

Mark Scheme for January 2012

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

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

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

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















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Annotations

Annotation	Meaning
	AO1
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO2
	Developed (replace DP)
	Expansion of developed point (replace WDP)
	Case (Q1-6)
	Point 1 (Q7-8)
	Point 2 (Q7-8)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	Alternative reasoning (Q7-8)
	Vague/sort of
	Expandable vertical wavy line

SECTION A

Question	Answer	Marks	Guidance												
1*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Outline the requirements for a successful claim under the Animals Act 1971</p> <p>Explain that a keeper of an animal may be liable under section 6(3):</p> <ul style="list-style-type: none"> The keeper is either the owner of the animal or the head of a household in which a person under the age of 16 is the owner <p>Define a dangerous species under the Act:</p> <ul style="list-style-type: none"> Under section 6(2) an animal not commonly domesticated in the UK with characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe Dangerous is a question of fact in each case <i>Behrens v Bertram Mills Circus, Tutin v Chipperfield Promotions</i> By section 2(1) the keeper is strictly liable for any animal defined as dangerous By section 5 the only defences are <i>volenti</i> or where the damage was caused by the claimant's own fault <p>Explain that liability for non-dangerous species exists under section 2(2) of the Act and that a keeper will be liable if:</p> <ul style="list-style-type: none"> (a) The damage is of a kind the animal is likely to cause unless restrained or if caused by the animal is likely to be severe and; (b) The likelihood of severity of damage is due to abnormal characteristics of the individual animal or species or of species at specific times and; (c) The keeper knows of the characteristics <p>Explain in section 2(2)(a) 'likely' means possible rather than probable <i>Smith v Ainger, Gloster v Chief Constable of GMP</i> and 'severe' is a question of fact <i>Curtis v Betts</i></p>	25	<table border="1" data-bbox="1350 296 1727 512"> <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>Candidates will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>Candidates should make reference to both dangerous and non-dangerous animals, who is a keeper and defences in order to reach Level 5.</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 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></p> <p>Characteristic must be the same for section 2(2)(a) and (b) <i>Clark v Bowl</i></p> <p>Explain the available defences include:</p> <ul style="list-style-type: none"> • section 5(1) – Damage due entirely to the fault of the victim <i>Sylvester v Chapman, Nelmes v Chief Constable of Avon & Somerset</i> • section 5(2) – Victim voluntarily accepts the risk <i>Cummings v Grainger</i> • section 5(3) – Animal was either not kept for protection or if so then it was reasonable to do so • Section 10 Contributory negligence <i>Cummings v Grainger</i> <p>Use any other relevant cases.</p>														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss that the strict liability principles of the Animals Act 1971 are aligned to those found in the earlier actions at common law. Discuss how the Act may be viewed as effective:</p> <ul style="list-style-type: none"> • Forces people to take responsibility for losses caused by animals in certain situations allowing the claimant a remedy • In the case of dangerous animals, liability is strict so that a keeper is liable for any damage • The existence of defences under section 5 and section 10 compromises the strict liability nature of this tort • The principles apply differently to animals which are used for guarding • A fair distinction is made in relation to the defences available for dangerous animals as there are fewer 	20	<table border="1" data-bbox="1350 807 1727 1023"> <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>	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"> • There are limited circumstances in which a claim can be avoided for a dangerous animal by contrast to those classed as non-dangerous. For example, it is highly unlikely that a claim will be successful against a pet owner unless the pet has previously done damage <p>Discuss how the Act may be viewed as ineffective:</p> <ul style="list-style-type: none"> • For liability to be imposed on a keeper of a non-dangerous animal, all of the criteria in section 2(2) must be established ie it must be shown that the damage is likely to be severe, that this depends on specific characteristics and that the keeper knows of those characteristics. It may therefore be easy for such a keeper to avoid liability • The definition of dangerous animals is wide so as to include such animals which are not actually dangerous – however this may have an effective deterrent effect • Confusion amongst judges on whether different characteristics can be used for section 2(2)(a) and (b) • Strict liability nature of the tort is harsh on pet owners • There is difficulty in distinguishing between permanent and temporary characteristics <i>Mirvahedy v Henley</i> • The defences reduce the possibility of successful claims even where the animal has caused damage • The Act is cumbersome and there are relatively few cases – the most serious being litigated through negligence <p>Reach any sensible conclusion.</p>														
