

ADVANCED GCE

LAW

Unit G157: Law of Torts

Specimen Paper

UNIT G157

Time: 2 hours

Additional materials:
Answer booklet (16 pages)



INSTRUCTIONS TO CANDIDATES

- Complete the front page of the answer booklet as directed.
- Answer **three** questions, **one** from Section A, **one** from Section B and **one** from Section C.
- Write the numbers of the questions you answer on the front of your answer booklet.
- When answering the following questions you are required to demonstrate some synoptic thinking. In Section A this is achieved by relevant reference to precedent and/or statutory materials including the development of law and comments on justice or morality where appropriate. In Section B this is achieved by relevant use of precedent and/or statutory materials in the application of legal reasoning to given factual situations, including comment on the justice or morality of the outcome where appropriate. You are not required to demonstrate synoptic thinking in Section C.

INFORMATION FOR CANDIDATES

- The maximum mark for this paper is **120**.
- You are reminded of the need to write legibly and in continuous prose where appropriate. In Section A and B you will be assessed on your written communication and your use of appropriate legal terminology.
- The number of marks for each question is given in [] at the end of each question.

ADVICE TO CANDIDATES

- Read each question carefully and make sure you know what you have to do before starting your answer.

This document consists of **4** printed pages.

Answer **three** questions.

One from Section A, **one** from Section B and **one** from Section C.

You are advised to spend 50 minutes on Section A, 50 minutes on Section B and 20 minutes on Section C.

SECTION A

When answering the following questions you are required to demonstrate some synoptic thinking. In Section A this is achieved by relevant reference to precedent and/or statutory materials including the development of law and comments on justice or morality where appropriate.

Answer only **one** question from this section.

- 1 'The two principal aims of tort law are to compensate the victim and to deter torts in general.'

Consider the extent to which the doctrine of vicarious liability helps to achieve both of these aims. **[50]**

- 2 Fear of 'opening the floodgates' has been a major policy factor in the development of the law on liability for economic loss caused by a negligent misstatement.'

Discuss the accuracy of the above statement. **[50]**

- 3 Discuss the extent to which the law of private nuisance creates an effective balance between the rights of neighbours in their respective use of land. **[50]**

Section A Total [50]

SECTION B

When answering the following questions you are required to demonstrate some synoptic thinking. In Section B this is achieved by relevant use of precedent and/or statutory materials in the application of legal reasoning to given factual situations, including comment on the justice or morality of the outcome where appropriate.

Answer only **one** question from this section.

- 4 Two businesses share the same premises on a retail park. Bright Light plc sell light fittings from the first floor. Chemi-Kaze plc sell industrial chemicals and store large quantities of chemicals in the ground floor. A wiring fault in Bright Light causes a fire which escapes down to the ground floor causing damage to Chemi-Kaze. Firemen put out the blaze.

Chemi-Kaze leave large containers of chemicals outside the back door while repairs are taking place to the premises. Some of the containers have become damaged in the fire causing rust to develop from the water. Vandals also knock over some of the containers and unscrew the caps. The chemicals from all the containers then seep out and run along the ground and down a slope and escape into the next unit, Flower Power, a garden centre. The chemicals kill many of Flower Power's stock of plants valued at several thousand pounds.

Discuss the potential liability of Bright Light to Chemi-Kaze and of Chemi-Kaze to Flower Power including any possible defences. **[50]**

- 5 A ladies' football league cup final is being contested between two teams, the Wanderers and the Lilywhites. In an early chance the Wanderers' striker, Emma leaps to head the ball and clashes heads with the Lilywhites' goalkeeper, Vicki, causing a gash under Vicki's eye. Vicki turns on Emma waving her fists and shouting 'I'll make sure nobody will want to see your pretty face in future'. The next time Emma has a chance of a shot on goal Vicki rushes towards her to prevent a goal. Fearing that Vicki is going to attack her, Emma punches Vicki in the face, knocking her unconscious. The referee immediately sends Emma off. Emma is so angry with this that an official, Uriah, has to drag her off the field, and he then locks her in the dressing room until the end of the match.

Advise Vicki and Emma of any claims that either of them may bring in the tort of trespass to the person. **[50]**

- 6 David takes his young son Eddie to a local theme park, Fundays. David takes Eddie on the 'Fright-of-your-life' roller coaster. Owing to negligent maintenance by Fundays the harness holding Eddie breaks and he plunges to the ground suffering massive injuries. Georgina sees the fall and the injuries to Eddie. She now suffers from post traumatic stress disorder.

