CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 13 – LAW OF TORT

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2026 examinations.

The ‘suggested points for responses’ set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview
Candidates must always be prepared to discuss issues of concern within individual legal areas. Simply reciting legislation and case law will not suffice as marks for legal knowledge are capped and so without analysis of the principles that are addressed within the question, candidates will be unable to gain more than approximately half of the marks awarded. Conclusions should attempt to conclude the debate with information such as progress on any reviews or recommendations or developments in case law principles. A summary of previously stated facts and authority cannot be credited. Those candidates with good answers refrained from summarising and focused on bringing the discussion to an end.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

Section A

Question 1a	15 marks
Most candidates showed a great understanding of the law in this area. Many cases were used in connection with the multiple common law principles. However, there was a stark absence of a focus on the question and therefore, there should have been a discussion relating to the principles and cases that clarify and enforce the limitations of the scope of this type of liability.	
Suggested Points for Response:	
Discussion of relevant rules: • Alcock (1991), Page v Smith (1995) and White v Chief Constable of South Yorkshire (1999) • Distinction between physical and psychiatric harm • Distinction between primary and secondary victims • Primary is personally endangered or reasonably believes themselves to be • Secondary is neither personally endangered nor reasonably believe themselves to be • Primary victims need only prove physical harm was foreseeable (Page) • Must be foreseeable in person of reasonable fortitude (White) • Secondary victim must meet the criteria set out in Alcock • Must hear or see the incident with their own senses • Must have close tie of love and affection with a victim • Must have been at the incident or the immediate aftermath • Must have suffered psychiatric harm due to a sudden shock • Denning in Hinz v Berry (1970) - cannot be mere feelings of grief, sorrow, worry, financial strain etc – must be recognisable form of psychiatric harm (nervous shock) • Rescuers do not comprise a separate category but can be considered a primary victim if exposed to the risk of harm • Those who suffer both physical and psychiatric harm in the same incident are treated as ordinary personal injury claimants with the psychiatric element being treated as consequential, e.g. Corr (Administratix of The Estate of Thomas Corr (Deceased)) v IBC Vehicles Limited (2008); Attia v British Gas (1988) • There should be some reference to the fact that the rules for "psychiatric" harm also apply to physical injury which does not result from impact, e.g. heart attack, miscarriage.	

Question 1b	10 marks
Whilst some candidates showed knowledge of the conjoined appeals of Paul, Polmear and Purchase in 2023, many candidates have referred to outdated case law. Clarification was provided for in this appeal, including that there is no need for sudden shock (which was a discredited requirement) or horrific event as it was criticised for being too subjective.	
Suggested Points for Response:	

Discussion of Paul and Others:

- Limited claims for medical negligence where a ‘medical crisis’ was a precipitating event
- Primarily affects claims by individuals who suffer psychiatric injury due to witnessing the negligent treatment of another person, rather than the direct victim of the negligence
- Affects claims where the harm is caused by a gradual process
- Has the potential to widen the scope for claims involving workplace accidents or other traumatic events
- Removed the need for a claimant to experience sudden shock rendering claimants to only show there was a causal connection between witnessing the event and the illness suffered
- Removed the requirement of the event being ‘horrific’ due to its subjective nature
- Impacted the need for there to be a single event or multiple separate events
- Changed the impact of there being a time gap between the negligence and the event
- Focus placed on whether there has been an accident and whether the claimant witnessed the accident
- Reasonable foreseeability of harm is not sufficient to give rise to a duty of care; responsibilities of medical practitioners does not extend to protecting members of a patient’s close family from witnessing the death or injury of a relative
- must directly witness an incident involving death, injury or endangerment of a person to whom they have close ties by external physical forcible means or the aftermath of such an incident, in the strict McLoughlin sense of aftermath
- even a sudden shocking event such as the collapse of the victim in Taylor v A Novo or in Paul itself does not count even though it was the result of earlier negligence as there is not the required external physical forcible means

Question 2	25 marks
Candidates consistently show knowledge of the traditional principles and leading cases. Candidates do need to be able to link these principles and cases to the requirements of the question so require a more in-depth analysis of them rather than merely providing the facts of cases.	
Suggested Points for Response:	