	<p>Assessment Objective 3 – Communication and presentation</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" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO1 + AO2 marks</th> <th style="text-align: center;">AO3 mark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">37–45</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 marks	AO3 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
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2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define psychiatric injury (nervous shock) as a recognised psychiatric condition caused by a sudden single traumatic event Explain that recognised psychiatric conditions include PTSD and depression <i>Vernon v Bosley</i> Explain that emotional reactions such as grief and sorrow, claustrophobia and insomnia are not recognised <i>Reilly v Merseyside HA, Hinz v Berry</i> Distinguish between primary and secondary victims:</p> <ul style="list-style-type: none"> • A primary victim is one who is present at the scene and directly involved <i>Page v Smith, Dulieu v White</i> • A secondary victim is one witnessing a single shocking event causing risk of injury or injury to a primary victim <i>Hambrook v Stokes</i> <p>Explain the requirements for a successful claim by a secondary victim as outlined in <i>Alcock v Chief Constable of South Yorks Police</i>:</p> <ul style="list-style-type: none"> • Close tie of love and affection to a primary victim <i>Hambrook v Stokes</i> • Sufficient proximity in time and space to the event or its immediate aftermath <i>McLoughlin v O'Brian, Taylor v Somerset, NE Glamorgan NHS Trust v Walters, W v Essex CC</i> • Witnessing the traumatic event or its immediate aftermath with own unaided senses through either sight or hearing <i>Alcock</i> • Injury sustained as a result of a single shocking event <i>Sion v Hampsted HA</i> <p>Explain how the thin skull rule applies to primary victims as decided in the case of <i>Page v Smith</i> – provided that physical injury is foreseeable, any psychiatric injury which arises can also be claimed for</p>	25	<table border="1" data-bbox="1350 225 1704 435"> <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>Candidates will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>It is unlikely that a candidate will reach Level 5 without a discussion which refers to primary victims, secondary victims and rescuers.</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 that for secondary victims, psychiatric damage must be foreseen in a person of normal fortitude</p> <p>Explain that for a rescuer to claim, they must either be a genuine primary victim and at risk of physical injury <i>Chadwick v BRB, McFarlane</i> or must fulfil the criteria as a secondary victim <i>Greatorex v Greatorex, Frost</i></p> <p>Explain that a mere bystander cannot claim for failing to be in danger of physical harm and failing the relationship test in <i>Alcock, Bourhill v Young</i></p> <p>Explain the anomalous approach to claims for nervous shock arising from property damage <i>Attia v British Gas</i></p> <p>Use any other relevant cases.</p>														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss that there are different classes of victim and that the tests which apply to their claims are different</p> <p>Discuss that historically, the origins of liability were with primary victims only, this then expanded to include secondary victims in the subsequent case law</p> <p>Discuss that policy considerations, such as ‘floodgates’, were influential on the development of the approach to secondary victims in <i>Alcock</i> due to the scale and nature of the event</p> <p>Discuss the limitations imposed on secondary victims and how this may produce harsh results:</p> <ul style="list-style-type: none"> • Requirement of a close tie of love and affection • Close friend and colleagues do not fall within the definition • Restrictive interpretation of what is the immediate aftermath • Secondary victim must show that nervous shock is foreseeable whereas a primary victim need only show that injury was foreseeable and that there was a causal connection 	20	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th data-bbox="1350 659 1520 699">AO2 Level</th> <th data-bbox="1520 659 1702 699">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1350 699 1520 730" style="text-align: center;">5</td> <td data-bbox="1520 699 1702 730" style="text-align: center;">17–20</td> </tr> <tr> <td data-bbox="1350 730 1520 762" style="text-align: center;">4</td> <td data-bbox="1520 730 1702 762" style="text-align: center;">13–16</td> </tr> <tr> <td data-bbox="1350 762 1520 794" style="text-align: center;">3</td> <td data-bbox="1520 762 1702 794" style="text-align: center;">9–12</td> </tr> <tr> <td data-bbox="1350 794 1520 826" style="text-align: center;">2</td> <td data-bbox="1520 794 1702 826" style="text-align: center;">5–8</td> </tr> <tr> <td data-bbox="1350 826 1520 858" style="text-align: center;">1</td> <td data-bbox="1520 826 1702 858" style="text-align: center;">1–4</td> </tr> </tbody> </table>	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"> • Secondary victim must show that nervous shock is foreseeable for a person of 'reasonable phlegm and fortitude'. Therefore a secondary victim who is already suffering from a condition made worse will not have a claim whereas a primary victim would • Victims who see TV broadcasts may also be barred • Bystanders' claims are also restricted • Rescuers who are not primary victims will have great difficulty in successfully claiming • Inconsistent approach to claims following property damage • No account taken for excessive grief even though it may be long lasting <p>Discuss the Law Commission proposals on a less restrictive approach in the way that secondary victims are dealt with Credit any reference to the fact that the <i>McLoughlin</i> decision left a number of issues unresolved; Bridge & Scarman that the test should be one of foreseeability, Wilberforce that this approach was too wide Reach any sensible conclusion.</p>															