David phones his wife Hannah who drives directly to the hospital. She arrives one hour later to find that Eddie has died. She suffers from grief and severe depression. Ian, a paramedic who treats Eddie at the scene, is so horrified by the injuries that he suffers post traumatic stress disorder. David has become withdrawn and terrified of heights.

Advise David, Georgina, Hannah and Ian on any actions they may have against Fundays for their injuries. **[50]**

Section B Total [50]

SECTION C

Answer only **one** question from this section.

- 7 Abid is driving his car at 90 miles per hour at night on the wrong side of the road along a dark country lane. Abid collides with another car being driven by Beatrice. Beatrice's passenger, Claudine, is seriously injured in the collision. Beatrice and Claudine were returning from a party where they had both drunk a large quantity of wine. Claudine had accepted a lift even though she knew Beatrice was over the limit and should not be driving.

Evaluate the accuracy of **each** of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

Statement A: Claudine has no claim in negligence against Abid as he has not breached his duty of care to her.

Statement B: Abid is not liable to Claudine in negligence because he can argue that a *novus actus interveniens* by Beatrice.

Statement C: Abid has a defence of *volenti non fit injuria* to any claim by Claudine.

Statement D: Abid can use the defence of contributory negligence to reduce damages in any claim by Claudine. **[20]**

- 8 Gordon has paid to stay overnight at the Superposh Hotel. After midnight he goes to the Hotel pool for a swim. A sign on the door reads: 'Pool closed between 7.00 pm and 7.00 am. No entry to visitors during these hours. Dangerous when unattended.' Gordon reads but ignores the sign and enters. He cannot find the light so he jumps in. In fact the pool has been emptied and Gordon is badly injured and blood from his injuries ruins his Armani swimwear which cost £300.

Evaluate the accuracy of **each** of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

Statement A: Gordon can make a successful claim under the Occupiers' Liability Act 1957.

Statement B: Gordon will use ordinary negligence principles in his claim against Superposh.

Statement C: Gordon cannot claim damages under the Occupiers' Liability Act 1984 because of the warning notice.

Statement D: Gordon can claim for his injury and ruined swimwear under the Occupiers' Liability Act 1984 but Superposh will have a successful defence of *volenti*. **[20]**

Section C Total [20]

Paper Total [120]

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OXFORD CAMBRIDGE AND RSA EXAMINATIONS

Advanced GCE

LAW

[G157MS]

Unit G157: Law of Torts

Specimen Mark Scheme

This mark scheme must be used in conjunction with the Advanced GCE Law Assessment Grid.

Candidates answering these questions are required to demonstrate some synoptic thinking. In Section A this is achieved by relevant reference to precedent and/or statutory materials including the development of law and comments on justice or morality where appropriate. In Section B this is achieved by relevant use of precedent and/or statutory materials in the application of legal reasoning to given factual situations, including comment on the justice or morality of the outcome where appropriate. Candidates are not required to demonstrate synoptic thinking in Section C.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all, will receive no marks. Reward grammar, spelling and punctuation.

This mark scheme contains indicative content but it is not exhaustive or prescriptive. It should be used alongside the matrix of levels of assessment and live exemplar standardisation scripts (which cover a range of responses identifying where within a level of assessment a particular response lies). Examiners are required to use the indicative content of the mark schemes **only** in conjunction with the matrix of levels of assessment as informed by actual responses in the standardisation scripts. Examiners should not be drawn prescriptively and quantitatively to the content of the mark scheme when marking candidates' responses and should follow the specific guidance provided by the Principal Examiner in terms of breadth and depth of responses. Appropriate credit will be given for non-standard answers.

This mark scheme consists of 15 printed pages.