- Tort of private nuisance protects against unreasonable interference with any enjoyment of land, encroachment and physical damage
- St Helen's Smelting Co v Tipping (1865) - requirement of 'real interference'
- Cambridge Water v Eastern Counties Leather [1994] - requirement of 'material interference' to limit scope of liability
- What is unreasonable – frequency, duration, time of day/night, intensity. Goes beyond reasonable give and take/legitimate pursuit of own interests
- Locality of the neighbourhood integral part of decisions (e.g., Sturges v Bridgman (1879))
- No liability if claimant is particularly sensitive (e.g., Robinson v Kilvert (1889)
- Planning permission does not in itself authorise a nuisance, e.g., Forster v Secretary of State for Communities and Local Government [2016]
- Public interest potentially important factor, e.g., Miller v Jackson [1975], Dennis v MoD [2003]; Barr v Biffa Waste Services [2012]
- Whilst sensitivity will normally defeat a claim, there are exceptions depending on the circumstances (e.g., Grange Wind Farm v North Lincolnshire Council [2010])
- Principles are primarily based on reasonableness
- Malice usually makes what would normally be considered reasonable unreasonable (Christie v Davey (1893))
- Locality has fundamental influence on rulings:
- Characteristic of the neighbourhood has always been an integral part of the court's decisions (e.g., Sturges v Bridgman (1879))
- If the noise is more than any reasonable resident should endure it, it is no answer to say the neighbourhood is noisy (Rushmer v Polsue & Alfieri [1906])
- In Hunter v Canary Wharf [1997] the court discussed how the Isle of Dogs had been designated and developed as an enterprise zone and so development should continue to be encouraged
- In Hirose Electrical UK Ltd v Peak Ingredients [2011] the claimant complained of the smell of food, but the court ruled against them based on the area being an industrial one
- In Coventry v Lawrence [2012] a car racing circuit had become part of the nature of locality and so was not deemed a nuisance
- For certain rights there is no protection offered, e.g., right to a view and light:
- No protection for the right to a view as not seen as a necessity (Bland v Moseley (1587); Aldred's Case (1610); AG v Doughty (1752); re-asserted in Hunter)
- A right to light should be protected by easements or use of the Prescription Act 1832
- However, the court has been willing to accept that in certain circumstances the view from a property may be a valid deciding factor, for example, if it was the reason the property was purchased (Dalton v Angus (1880)
- The right to not be overlooked is not protected (e.g., Fearn v Tate Gallery Board of Trustees [2023]), however, in appropriate circumstances overlooking could amount to a private nuisance.

- Access to electronic signals (e.g., terrestrial/satellite TV) was seen as important in Hunter indeed, the court as far back as 1965 in Bridlington Relay noted that the day may come when the population need signals such as those for the TV and internet. The claim in Hunter failed because the interference was caused by the presence of a building by analogy with there being no right to a view. Three of the Law Lords considered that other forms of interference could amount to an actionable nuisance

Question 3	25 marks
This question was a very popular choice. Candidates showed general good knowledge of the leading cases in this area of law. On occasion, candidates provided irrelevant discussion points by providing information covering, for example, causation. Other issues included the lack of analysis accompanying the cited cases.	
Suggested Points for Response:	

General Outline:

- Duty involves taking reasonable care
- Court uses two-stage test to determine if a duty has been breached: how much care a reasonable person should have taken in the circumstances and whether or not the defendants conduct fell below that standard
- The standard of care to be expected is assessed objectively
- The court does not usually take into account personal characteristics of the defendant
- For example, inexperienced learner drivers are held to the same standard as a qualified and competent driver (Nettleship v Weston 1971)
- For example, junior doctors are held to the same standard as a qualified and competent doctor in that particular position (Wilsher v Essex HA 1986)
- If the defendant is a professional, they will be judged according to their profession's standards, for example, in the cases of Bolam and Bolitho, doctors can claim their actions were standard practice and that a body of medical opinion would have acted in the same way
- The defendant can escape liability if it was an accidental cause of harm/damage (Mansfield v Weetabix 1998)

Discuss issues relating to standard of care:

- As claims do not consider the subjective skill of a defendant, there is a consistent approach
- If the defendant commits an act or omission the reasonable man would not have, the defendant will have breached their duty of care (Hazell v British Transport Commission 1958)
- The court must decide whether a reasonable person would do the same thing (Etheridge v East Sussex CC 1999)
- An objective standard means there would be no breach of duty for failing to take steps to guard against risks which could not reasonably have been foreseen, for example, Roe v Ministry of Health 1954
- Not considering the subjective skill of a defendant promotes settlements
- Exists competing arguments that defendants should not be held liable for failing to achieve a standard they were incapable of achieving against the argument that claimants are entitled to expect an appropriate level of competence and liability should not depend on the accident of the skill level of the defendant
- The rules attempt to avoid fixing defendants with unrealistic expectations

- An objective assessment limits floodgates concerns (e.g., could use illness as excuse such as in Roberts v Ramsbottom 1980 in which the defendant suffered heart attack and diabetic attack whilst driving)
- Due to there being no accurate standard, circumstances can exist under which the level of care can vary according to the risk (Glasgow Co. v Muir 1943)
- Vulnerability of the claimant is a relevant factor e.g., Paris v Stepney [1951]
- Circumstances can be considered, for example, in cases involving children (e.g., Mullins v Richards 1998; Orchard v Lee 2009)
- Rules relating to sporting events will be considered (e.g., Condon v Basi 1985)
- The way in which the courts determine standard results in flexibility, for example, if engaged in risky activities, the standard is increased, whereas, if the defendant were in a situation of sudden danger, the standard of care expected would be lessened as they may act 'in the spur of the moment'
- Fairness can be achieved due to the social utility of a defendant's conduct being considered, for example, s1 Compensation Act 2006, Social Action, Responsibility and Heroism Act 2015, and Watt v Hertfordshire CC 1954 in which Denning confirmed that the taking of a risk can be justified (i.e., fire brigade)