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3*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain that a claimant must initially show that the defendant owed them a duty of care.</p> <p>Explain that the early test established by Lord Atkin in <i>Donoghue v Stevenson</i> was based on foreseeability of harm</p> <p>Explain the current requirement is set out in <i>Caparo v Dickman</i> – a three part test establishes:</p> <ul style="list-style-type: none"> • reasonable foreseeability of some loss • relationship of proximity • is it fair, just and reasonable to impose a duty? <p>On the issue of reasonable foreseeability:</p> <p>The defendant must have foreseen the risk of some loss to the claimant at the time of negligence <i>Topp v London Country Bus, Donoghue v Stevenson, Bourhill v Young</i></p> <p>On the issue of proximity:</p> <p>Explain that this was a key issue in Lord Atkin's original test <i>John Munroe v London Fire & Civil Defence Authority</i></p> <p>Explain that it can mean different things depending on the damage claimed for</p> <p>Explain the nature of the relationship which may give rise to a duty of care between the parties</p> <p>Explain that proximity of relationship is often influenced by policy considerations <i>Hill v Chief Constable of West Yorks Police</i></p> <p>On the issue of whether it is just, fair and reasonable to impose a duty:</p> <p>This requirement recognises that there must be a limit to liability and that no duty will be imposed unless it is fair in the circumstances <i>Hemmens v Wilson Browne</i></p> <p>Explain that there are a number of factors or policy considerations which the courts will take into account in determining what may be just and fair:</p>	25	<table border="1" data-bbox="1323 236 1675 451"> <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>Candidates will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</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"> • Wider benefit to society <i>Hill v Chief Constable of West Yorks Police</i> • Loss allocation • Practical considerations and future benefits <i>Smolden v Whitworth & Nolan</i> • Moral considerations <i>McKay v Essex Area Health Authority</i> • Protecting professionals <i>Rondel v Worsley, Hall v Simmons, Reeves v Commissioner of the Met Police, Osman v UK, Brooks v Commissioner of Police for the Metropolis</i> • Availability of other remedies <i>Matthews v MOD, Phelps v London Borough of Hillingdon</i> • Constitutional considerations • The floodgates argument <i>Alcock v Chief Constable W Yorks Police</i> <p>Use any other relevant cases.</p>														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> • Discuss the flexibility to determine that it may not be just and fair in the circumstances to impose a duty of care for policy reasons, causing harshness to the claimant • Discuss that the judges, in the past, have refused to impose liability on lawyers for work done in court for fear of preventing a barrister from carrying out his work effectively and the potential floodgates of re-opened claims. This immunity has since been removed as there is more effective professional regulation to avoid abuse of process. This provides greater fairness for claimants • Discuss that traditionally, judges have also had immunity against claims of negligence in judicial office. Explain that this unfairness is now ameliorated in respect of the work of inferior judges who can be held liable for acts in excess of their jurisdiction 	20	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO2 Level</th> <th style="text-align: center;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17–20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13–16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9–12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5–8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1–4</td> </tr> </tbody> </table>	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"> • Discuss how the police have been deemed not to owe a duty of care to the public at large. This is fair to the defendants on the grounds that the police would not effectively be able to carry out their duties. Identify that this is not as harsh on the claimant as it first appears due to alternative routes to compensation eg CICA. Highlight examples of when this has been lifted in respect of specific duties. • Discuss how the courts have approached the duty of care and failure to act in relation to public authorities. The courts often refuse to impose a duty for lack of proximity and this is very harsh on the claimants but there must be limits placed on liability so it is a matter of where to draw the line • Discuss that the courts will be reluctant to impose a duty of care on defendants where statute provides a fair and alternative remedy for the claimants • Discuss how the matter of blanket immunity for public authorities and the police has traditionally been unfair to claimants and that it raises human rights implications <i>X v Bedfordshire CC, Z and Others v UK</i> <p>Reach any sensible conclusion.</p>															
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SECTION B

