Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the June 2015 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

SECTION A

1. Any example of a common law tort such as nuisance or trespass could have been given, here.

2. An explanation was required here of the two aspects of neighbour test.
   i. Reasonable care must be taken to avoid acts/omissions which could reasonably be foreseen as likely to injure one’s neighbour.
   ii. One’s neighbour is someone so closely and directly affected by the act that one ought reasonably to have them in contemplation when directing one’s mind to the act or omission called into question. A relevant case would be Donoghue v Stevenson (1932).

3. A secondary victim is not directly involved in an accident, but suffers as a result of what he sees or hears happening to others.

4. The magnitude of risk test means that the greater the risk the greater the precautions which should be taken. A relevant case would be Bolton v Stone (1951).

5. Any three of the following factors considered by the courts when determining a breach of duty could have been given, here:
   - The Claimant’s age/vulnerability
   - Special characteristics of the Defendant
   - The Defendant’s objective
   - The cost of avoiding harm
   - Foreseeability of harm
   - Whether the defendant professes to have a particular skill
   - The likelihood of harm
   - The magnitude of risk
6. When establishing causation in law the relevant test is one of remoteness. The type of injury must be foreseeable, and must not be too remote. A relevant case law would be The Wagon Mound (No.1) (1961).

7. The multiple test, used to consider someone’s employment status, considers all the circumstances in which a person works. The test could have been explained with reference to one or more of the factors which are considered, such as the freedom to choose hours of work or holidays or the ability to delegate work, all of which imply self-employed status or the payment of P.A.Y.E. or the requirement to obey reasonable orders, both of which imply employed status. A relevant case would be Ready Mixed Concrete (SE) v Ministry of Pensions (1968).

8. The defence of ex turpi causa means that no legal action can arise from a blameworthy cause. Relevant cases would be Clunis v Camden & Islington Health Authority (1998) and Gray v Thames Trains Ltd and another (2009).

9. The purpose of damages in negligence is to put the Claimant in the position he or she would have been in had the tort not occurred.

SECTION B

Scenario 1 Questions

1. Candidates would have made reference to established duty of care situations and continued to explain that the duty, otherwise, relies on the neighbour test and/or the 3 stage test of ‘Foreseeability’, ‘Proximity’ and ‘Just and reasonableness’. This would have been followed by application of the law to this scenario. Here there is an established duty as both Alf and Don are road users. Relevant cases would be Donoghue v Stevenson (1932) and Caparo v Dickman (1990).

2. Breach of a duty of care depends on the ‘reasonable person’ test, which is objective. Driving is a skill and therefore a relevant case would be Bolam v Friern Hospital Management Committee (1957). A suitable explanation might therefore be that a breach of duty occurs if a driver fails to do what a reasonable driver would do or does what a reasonable driver would not do. A good answer would then have followed this by applying this law to the facts of the scenario. Thus a reasonable driver would not have raced away from lights and as a motorist Alf should show the standard of a reasonably experienced driver. A suitable conclusion would then have been that Alf’s learner drive status does not affect the standard of care expected of him and that Alf has therefore breached his duty of care to Don. A relevant case would be Nettleship v Weston (1971).

3. Candidates would have identified the need for both causation in fact and causation in law to be established. Causation in fact is usually established by use of the ‘but for’ test. A relevant case would be Barnett v Chelsea & Kensington Hospital Management Committee (1969). Causation in law is established by use of the ‘remoteness’ test. A relevant case would be The Wagon Mound (No. 1) (1961). The relevant law would then have been applied to the scenario. Don’s broken arm would not have occurred but for Alf’s actions and a reasonable person in Alf’s position could have foreseen the type of injury. A suitable conclusion might therefore be that Alf has caused damage to Don.
4 (a) The two defences on which Alf may be able to rely are *ex turpi causa* and contributory negligence. *Ex turpi causa* could be explained as no legal action can arise from a blameworthy cause. Application here would be that Bill is complicit in Alf driving without insurance and in fact encouraged him to do so and Bill is also complicit in Alf racing from traffic lights; again he encouraged him to do so. A relevant case would be *Gray v Thames Trains Ltd and another* (2009).

Turning then to the defence of contributory negligence, a statutory defence under the **Law Reform (Contributory Negligence) Act 1945**, a Defendant must establish that the claimant acted carelessly and Causation i.e: the Claimant is partly to blame for the accident or contributed to injury. Application here would be that Bill contributed to his injuries by not wearing a seatbelt. A relevant case would be *Froom v Butcher* (1975).

The defence of consent or volenti does not apply here but a thorough answer might have explained that consent cannot apply because of **s.149 Road Traffic Act 1988**.

(b) In this situation there would be a further defence under the **Limitation Act 1980**. Application here might be that this is a personal injury case and, therefore, the limitation period is 3 years from the date on which the cause of action arose. Candidates would then have explained that the cause of action arises on latest of the date of the wrongdoing, the date on which the injury was sustained and the date of knowledge. A relevant case would be *Halford v Brookes* (1991). In conclusion Alf will not be liable. The action will have become statute barred as it was not commenced by the appropriate date and the appropriate date, here, is 3 years from 21 March 2012.

**Scenario 2 Questions**

1 (a) The three stages of the test are Foreseeability, would a reasonable person in the Defendant’s position have reasonably foreseen the risk of injury or harm to the Claimant? Proximity, is there a form of relationship between the parties/was the Claimant a member of a group to which a duty of care was owed? Just & reasonableness/policy, is there any policy reason why a duty of care should not be owed?