SECTION A																										
Question Number	Answer	Max Mark																								
1	<p>'The two principal aims of tort law are to compensate the victim and to deter torts in general.'</p> <p>Consider the extent to which the doctrine of vicarious liability helps to achieve both of these aims.</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Define vicarious liability – imposing liability on a person other than the tortfeasor (usually an employer).</p> <p>Explain that for liability the tortfeasor must:</p> <ul style="list-style-type: none"> • Be an employee of the defendant and (except in very rare circumstances) not an independent contractor. • Be acting within the course of employment when the tort occurs. • Have committed a tort (although in some cases there can be liability for the crimes of employees). <p>Explain the tests of employment: control test <i>Mersey Docks and Harbour Board v Coggins and Griffiths</i>; integration test <i>Stevenson, Jordan and Harrison v Macdonald and Evans</i>; economic reality (multiple) test <i>Ready Mixed Concrete</i> case.</p> <p>Explain the circumstances where the tort falls within the course of employment: authorised acts <i>Poland v Parr</i>; acting in an unauthorised manner <i>Limpus v London General Omnibus</i>; or in a purely careless manner <i>Century Insurance v Northern Ireland Transport Board</i>; where the employer benefits from the tort <i>Rose v Plenty</i>; paid travelling time <i>Smith v Stages</i>.</p> <p>Explain the circumstances that are not within the course of employment: activities not within the scope of employment <i>Beard v London General Omnibus</i>; a 'frolic on his own' <i>Hilton v Thomas Burton</i>; giving unauthorised lifts <i>Twine v Beans Express</i>; exceeding the proper bounds of the work <i>Makanjuola v Metropolitan Police Commissioner</i>.</p> <p>Explain the employer's indemnity <i>Lister v Romford Ice Storage</i>.</p> <p>Use any other relevant cases.</p>	Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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SECTION A [continued]																												
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1 cont'd	<p>Assessment Objective 2</p> <p>Consider the impact of the doctrine on compensation:</p> <ul style="list-style-type: none"> • Employer is more likely to be able to compensate the victim than the employee. • In any case an employer is obliged to carry public liability insurance so there is a greater likelihood of compensation. • Employer can also pass on the cost in prices. • Candidates may also pass comment on the fairness – e.g. the employer profits from the employee's work so should bear the cost. <p>Consider the deterrent value of the doctrine:</p> <ul style="list-style-type: none"> • Employer has certain degree of control over employees – so can train to avoid torts and can hire competent employees and will be encouraged to discipline or dismiss incompetent employees. • Cost to business may be a deterrent against unsafe practices. • On the other hand it is not always possible for an employer to prevent breaches of rules though he may still be liable for the outcome. • Candidates may refer to the difficulty of an employer preventing criminal acts but the greater need for vigilance in employment practices <i>Lloyd v Grace Smith, Warren v Henleys</i> and particularly following <i>Lister v Hesley Hall</i>. <p>Use any of the cases in AO1 to illustrate compensation or deterrence.</p> <p><i>Candidates who merely list advantages and disadvantages will only be able to achieve top of Level 3.</i></p> <p>Assessment Objective 3</p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p> <p style="text-align: right;">Total marks</p>			[20]																								
2	<p>Fear of 'opening the floodgates' has been a major policy factor in the development of the law on liability for economic loss caused by a negligent misstatement.'</p> <p>Discuss the accuracy of the above statement.</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers MAY:</p>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[5]
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SECTION A [continued]		
Question Number	Answer	Max Mark
2 cont'd	<p>Assessment Objective 1</p> <p>Explain the basic criteria for liability for negligent misstatement arising under <i>Hedley Byrne</i>:</p> <ul style="list-style-type: none"> • Existence of a special relationship <i>Yianni v Edwin Evans</i>. • Possession of specialist skill by the person giving the advice <i>Hedley Byrne</i>, <i>Mutual Life and Citizens Assurance v Evatt</i>. • Reasonable reliance on the defendant's skill and judgment <i>Smith v Eric S Bush</i>, <i>Harris v Wyre Forest DC</i>. <p>Explain the situations in which liability could be found at its widest <i>Chaudhry v Prabhaker</i>.</p> <p>Explain the situations where liability could not be found <i>JEB Fasteners v Marks Bloom</i>.</p> <p>Explain the general rejection of a test of foreseeability and the narrower test of knowledge of the purpose for which the advice is needed <i>Caparo v Dickman</i>.</p> <p>Explain the tests of knowledge in <i>James McNaughten Paper Group v Hicks Anderson</i>.</p> <p>Explain the requirement of assumption of responsibility for the advice in <i>Henderson v Merritt Syndicates</i>.</p> <p>Use any other relevant cases to demonstrate the development of the tort.</p> <p>Assessment Objective 2</p> <p>Credit reference to the original reluctance of the courts to accept an action for pure economic loss arising from a negligent act <i>Spartan Steels v Martin</i>.</p> <p>Discuss the original reluctance of judges to accept liability for economic loss arising from a negligently made statement <i>Candler v Crane Christmas</i>.</p> <p>Discuss whether these early positions were both based on policy and floodgates.</p> <p>Discuss the basis of the original acceptance of liability in <i>Hedley Byrne</i> – the dissenting judgment of Lord Denning in <i>Candler</i>, the test in <i>Hedley Byrne</i> of specialist knowledge and reasonable reliance and the difference as a result from a claim based on pure economic loss.</p> <p>Discuss the acceptance of reasonable foreseeability as the basis for early liability leading to expansion of the tort in cases such as <i>Yianni v Edwin Evans</i>.</p> <p>Discuss the shock that such expansion caused e.g. amongst valuers and estate agents.</p> <p>Discuss the gradual rejection of the early test and the gradual narrowing of the basis for the test, particularly in <i>Caparo</i> but also in <i>McNaughten v Hicks Anderson</i> and <i>Henderson v Merritt</i>.</p> <p>Consider that further expansion is unlikely <i>Morgan Crucible v Hill Samuel</i>.</p> <p>Make any other relevant comment on policy or the floodgates argument restricting development of the tort.</p> <p>Assessment Objective 3</p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>	<p>[25]</p> <p>[20]</p> <p>[5]</p> <p>Total marks [50]</p>