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4*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define assault – intentionally and directly causing the other to apprehend immediate battery Explain the elements of the tort:</p> <ul style="list-style-type: none"> • Intention concerns the effect produced (and intended to be produced) in the claimant <i>Blake v Barnard</i> • Traditionally required an active threat <i>Read v Coker</i> • Words alone were insufficient and can negative an assault <i>Tuberville v Savage</i> but see also <i>R v Burstow</i>, <i>R v Ireland</i> <p>Explain the fact that the claimant does not intend or cannot carry out the tort does not matter as long as it produces and intended to produce the effect of apprehension <i>Stevens v Myers</i></p> <p>Explain that if it is not possible to place the claimant in apprehension of imminent battery then there is no assault <i>Thomas v NUM</i></p> <p>Explain the elements of a battery:</p> <ul style="list-style-type: none"> • Must involve intention not carelessness <i>Letang v Cooper</i> • Requires direct contact as broadly defined <i>Scott v Shepherd</i>, <i>Nash v Sheen</i> • Requirement of hostility involving the contrasting decisions in <i>Wilson v Pringle</i> and <i>Re F</i> • Explain the defence of volenti <p>Define false imprisonment – unlawful and intentional bodily restraint:</p> <ul style="list-style-type: none"> • Requires total bodily restraint <i>Bird v Jones</i> • Can be for a short period <i>White v WP Brown</i> 	25	<table border="1" data-bbox="1294 316 1646 523"> <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>Candidates will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>It is unlikely that candidates will achieve Level 3 or above without discussing each of the three forms of trespass to the person.</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"> Will not matter that the claimant is unaware or unconscious at the time Define relevant defences: <ul style="list-style-type: none"> There is no false imprisonment where a claimant is contractually bound <i>Robinson v Balmain Ferry, Herd v Werdale</i> Use any other relevant cases.														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> Identify assault Identify battery Identify false imprisonment <p>In relation to any claim by Alvor against Belinda when she pokes his leg:</p> <ul style="list-style-type: none"> Possible claim in battery There is the requisite intention Contact is direct Is the requirement of hostility fulfilled as Belinda thinks that it is amusing? Law suggests that any unwanted intentional contact could amount to a battery but hostility not now required Credit discussion of volenti Reach any sensible conclusion <p>In relation to any claim by Belinda against Alvor when he swings round to knock the umbrella away:</p> <ul style="list-style-type: none"> Possible claim for assault but no battery as there is no direct contact. Credit any distinction from <i>Scott v Shepherd</i> For an assault, Belinda must fear immediate and unlawful battery Intention is present However, Belinda has not seen what has happened and therefore does not apprehend a battery 	20	<table border="1"> <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>	AO2 Level	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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Question	Answer	Marks	Guidance													
	<ul style="list-style-type: none"> • Conclude that an assault cannot be proved In relation to any claim by Alvor against Darren for his threat: <ul style="list-style-type: none"> • Possible claim for assault • Words alone may amount to an assault • Darren’s statement negates the prospect of an immediate and unlawful battery • Conclude that an assault is unlikely to be proved • In relation to any claim by Alvor against the cinema: <ul style="list-style-type: none"> • Possible claim for false imprisonment • There is no other way out of the cinema and therefore restraint is total • Alvor is not aware that there is no other way out and is therefore unaware of the false imprisonment. This will not affect the claim • The false imprisonment is only for a short period of time. This will not affect the claim following <i>White v WP Brown</i> • Reach any sensible conclusion. 															
	<p>Assessment Objective 3 – Communication and presentation</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" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO1 + AO2 marks</th> <th style="text-align: center;">AO3 mark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">37–45</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>		AO1 + AO2 marks	AO3 mark	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1
