b>Assessment Objective 3 – Communication and presentation</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>37-45</td> <td>5</td> </tr> <tr> <td>28-36</td> <td>4</td> </tr> <tr> <td>19-27</td> <td>3</td> </tr> <tr> <td>10-18</td> <td>2</td> </tr> <tr> <td>1-9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1	
AO1 + AO2 Marks	AO3 Marks																	
37-45	5																	
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Question		Indicative content	Mark	Guidance												
7		<b>Assessment Objective 2 - Analysis, evaluation and application</b>														
7	(a)	<p>P1 Reason that to make a claim for nervous shock the injury must occur from a single shocking event</p> <p>P2 Reason that the train crashing into the railway station is a single shocking event</p> <p>P3 Reason that injury caused must be a recognised psychiatric condition</p> <p>P4 Reason that claustrophobia is not a recognised psychiatric condition</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>	AO2 Level	AO2 Marks	5	5	4	4	3	3	2	2	1	1
AO2 Level	AO2 Marks															
5	5															
4	4															
3	3															
2	2															
1	1															
7	(b)	<p>P1 Reason that a primary victim is someone who is physically injured or in danger of physical injury</p> <p>P2 Reason that Simon is a primary victim as the cuts are caused from the train crashing into the railway station</p> <p>P3 Reason that as physical injury is foreseeable any consequent psychiatric injury can be claimed for</p> <p>P4 Reason that Simon has suffered from PTSD and this is a psychiatric injury</p> <p>P5 Conclude that the statement is accurate.</p>	5													
7	(c)	<p>P1 Reason that a secondary victim is someone who is not in physical danger but suffers psychiatric harm as a result of witnessing with their own unaided senses an event that causes harm or risk of harm to a primary victim</p>	5													

Question		Indicative content	Mark	Guidance
		<p>P2 Reason that Amber is a secondary victim as she is not in physical danger but witnesses the harm to Simon</p> <p>P3 Reason that there must be a close tie of love and affection and sufficient proximity to the incident</p> <p>P4 Reason that Simon and Amber are husband and wife so there is a close tie of love and affection and Amber is present at the immediate aftermath</p> <p>P5 Conclude that the statement is accurate.</p> <p><b>OR</b></p> <p>P4a Reason that although Simon and Amber have a close tie of love and affection anxiety may not be considered a recognised psychiatric injury</p> <p>P5a Conclude that the statement is inaccurate.</p>		
7	(d)	<p>P1 Reason that professional rescuers can only claim for psychiatric injury if they are a genuine primary or secondary victim</p> <p>P2 Reason that Baasim is not a primary victim as there is no risk of physical danger to him or that he is not a secondary victim as there is no close tie of love and affection</p> <p><b>OR</b></p> <p>P2a Reason that Baasim is a primary victim as there is a risk of physical danger to him</p> <p>P3 Reason that injury caused must be a recognised psychiatric condition</p>		

Question	Indicative content	Mark	Guidance
	P4 Reason that Baasim has suffered depression, which is a recognised psychiatric illness  P5 Conclude the statement is accurate.  <b>OR</b>  P5a Conclude the statement is inaccurate.		

Question		Indicative Content	Mark	Guidance	
8		<b>Assessment Objective 2 - Analysis, evaluation and application</b>		<b>AO2 Level</b>	<b>AO2 Marks</b>
8	(a)	<p>P1 Reason that for the defence of <i>volenti</i> to apply it must be established that the claimant knew the nature and extent of the risk of harm</p> <p>P2 Reason that David knew that there was a risk of some harm by agreeing to play football</p> <p>P3 Reason that the harm must be voluntarily agreed to</p> <p>P4 Reason that David has only agreed to harm caused within the ordinary rules of the game and an illegal tackle is outside the rules of the game</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	5	5
				4	4
				3	3
				2	2
				1	1
8	(b)	<p>P1 Reason that for the defence of <i>volenti</i> to apply it must be established that the claimant knew the nature and extent of the risk of harm</p> <p>P2 Reason that David knew that there was a risk of injury as he thought the stretcher looked unsafe</p> <p>P3 Reason that the harm must be voluntarily agreed to</p> <p>P4 Reason that David had no choice but to get onto the stretcher as he was under pressure not to hold up the game and he had been directed to do so by the referee</p> <p>P5 Conclude that the statement is accurate.</p> <p><b>OR</b></p>	5		

Question		Indicative Content	Mark	Guidance
		<p>P4a Reason that David chose to get on the stretcher rather than refusing the request of the referee</p> <p>P5a Conclude that the statement is inaccurate.</p>		
8	(c)	<p>P1 Reason that for the defence of <i>volenti</i> to apply it must be established that the claimant knew the nature and extent of the risk of harm</p> <p>P2 Reason that David knew that Henry had been drinking and appreciated a risk of harm</p> <p>P3 Reason that the harm must be voluntarily agreed to</p> <p>P4 Reason that even though David voluntarily agreed to get into the car, liability cannot be negated due to the Road Traffic Act 1988</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	
8	(d)	<p>P1 Reason that a doctor can treat a patient without his consent where the patient lacks the capacity to consent</p> <p>P2 Reason that David was in a state of unconsciousness so could not consent</p> <p>P3 Reason that a doctor will not be liable when they reasonably believe that they are acting in the patient's best interests</p> <p>P4 Reason that the surgery was necessary to save David's life</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	

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