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3	<p>Discuss the extent to which the law of private nuisance creates an effective balance between the rights of neighbours in their respective use of land.</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Define the tort – unlawful, indirect interference with another person's use or enjoyment of land in which they have an interest.</p> <p>Explain the need for the claimant to have an interest in the land affected by the nuisance <i>Hunter v Canary Wharf</i>.</p> <p>Identify the type of indirect interference giving rise to liability e.g. noise <i>Sturges v Bridgman</i>, smoke and fumes <i>St Helens Smelting v Tipping</i>.</p> <p>Identify that there is a difference between nuisance causing damage and one causing interference with comfort or the enjoyment of land <i>Halsey v Esso Petroleum, St Helens Smelting v Tipping</i>.</p> <p>Explain the term unlawful – meaning unreasonable.</p> <p>Identify the elements that may be taken into account in determining whether the use of land is unreasonable:</p> <ul style="list-style-type: none"> • Locality <i>Sturges v Bridgman, Kennaway v Thompson, Laws v Florinplace</i>. • Duration <i>Spicer v Smees, De Keyser's Royal Hotel v Spicer Bros</i>. • Abnormal sensitivity of the claimant <i>Robinson v Kilvert</i>. • The presence of malice <i>Christie v Davey, Hollywood Silver Fox Farm v Emmett</i>. <p>Identify the potential defendants – the occupier of the land <i>Tetley v Chitty</i>, the creator of the nuisance <i>Southport Corporation v Esso Petroleum</i>, independent contractors, landlords.</p> <p>Explain the potential defences – prescription <i>Sturges v Bridgman</i>, statutory authority <i>Allen v Gulf Oil</i>, local authority planning permission <i>Gillingham BC v Medway Dock</i> and <i>Wheeler v Saunders</i>, act of a stranger <i>Sedleigh Denfield v O'Callaghan</i>, and the effect of public policy <i>Adams v Ursell, Miller v Jackson</i>.</p> <p>Identify the basic remedies – damages <i>Halsey</i>, injunctions <i>Kennaway v Thompson</i>, abatement.</p>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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SECTION A [continued]		
Question Number	Answer	Max Mark
3 cont'd	<p>Assessment Objective 2</p> <p>In effect the question is asking candidates to assess the effectiveness of the tort in resolving and even preventing disputes between neighbours – so a balanced discussion is called for.</p> <p>Discuss whether or not the elements of the tort mean there is ‘give and take’.</p> <p>Discuss the difficulties of establishing use of land as unreasonable.</p> <p>Discuss the limitation on potential claimants e.g. <i>Hunter v Canary Wharf</i>.</p> <p>Discuss the relative ease of proving nuisance where there is damage in comparison with interference with enjoyment of land.</p> <p>Discuss the potential unfairness of liability being dependent on the locality in which the nuisance occurs.</p> <p>Discuss the fact that many modern nuisances will be covered by the defence of statutory authority or planning permission.</p> <p>Discuss the effects of malice by either the claimant or defendant.</p> <p>Discuss the fairness of the defences to both claimant and defendant.</p> <p>Discuss the effect of moving to a nuisance – irrelevant if prescription applies but otherwise an activity can be a nuisance after many years.</p> <p>Discuss on the problem of seeking the correct remedy <i>Miller v Jackson</i>.</p> <p>Discuss whether public policy should have an impact.</p> <p>Assessment Objective 3</p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>	<p>[20]</p> <p>[5]</p> <p>Total marks [50]</p>
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SECTION B		
4	<p>Two businesses share the same premises on a retail park. Bright Light plc sell light fittings from the first floor. Chemi-Kaze plc sell industrial chemicals and store large quantities of chemicals in the ground floor. A wiring fault in Bright Light causes a fire which escapes down to the ground floor causing damage to Chemi-Kaze. Firemen put out the blaze.</p> <p>Chemi-Kaze leaves large containers of chemicals outside the back door while repairs are taking place to the premises. Some of the containers have become damaged in the fire causing rust to develop from the water. Vandals also knock over some of the containers and unscrew the caps. The chemicals from all the containers then seep out and run along the ground and down a slope and escapes into the next unit, Flower Power, a garden centre. The chemicals kill many of Flower Power’s stock of plants valued at several thousand pounds.</p> <p>Discuss the potential liability of Bright Light to Chemi-Kaze and of Chemi-Kaze to Flower Power including any possible defences.</p>	