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5*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define occupiers' liability – damage arising from the state of the premises State that liability arises from Occupiers' Liability Act 1957 for lawful visitors and the Occupiers' Liability Act 1984 for unlawful visitors Explain that:</p> <ul style="list-style-type: none"> • An occupier is someone in control of the premises • There may be more than one occupier <i>Wheat v Lacon</i> • Premises are broadly defined <i>Wheeler v Copas</i> <p>Explain that 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</p> <p>Occupiers' Liability Act 1957:</p> <ul style="list-style-type: none"> • Section 2(1) common duty of care owed to all lawful visitors • Scope is to keep visitor reasonably safe for the purpose for which he is invited to be there under section 2(2) • The extent of this duty depends on the nature of the visitor eg professional visitors are expected to guard against any risks ordinarily incidental to their trade under section 2(3)(b), <i>Roles v Nathan</i>. Conversely, children are owed a higher duty of care under section 2(3)(a) • Occupier can exclude or modify the duty subject to Unfair Contract Terms Act 1977 under section 2(1) • A visitor going beyond the purpose of his visit becomes a trespasser and the 1984 Act will apply <i>The Calgarth</i> <p>Occupiers' Liability Act 1984:</p> <ul style="list-style-type: none"> • 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> 	25	<table border="1" data-bbox="1348 236 1702 450"> <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>Candidates will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 6 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>It is unlikely that candidates will achieve Level 3 or above without discussing both the Occupiers' Liability Act 1957 and 1984.</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"> • Covers personal injury and death but not damage to property under section 1(8) • Duty arises under section 1(3) if occupier has reasonable grounds to believe that the danger exists <i>Rhind v Astbury Water Park</i>, that there are trespassers in the vicinity <i>Swain v Natui Ram Pun</i>, and the danger is one against which the occupier can be reasonably expected to provide protection <i>Tomlinson v Congleton BC</i> • 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> • A warning sign may be effective under section 1(5) <i>Westwood v Post Office</i> <p>Defences may include <i>volenti</i> and contributory negligence <i>Tomlinson v Congleton BC</i> Use any other relevant cases.</p>														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify Giles and Smalltown Brewery as the occupiers and therefore the defendants in all three claims:</p> <ul style="list-style-type: none"> • Control will be a determining factor • Giles as tenant and manager has control over the premises • Smalltown Brewery own the premises <p>In relation to Jakob’s broken ankle and smashed mobile phone:</p> <ul style="list-style-type: none"> • Discuss that for normal deliveries, Jakob would be a lawful visitor and would have permission to enter • Discuss that the hotel is classed as premises • Explain that when Jakob enters the premises he is an unlawful visitor therefore Occupiers’ Liability Act 1984 will apply 	20	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th data-bbox="1350 831 1518 863">AO2 Level</th> <th data-bbox="1518 831 1697 863">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1350 863 1518 895" style="text-align: center;">5</td> <td data-bbox="1518 863 1697 895" style="text-align: center;">17–20</td> </tr> <tr> <td data-bbox="1350 895 1518 927" style="text-align: center;">4</td> <td data-bbox="1518 895 1697 927" style="text-align: center;">13–16</td> </tr> <tr> <td data-bbox="1350 927 1518 959" style="text-align: center;">3</td> <td data-bbox="1518 927 1697 959" style="text-align: center;">9–12</td> </tr> <tr> <td data-bbox="1350 959 1518 991" style="text-align: center;">2</td> <td data-bbox="1518 959 1697 991" style="text-align: center;">5–8</td> </tr> <tr> <td data-bbox="1350 991 1518 1023" style="text-align: center;">1</td> <td data-bbox="1518 991 1697 1023" style="text-align: center;">1–4</td> </tr> </tbody> </table>	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"> • Under Occupiers' Liability Act 1984, only personal injury/death can be claimed for and therefore Jakob would have no claim for his mobile phone • Discuss that for Giles to be liable he should be aware of the danger or have reasonable grounds to believe that it exists – this is likely being as the cellar will be in use • Discuss that Giles should know or have reasonable grounds to believe that there are trespassers in the vicinity – this is not likely <i>Higgs v Foster</i> • Discuss that the danger should be one against which Giles should reasonably afford protection – this is likely to be the case • Credit discussion of contributory negligence • Reach any sensible conclusion <p>In relation to Myleen's back injury:</p> <ul style="list-style-type: none"> • Discuss that Myleen is a lawful visitor as she has a license to be on the premises and that OLA 1957 will apply • Discuss that the hotel is classed as premises so that Giles has a duty to keep Myleen safe for the purpose of her visit • It is clear that the wet floor can be classed as the state of the premises • Consider that Giles is in clear breach under section 2(2) Occupiers' Liability Act 1957 as he knew of the risk of harm (other patrons had also slipped) but did nothing about it • The harm is foreseeable • Conclude that Myleen is likely to be successful <p>In relation to Sparkie's electrocution:</p> <ul style="list-style-type: none"> • Discuss that Sparkie is a lawful visitor as he has a license to be on the premises and that Occupiers' Liability Act 1957 will apply • Discuss that the hotel is classed as premises so that Giles has a duty to keep Sparkie safe for the purpose of his visit • Explain that as Sparkie is carrying out a trade on the premises he is a professional visitor 		