(b) In applying the test, a candidate would have considered that a reasonable person in Fred’s position could have foreseen the risk of injury, that Hema, as a café customer, is a member of a group to which a duty of care is owed and that there is no policy reason why a duty of care should not be owed. They would then have concluded that a duty of care was owed. Relevant cases would be *Fardon v Harcourt-Rivington* (1932), *Topp v London Country Bus Ltd* (1993), *L & another v Reading Borough Council and others* (2007).

2. Hema would have to establish both causation in fact and causation in law if she is to bring a successful claim. The ‘but for’ test for establishing the former would need to be explained e.g. the injury would not have happened but for the act or omission of the Defendant. Here, the injury would not have occurred but for Fred leaving the box on floor. A relevant case would be *Barnett v Chelsea & Kensington Hospital Management Committee* (1969).
The ‘remoteness’ test for establishing causation in law would need to be explained e.g. a reasonable person in the Defendant’s position must have been able to foresee the type of injury. Here, some damage of a similar type was foreseeable. A relevant case would be The Wagon Mound (No.1) (1961). In conclusion Fred is likely to be held liable/causation is established.

3 (a) The three different situations in which the chain of causation may be broken are where there is an act of the Claimant, an act of a 3rd party or an act of nature.

(b) Candidates would have explained that Courts are reluctant to find that negligent medical treatment breaks the chain of causation. Relevant cases would be McKew v Holland (1969) and Knightley v Johns (1982). It would then have shown that Dr Ian’s failure to check the bracelet is the act of a 3rd party which is a new intervening act and could break the chain of causation. As medical treatment is unlikely to break the chain of causation, the chain is unlikely to have been broken here. A relevant case would be Webb v Barclays Bank plc & Portsmouth Hospitals NHS Trust (2001).

4 (a) Vicarious liability is the liability of one person (usually an employer) for the torts of another (usually an employee). The requirements for establishing vicarious liability in employment situations are the commission of a tort, the existence of an employer/employee relationship and the tortfeasor was acting in the course of his or her employment.

(b) A candidate should have applied the relevant law to the scenario, thus Fred has committed a tort – leaving the box on the floor was negligence, he is employed by Edward and he was working in the cafeteria is in the course of his employment.

In conclusion Edward is vicariously liable for Fred’s tort, however, Fred also remains liable. A relevant case would be Hilton v Thomas Burton (Rhodes) Ltd (1961).

Scenario 3 Questions

1 (a) The three requirements for establishing a duty of care in negligence are: Foreseeability, would a reasonable person in the Defendant’s position have reasonably foreseen the risk of injury or harm to the Claimant? Proximity, is there a form of relationship between the parties/was the Claimant a member of a group to which the duty of care was owed? Just & reasonableness/policy, is there any policy reason why a duty of care should not be owed?

(b) A candidate should have applied the appropriate law to the scenario. Thus, with regard to foreseeability, an injury to Olivia of a similar type, at least, should have been foreseeable to a reasonable person. With regard to proximity, a relationship exists between Nuala and Olivia (Nuala was serving tea and Olivia was with a customer). With regard to policy, mention should have been made of the Compensation Act 2006 under which the courts may consider wider implications e.g: either preventing a desirable activity being undertaken and/or discouraging a person from undertaking functions connected with desirable activity. Here, a desirable activity was being undertaken.
(raising money for a good cause). In conclusion, Nuala will be held liable. A relevant case would be Glasgow Corporation v Muir (1943).

2. Reference should first have been made to the Courts’ reluctance to impose liability for negligence on statutory authorities. The police are a statutory authority/not likely therefore to be held liable. A relevant case would be Hill v Chief Constable of West Yorkshire (1988). However, police immunity may not be absolute. Here, the shooting of Karen should have been foreseeable to a reasonable person and Karen’s numerous complaints may be sufficient to have established proximity. Jas has failed to take sufficient preventative measures to secure effective protection for Karen and therefore, despite the courts’ general reluctance to hold the police liable, this may well prove to be an exception to the normal situation. Some discussions of the cases Osman v UK (1999) and Z & others v UK (2001) would have been relevant. Finally, reference could also have been made to the Compensation Act 2006 and that, under the Act, courts may consider wider implications e.g: either preventing a desirable activity being undertaken and/or discouraging a person from undertaking functions connected with a desirable activity. Here, a desirable activity was being undertaken - protecting the public.

3. The test which determines whether or not a duty of care has been breached is the ‘reasonable person’ test. The test should have been explained e.g: failing to do what a reasonable person would do or doing something which a reasonable person would not do. A relevant case would be Blyth v Birmingham Waterworks Co (1856). It should have been explained that the test is objective and that where the Defendant has particular experience or expertise, a higher standard will be expected. A relevant case would be Bolam v Friern Hospital Management Committee (1957). Jas is a police officer/has had special training; the standard is therefore that of the ordinary skilled person with the special skill. Jas has failed to take adequate and appropriate measures to protect Karen. Therefore, Jas has breached her duty of care.

4. (a) Damages are usually compensatory and are intended to put the Claimant back in the position he would have been in had the tort not occurred.

(b) Karen may be entitled to general damages for pain and suffering – injuries from the bullet and future loss of earnings as Karen has had to take a lower paid job. Karen may be entitled to special damages for damage to her dress and loss of earnings to the date of trial.