SECTION B [continued]					
Question Number	Answer				Max Mark
4 cont'd	Mark Levels	AO1	AO2	AO3	
	Level 5	21-25	17-20	-	
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	Potential answers MAY :				
	Assessment Objective 1				
	Define the tort of <i>Rylands v Fletcher</i> – liability for a bringing onto land and accumulation of a thing likely to cause mischief if it escapes, amounting to a non-natural use of land, and the thing does escape causing damage.				
	Explain the various elements:				
	<ul style="list-style-type: none"> • Bringing on and accumulation <i>Rylands v Fletcher</i>, <i>Ellison v MOD</i> (no liability for accumulations caused naturally), <i>Giles v Walker</i> (no liability for natural accumulations). • Thing likely to cause mischief if it escapes <i>Musgrove v Pandelis</i> (does not need to be inherently dangerous <i>Shiffman v The Order of the Hospital of St John of Jerusalem</i>). • Non-natural use <i>Cambridge Water v Eastern Counties Leather</i> (some things are always non-natural use), <i>Rickards v Lothian</i>, <i>Perry v Kendrick's Transport</i> (others may depend on whether the context is domestic or commercial), <i>Rylands v Fletcher</i> (or upon the volume of the accumulation). • Escape – compare <i>Read v Lyons</i> (an escape from land within the defendant's control to land not in his control) with <i>British Celanese v Hunt</i> (an escape from circumstances within the defendant's control to circumstances over which he has no control) – note also that it is not the thing itself which has to escape <i>Miles v Forest Rock Granite</i>. • Harm must be foreseeable <i>Cambridge Water v Eastern Counties Leather plc</i> (approved in <i>Transco plc v Stockport MBC</i>). 				
	<i>Credit any reference to the Prevention of Fires (Metropolis) Act 1774.</i>				
	Explain the available defences:				
	<ul style="list-style-type: none"> • Consent <i>Peters v Prince of Wales Theatre</i>. • Common benefit <i>Dunne v North Western Gas</i>. • Act of a stranger <i>Perry v Kendrick's Transport</i>. • Statutory Authority <i>Green v Chelsea Waterworks</i>. 				
					[25]

SECTION B [continued]				
Question Number	Answer			Max Mark
4 cont'd	<p>Assessment Objective 2</p> <p>Identify that the problem involves the tort of <i>Rylands v Fletcher</i>.</p> <p>In the case of Bright Light:</p> <ul style="list-style-type: none"> • Discuss the fact that that there is a bringing onto land and accumulation of a thing likely to do mischief if it escapes. • Discuss whether or not Chemi-Kaze can be a claimant – probably so under either <i>Read v Lyons</i> and definitely so under <i>British Celanese v Hunt</i>. • Discuss whether there is a non-natural use – relate to commercial use <i>Transco plc v Stockport MBC</i>. • Discuss also whether the harm is foreseeable in the circumstances – seems likely <i>Cambridge Water, Transco</i>. • Discuss whether the defences of consent or common benefit apply in the circumstances – since Bright Light is a plc statutory authority may also apply. <p>In the case of Chemi-Kaze:</p> <ul style="list-style-type: none"> • Discuss the fact that there is a bringing onto land and accumulation of a thing liable to cause mischief if it escapes. • Discuss the fact that Flower Power will be able to claim under the test in <i>Read v Lyons</i>. • Discuss whether or not there is non-natural use – <i>Cambridge Water</i> would seem to suggest that there is, as would <i>Transco</i>. • Discuss the issue of foreseeability – depends on what test of remoteness is used. • Discuss the possible defences – only act of a stranger seems possible – and this only applies to some of the chemicals. <p>Assessment Objective 3</p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>			[20]
	Total marks			[5]
5	<p>A ladies' football league cup final is being contested between two teams, the Wanderers and the Lilywhites. In an early chance the Wanderers' striker, Emma leaps to head the ball and clashes heads with the Lilywhites' goalkeeper, Vicki, causing a gash under Vicki's eye. Vicki turns on Emma waving her fists and shouting 'I'll make sure nobody will want to see your pretty face in future'. The next time Emma has a chance of a shot on goal Vicki rushes towards her to prevent a goal. Fearing that Vicki is going to attack her, Emma punches Vicki in the face, knocking her unconscious. The referee immediately sends Emma off. Emma is so angry with this that an official, Uriah, has to drag her off the field, and he then locks her in the dressing room until the end of the match.</p> <p>Advise Vicki and Emma of any claims that either of them may bring in the tort of trespass to the person.</p>			
	Mark Levels	AO1	AO2	AO3
	Level 5	21-25	17-20	-
	Level 4	16-20	13-16	5
	Level 3	11-15	9-12	4
	Level 2	6-10	5-8	3
	Level 1	1-5	1-4	1-2