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			<ul style="list-style-type: none"> • Explain that under section 2(3)(b) and in relation to the inspection, Sparkie should appreciate and guard against any special risks ordinarily incidental to the inspection • An electrician should know to turn the electricity off at the mains. In addition Giles told him to do so. • Conclude that Giles is unlikely to be liable as he has not agreed to the unsafe system of work. 															
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6*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the basic elements of a negligence claim:</p> <ul style="list-style-type: none"> • existence of a duty of care owed by defendant to claimant • breach of that duty (by falling below the appropriate standard of care – reasonable man test) <i>Blyth v Birmingham Waterworks</i> • damage caused by the defendant’s breach (the ‘but for’ test) <i>Barnett v Chelsea & Kensington Hospitals, Cork v Kirby</i> • which is not too remote a consequence of the breach (ie damage that is reasonably foreseeable) <i>The Wagon Mound</i> <p>Explain the factors relevant to breach of duty assuming that <i>Caparo</i> criteria have been met:</p> <ul style="list-style-type: none"> • foreseeability of harm <i>Roe v Minister of Health, Paris v Stepney BC</i> • likelihood of risk <i>Bolton v Stone, Haley v LEB</i> • practicability of precautions <i>Latimer v AEC</i> • social utility <i>Watt v Herts CC</i> • the different standard of care owed by professionals, particularly doctors – that measured against the standards of a reasonably competent body of medical opinion <i>Bolam v Friern Hospital Management Committee, Bolitho v City & Hackney HA</i> <p>Explain the factors relevant to causation:</p> <ul style="list-style-type: none"> • Factually established using the ‘but for’ test <i>Barnett v Chelsea & Kensington HMC</i> • Multiple consecutive causes <i>Jobling v Associated Dairies, Baker v Willoughby</i> • Remoteness test 	25	<table border="1" data-bbox="1323 248 1675 461"> <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>Candidates will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>It is unlikely that candidates will achieve Level 3 or above without discussing the issue of causation.</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"> • How a <i>novus actus interveniens</i> may break the chain of causation, relieving the defendant of liability <i>Smith v Littlewoods</i> • The court must accept that the <i>novus actus interveniens</i> is the true cause of the damage <i>Wieland v Cyril Lord Carpets Ltd, Knightly v Johns</i> Credit references to the ‘thin skull rule’ Explain the courts approach to dealing with claims for loss of chance: <ul style="list-style-type: none"> • Explain that loss of chance is a claim for the loss of chance of recovery through negligent medical treatment or diagnosis • The claimant must have a probable chance of recovery before a claim will be considered. A slim chance will not be taken into account <i>Gregg v Scott, Hotson v East Berkshire AHA</i> Credit reference to defence of <i>volenti</i> Use any other relevant cases.														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of a claim by Mina against Stokesire hospital for loss of chance:</p> <ul style="list-style-type: none"> • Consider that the nurse is expected to meet the standard of the <i>Bolam Test</i> • Reason that the duty of care was breached • Explain that for Mina to have a claim against the hospital for the loss of her chance of recovery, she would need to prove, on the balance of probabilities, that she had a chance of recovery • Reason that, it was more likely that Mina would suffer this injury anyway (80%) rather than recover • Conclude that Mina is unlikely to be successful 	20	<table border="1"> <thead> <tr> <th data-bbox="1323 874 1491 906">AO2 Level</th> <th data-bbox="1491 874 1675 906">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1323 906 1491 943">5</td> <td data-bbox="1491 906 1675 943">17–20</td> </tr> <tr> <td data-bbox="1323 943 1491 979">4</td> <td data-bbox="1491 943 1675 979">13–16</td> </tr> <tr> <td data-bbox="1323 979 1491 1016">3</td> <td data-bbox="1491 979 1675 1016">9–12</td> </tr> <tr> <td data-bbox="1323 1016 1491 1053">2</td> <td data-bbox="1491 1016 1675 1053">5–8</td> </tr> <tr> <td data-bbox="1323 1053 1491 1090">1</td> <td data-bbox="1491 1053 1675 1090">1–4</td> </tr> </tbody> </table>	AO2 Level	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>In the case of Colin's claim against Victor:</p> <ul style="list-style-type: none"> • Establish that Victor has breached his duty of care and has not behaved as the reasonable driver/reasonable professional driver • Reason that Colin's injuries were as a result of multiple consecutive causes, the pain from the original disease of the spine being compounded by the injury inflicted by Victor • Consider whether Colin's act of diving to save Doreen amounts to a <i>novus actus interveniens</i> • Reason that it may be unlikely that the courts view the act as sufficiently unreasonable to break the chain • Conclude that Colin is likely to be successful • Credit identification and rejection of defence of <i>volenti</i> <p>In the case of Doreen's claim against Victor:</p> <ul style="list-style-type: none"> • Establish that Victor has breached his duty of care and has not behaved as the reasonable driver/reasonable professional driver • Show that Doreen's injuries were both a direct and foreseeable consequence of Victor's act • Conclude that Doreen is likely to be successful 														
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SECTION C

Question		Answer	Marks	Guidance												
7	(a)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that smoke and noise can amount to an unlawful interference with a person’s use and enjoyment of land</p> <p>P2 Reason that smoke and noise can amount to an indirect interference with a person’s use and enjoyment of land</p> <p>P3 Reason that the noise is unreasonable as the concerts last through the night and are held throughout the summer</p> <p>P4 Reason that as the smoke is a one-off incident it will not be seen as unreasonable</p> <p>P5 Conclude that the statement is inaccurate</p> <p>P4a Reason that a temporary interference can give rise to a claim if it is of a kind and at times which make it unacceptable and the smoke is unacceptable</p> <p>P5a Conclude that the statement is accurate.</p>	5	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>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	Marks	5	5	4	4	3	3	2	2	1	1
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	(b)	<p>P1 Reason that public nuisance must affect a class of people</p> <p>P2 Reason that the smoke affects the villagers, a class of which Barry is a member</p> <p>P3 Reason that a claimant must show special damage over and above that suffered by the other members.</p> <p>P4 Reason that Barry has suffered special damage by suffering personal injury and damage to his property</p> <p>P5 Conclude that the statement is inaccurate.</p> <p>P2a Reason that the smoke affects road users, a class of which Barry is a member</p> <p>P3a Reason that a claimant must show special damage over and above that suffered by the other members</p> <p>P4a Reason that Barry has suffered special damage by suffering personal injury and damage to his property</p> <p>P5a Conclude that the statement is inaccurate.</p>	5													