SECTION B [continued]		
Question Number	Answer	Max Mark
5 cont'd	<p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Identify that there are three types of trespass to the person: assault, battery, false imprisonment.</p> <p>Define assault – intentionally and directly causing the other to apprehend imminent battery</p> <p>Explain the essential elements of the tort:</p> <ul style="list-style-type: none"> • Intention concerns effect produced in claimant <i>Blake v Barnard</i>. • Traditionally required an active threat <i>Read v Coker</i>. • Words alone were insufficient <i>Tuberville v Savage</i> (but see <i>R v Ireland, R v Burstow</i>). <p>Define battery – intentionally and directly inflicting unlawful force.</p> <p>Explain essential elements of battery:</p> <ul style="list-style-type: none"> • Must involve intention not carelessness <i>Letang v Cooper</i>. • And requires direct contact <i>Scott v Shepherd</i>. • Requirement of hostility – compare <i>Wilson v Pringle</i> with <i>Re</i>. <p>Possible defences – <i>volenti Simms v Leigh RFC</i> and <i>Condon v Basi</i>, inevitable accident <i>Stanley v Powell</i>, self defence if reasonable force used <i>Lane v Holloway</i>.</p> <p>Define false imprisonment – unlawful, intentional bodily restraint.</p> <p>Explain elements of false imprisonment:</p> <ul style="list-style-type: none"> • Requires total restraint <i>Bird v Jones</i>. • Can be for short period <i>White v WP Brown</i>. <p>Possible defences – lawful arrest/detention <i>Tims v John Lewis, White v WP Brown</i>.</p> <p>Use any other relevant cases.</p> <p>Assessment Objective 2</p> <p>In relation to a claim by Vicki against Emma:</p> <ul style="list-style-type: none"> • The first clash may be technically a battery but seems to fall within the context of the game and Emma is likely to have the defence of <i>volenti</i> available. • When Emma punches Vicki this is a battery – while she may argue self defence because of Vicki's earlier assault, has she used unreasonable force in which case she may be liable. <p>In relation to a claim by Emma against Vicki:</p> <ul style="list-style-type: none"> • Vicki's response to the clash of heads may well be an assault. • Her threats go beyond the context of the game and are accompanied by actions. • Vicki cannot claim self defence in the circumstances. <p>In relation to a claim by Emma against Uriah:</p> <ul style="list-style-type: none"> • Again if there is no other way out of the dressing room the restraint is total and a claim for false imprisonment is possible. • A defence of lawful arrest may be possible because Emma's actions may amount to a crime also – but the duration of the restraint and the failure to call police would mean the defence would fail. <p>Assessment Objective 3</p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>	<p>[25]</p> <p>[20]</p> <p>[5]</p> <p>Total marks [50]</p>