Question		Answer	Marks	Guidance
	(c)	<p>P1 Reason that the noise can amount to an unlawful and indirect interference with her use and enjoyment of land</p> <p>P2 Reason that an act may not normally amount to a private nuisance if Caroline's use of land is abnormally sensitive</p> <p>P3 Reason that Caroline's breeding of gerbils is an abnormally sensitive use of land</p> <p>P4 Reason that Farmer Rock does not know that Caroline's gerbils are sensitive to noise</p> <p>P5 Conclude that the statement is accurate.</p>	5	
	(d)	<p>P1 Reason that Farmer Rock may argue the defence of public benefit/social utility</p> <p>P2 Reason that the courts will not accept public benefit as a defence</p> <p>P3 Reason that the courts take public benefit/social utility into account in determining the remedy</p> <p>P4 Reason that Farmer Rock's charitable donation will be relevant to the remedy awarded</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	

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8		Potential answers may:		<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>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>	AO2 Level	Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
	AO2 Level	Marks														
	5	17–20														
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1	1–4															
(a)	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that for Kumar to be an employee he must work under a contract of service/employment</p> <p>P2 Reason that the courts may use a number of tests to determine whether Kumar is an employee such as the control test, integration test and multiple test</p> <p>P3 Reason that Kumar's status is irregular, as he has been taken on as casual labour</p> <p>P4 Reason that Kumar has no contract of service and so he is an independent contractor</p> <p>P5 Conclude that the statement is accurate.</p>	5														
(b)	<p>P1 Reason that the negligent act must have been committed in the course of employment</p> <p>P2 Reason that Kumar has been employed to make deliveries</p> <p>P3 Reason that Kwikdrop can be liable for authorised acts of an employee even if they are carried out in an unauthorised or negligent manner</p> <p>P4 Reason that Kumar is delivering the parcels in an unauthorised/negligent manner by having a race</p> <p>P5 Conclude that the statement is inaccurate.</p>	5														
(c)	<p>P1 Reason that Jerry is an employee of Kwikdrop</p> <p>P2 Reason that Jerry's negligent act must have been committed in the course of employment</p> <p>P3 Reason that Kwikdrop will not be liable for an employee on a frolic of their own</p> <p>P4 Reason that Jerry is on a frolic of his own by going to pick up his daughter</p> <p>P5 Conclude that the statement is inaccurate.</p>	5														

Question		Answer	Marks	Guidance
	(d)	<p>P1 Reason that with contributory negligence the damages awarded will be reduced</p> <p>P2 Reason that the reduction depends upon the proportion that the claimant contributed to his own loss</p> <p>P3 Reason that William has partly contributed to his injuries by not wearing a seat belt</p> <p>P4 Reason that as William is only partly at fault for his injuries the reduction will not be 100%</p> <p>P5 Conclude that the statement is inaccurate</p> <p>P4a Reason that contributory negligence can never lead to a reduction of 100%</p> <p>P5a Conclude that the statement is inaccurate.</p>	5	

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 candidates 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 candidates 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 candidates 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 or identify all of the relevant points of law in issue. A high level of ability to develop arguments or 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 candidates 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 or identify most of the relevant points of law in issue. Ability to develop clear arguments or 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 candidates 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 or identify the main points of law in issue. Ability to develop arguments or 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 or identify some of the points of law in issue. A limited ability to produce arguments based on their material or 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.

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