SECTION B [continued]																												
Question Number	Answer			Max Mark																								
6	<p>David takes his young son Eddie to a local theme park, Fundays. David takes Eddie on the 'Fright-of-your-life' roller coaster. Owing to negligent maintenance by Fundays the harness holding Eddie breaks and he plunges to the ground suffering massive injuries. Georgina sees the fall and the injuries to Eddie. She now suffers from post traumatic stress disorder.</p> <p>David phones his wife Hannah who drives directly to the hospital. She arrives one hour later to find that Eddie has died. She suffers from grief and severe depression. Ian, a paramedic who treats Eddie at the scene, is so horrified by the injuries that he suffers post traumatic stress disorder. David has become withdrawn and terrified of heights.</p> <p>Advise David, Georgina, Hannah and Ian on any actions they may have against Fundays for their injuries.</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>21-25</td> <td>17-20</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>16-20</td> <td>13-16</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>11-15</td> <td>9-12</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>6-10</td> <td>5-8</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-5</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Define nervous shock (psychiatric injury) – PTSD is sufficient, severe depression may also count <i>Vernon v Boseley</i>, emotional reactions such as grief will not <i>Reilly v Merseyside HA</i>.</p> <p>Distinguish between primary victim and secondary victim:</p> <ul style="list-style-type: none"> • Primary victim is one present at the scene and at risk of injury <i>Dulieu v White</i>. • Secondary victim is one witnessing a single shocking event causing risk of injury or injury to a related primary victim <i>Hambrook v Stokes</i>. <p>Define the basic rules on secondary victim from <i>Alcock</i>:</p> <ul style="list-style-type: none"> • Close tie of love and affection to the person injured in the accident <i>Hambrook v Stokes</i>. • Sufficient proximity in time and space to the event or its immediate aftermath <i>McLoughlin v O'Brien</i>. • Saw or heard the accident or its immediate aftermath with own unaided senses <i>Alcock</i>. • Injury sustained as a result of a single shocking event <i>Sion v Hampstead</i>. <p>Limitation on claims by 'bystanders' even though they may suffer psychiatric harm <i>McFarlane v EE Caledonia</i>.</p> <p>Explain the restrictive definition of 'immediate aftermath' as applied in <i>Alcock</i> (credit any comparison with <i>Taylor v Somerset, NE Glamorgan NHS Trust v Walters, W v Essex CC</i>).</p> <p>Explain that a rescuer can only claim if a genuine primary victim <i>White v Chief Constable of South Yorkshire</i>.</p> <p>Use any other relevant cases.</p>			Mark Levels	AO1	AO2	AO3	Level 5	21-25	17-20	-	Level 4	16-20	13-16	5	Level 3	11-15	9-12	4	Level 2	6-10	5-8	3	Level 1	1-5	1-4	1-2	[25]
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SECTION B [continued]		
Question Number	Answer	Max Mark
6 cont'd	<p>Assessment Objective 2</p> <p>In the case of David:</p> <ul style="list-style-type: none"> Identify David as a secondary victim according to the criteria in <i>McLoughlin and Alcock</i> unless he can show that he was at risk. Consider that he satisfies the final two criteria i.e. proximity in time and space and witnessing or hearing the event (or more precisely here the immediate aftermath) with his own unaided senses. But will have to prove a close tie of love and affection to Eddie so may fail <i>Duncan v British Coal, Robertson and Rough v Forth Road Bridge Joint Board</i>. Consider that he will not in any case have a recognised psychiatric illness. <p>In the case of Georgina:</p> <ul style="list-style-type: none"> Identify her as a secondary victim. Consider that she passes the last two tests in <i>Alcock</i>. Identify her as a bystander with no tie to the victim so claim fails <i>McFarlane v EE Caledonia</i>. Discuss how otherwise her injury falls within the definition of nervous shock. Credit any reference to the possibility of Georgina being in danger from Eddie's fall and having a claim as a primary victim. <p>In the case of Hannah:</p> <ul style="list-style-type: none"> Identify her as a secondary victim. Passes first <i>Alcock</i> test as close tie is presumed for parents and children. Comment on the similarity with <i>McLoughlin v O'Brien</i> she probably comes within the immediate aftermath. Conclude that her grief and severe depression may well be sufficient to be classed as psychiatric injury <i>Vernon v Boseley</i>. <p>In the case of Ian:</p> <ul style="list-style-type: none"> Identify him as a professional rescuer. Explain that, following <i>White</i> rescuers would now generally be classed as secondary victims but may still succeed if able to show that they are genuine primary victim i.e. at risk themselves – which appears not to be the case here. But his injuries are recognised psychiatric injury <i>Vernon v Boseley</i>. 	[20]
6 cont'd	<p>Assessment Objective 3</p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>	[5]
	Total marks	[50]
Section B Total		[50]

SECTION C

7

Abid is driving his car at 90 miles per hour at night on the wrong side of the road along a dark country lane. Abid collides with another car being driven by Beatrice. Beatrice's passenger, Claudine, is seriously injured in the collision. Beatrice and Claudine were returning from a party where they had both drunk a large quantity of wine. Claudine had accepted a lift even though she knew Beatrice was over the limit and should not be driving.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2

Statement A: Claudine has no claim in negligence against Abid as he has not breached his duty of care to her.

- Identify that a road user owes a duty of care to all other road users, including passengers of vehicles, *Nettleship v Weston*.
- Identify that a motorist owes the standard of care appropriate to a reasonable motorist (measured objectively) and that in driving at 90 mph and on the wrong side of the road some harm is foreseeable and indeed highly likely, and that Abid could have easily taken precautions to avoid harm by driving safely.
- Conclude that the statement is inaccurate.

Statement B: Abid is not liable to Claudine in negligence because he can argue that a *novus actus interveniens* by Beatrice.

- Identify that a *novus actus interveniens* by a third party can break the chain of causation and relieve a defendant of liability.
- Identify that this will only be the case where the intervening act is in fact the operating cause of the harm suffered *Knightley v Johns*.
- Conclude that here the accident was foreseeable irrespective of Beatrice drinking over the limit so that the defence is unlikely to succeed.

SECTION C [continued]		
Question Number	Answer	Max Mark
7 cont'd	<p>Statement C: Abid has a defence of <i>volenti non fit injuria</i> to any claim by Claudine.</p> <ul style="list-style-type: none"> Identify that Abid owes Claudine a duty of care which he has breached by driving unreasonably and that this has caused damage which is a foreseeable consequence. Identify that the defence of <i>volenti non fit injuria</i> is not available under the Road Traffic Acts to such claims because of compulsory insurance. Conclude that Abid will be unable to raise such a defence successfully. <p>Statement D: Abid can use the defence of contributory negligence to reduce damages in any claim by Claudine.</p> <ul style="list-style-type: none"> Identify that under the Law Reform (Contributory Negligence) Act 1945 damages can be reduced for contributory negligence to the extent that the claimant is responsible for the harm suffered. Identify that the defence depends on proving firstly that the claimant failed to take care of his own safety, and secondly that this failure contributed to causing the harm suffered. Conclude that Claudine has failed to take care of her own safety by accepting a lift with Beatrice who has drunk too much, but that it is harder to prove that this actually caused the injury to her. 	[20]
8	<p>Gordon has paid to stay overnight at the Superposh Hotel. After midnight he goes to the Hotel pool for a swim. A sign on the door reads: 'Pool closed between 7.00 pm and 7.00 am. No entry to visitors during these hours. Dangerous when unattended.' Gordon reads but ignores the sign and enters. He cannot find the light so he jumps in. In fact the pool has been emptied and Gordon is badly injured and blood from his injuries ruins his Armani swimwear which cost £300.</p> <p>Evaluate the accuracy of <u>each</u> of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.</p> <p>Mark Levels AO2</p> <p>Level 5 17-20</p> <p>Level 4 13-16</p> <p>Level 3 9-12</p> <p>Level 2 5-8</p> <p>Level 1 1-4</p> <p>Potential answers MAY:</p> <p>Assessment Objective 2</p> <p>Statement A: Gordon can make a successful claim under the Occupiers' Liability Act 1957.</p> <ul style="list-style-type: none"> Identify that OLA 1957 applies to lawful visitors by S2(1) and that Gordon enters lawfully as a licensee. Identify that Gordon exceeds his permission under S2(1) and becomes a trespasser when he enters a prohibited place <i>The Calgarth</i>. Conclude that the 1957 Act cannot apply. 	

SECTION C [continued]		
Question Number	Answer	Max Mark
8 cont'd	<p>Statement B: Gordon will use ordinary negligence principles in his claim against Superposh.</p> <ul style="list-style-type: none"> Identify that OLA 1957 is a statutory form of negligence so that an ordinary negligence claim is possible. Identify that such a claim is unlikely because OLA concerns the liability of occupiers for damage caused by the state of the premises S1(1). <p>Statement C: Gordon cannot claim damages under the Occupiers' Liability Act 1984 because of the warning notice.</p> <ul style="list-style-type: none"> Identify that Gordon becomes a trespasser when he enters a prohibited area so the 1984 Act may be appropriate. Identify that all three aspects of S1(3) are satisfied: there is an obvious danger when the pool is empty and in darkness if visitors are still able to enter the pool, that without the door being locked a trespass can be anticipated, and that damage could have been avoided by locking the door. Consider whether under S1(5) the warning: 'Dangerous when unattended' is sufficient to alert the trespasser to the danger and is therefore reasonable in all the circumstances – <i>Westwood v The Post Office</i>. <p>Statement D: Gordon can claim for his injury and ruined swimwear under the Occupiers' Liability Act 1984 but Superposh are likely to have a successful defence of <i>volenti</i>.</p> <ul style="list-style-type: none"> Identify that Gordon has become a trespasser, 1984 Act is appropriate and S1(3) is satisfied. Identify that under S1(4) damages can only be awarded for personal injury, not for property damage, so the claim for the swimwear would fail. Conclude that under S1(6) Superposh may make a successful defence of <i>volenti</i> if it can show that Gordon freely accepted the risk by entering a prohibited area and ignoring the warning <i>Tomlinson v Congleton BC</i>. 	[20]
Section C Total		[20]
Paper Total		[120]

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 the 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.