Question 4	25 marks
Candidates showed a good understanding of the principles in this area of law, along with many of the traditional and leading cases.	
Suggested Points for Response:	

Discussion of changes introduced by the Defamation Act 2013:

- Section 1 – introduced the serious harm test.
- Section 1 - Right of businesses ability to sue restricted.
- Section 2 – replaced common law defence of justification with the defence of truth.
- Section 3 – replaced common law defence of fair comment with the defence of honest opinion.
- Section 4 – abolished Reynolds defence and introduced public interest defence.
- Section 5 – introduced defence for operators of websites.
- Section 6 & 7 – expanded privilege categories.
- Section 8 – introduced the single publication rule and statutory limitation shortened to one year from first publication.
- Section 9 – jurisdiction issues.
- Section 10 – clarified rules in relation to secondary publishers.
- Section 11 - reversal of the presumption of trial by jury.
- Section 12(4) - court to pay regard to the freedom of expression when awarding damages.
- Section 13 – remedies, for example, the removal of defamatory content online.

Discussion relating to impact of changes:

- Pre-Defamation Act 2013, the law in this area was claimant-friendly and favoured the protection of reputation
- Fact that claims can be established on an actionable per se basis shows the value bestowed upon the protection of reputation
- Clarification provided in Lachaux v Independent Print Ltd relating to, for example, the interpretation of s1(1)
- Articles 8 and 10 have equal weighting
- Jury's ability to award damages impacted the freedom of expression until DA reversed the mode of trial presumption, with cases being heard by a judge unless the court specifically order a jury trial (see Yeo v Times News (2014)
- S1(1) 's interpretation is determined by the facts of the case and the impact of any statement(s) (Lachaux)
- Inferences can be drawn as to the level of harm suffered based on, for example, scale of publication and gravity of any statement(s) (Lachaux)
- Serious harm test discourages claims for cases involving a minor reputational impact
- Serious harm test raises threshold however, cases are determined by any impact on a claimant's reputation
- Burden of proof is on the defendant to provide evidence of truth
- Honest opinion under s3 no longer requires the presence of public interest as a justification (see Koutsogiannis v The Random House Group (2019)
- S4 and the public interest defence helps protect the freedom of expression; interpreted broadly (see Economou v de Freitas (2016); should consider context, timing, tone, seriousness (Serafin v Malkiewicz (2019)
- S5 can provide operator with immunity if they follow the correct process
- Ss 6 & 7 have aimed to prevent the stifling of scientific and academic debate

- S8 ended indefinite liability and brought stability to the claims presented before the courts (see Richardson v Facebook, Google (2015); Denman v Associated Newspapers (2016)
- S9 has restricted ‘libel tourism’ e.g., Ahuja v Politika Novine I Magazini (2015)
- S10 protects those that are not the authors, editors or publishers and would aid those involved in social media platforms issues arise when it is not reasonably practicable for the claimant to sue those ‘responsible’ for the comment
- S12(4) requires the court to have special regard to the freedom of expression when awarding damages to redress the balance away from the protection of reputation
- Access to justice denied due to no legal aid being available, however, ss2-4 Defamation Act 1996, an offer of amends, for example, can provide a means to avoid liability
- Companies’ rights to sue have been restricted by the harm required.
- Limitation period changed to being from one year from first publication as opposed to first view or download
- Expanded ability to plead privilege and, therefore, less potential defendants available
- Strategic litigation prevents publication
- Risky for claimants that wish to bring a claim based on principle or to merely punish a defendant where there has not been serious harm
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Section B

Question 1	25 marks
This was a very popular question. Candidates must take care to explain the elements of this tort, including leading cases that govern the courts approach. Many candidates did not provide an overview of the law before analysing the facts, which resulted in under-developed responses. More detail was required when discussing the employment status of those involved and further development was required from many responses debating the potential of there being a close connection.	
Suggested Points for Response:	

Carl:

- must be a tort committed by an actual tortfeasor and there must be a relationship of employment or one akin to employment between the tortfeasor or and the vicarious defendant
- Relevant case law to consider including Hawley v Luminar (2005), Catholic Child Welfare Society v Various Claimants (2012), Cox v Ministry of Justice (2006) and Armes v Nottinghamshire County Council (2017)
- tort must be closely connected to the employment. This will include connections satisfying the Salmond test, but what amounts to a close connection requires consideration of Lister v Hesley Hall (2002), Dubai Aluminium Co Ltd v Salaam (2002), Mattis v Pollock (2003), Mohamud v Morrison (2016), Various Claimants v Morrison and BXB (2020)
- Vicarious liability cannot apply in relation to a bona fide independent contractor: Various Claimants v Barclays Bank (2020)
- In Hawley v Luminar Leisure plc and Others (2005) the Court of Appeal explained circumstances in which employers, with the temporary benefit of employee services could be vicariously liable
- Discussions include the requirement of adequate supervision whilst on an employer’s premises and the assumption of responsibility when taking over control and the giving of instructions to agency workers
- Ben potentially seen as an employee under the relationship test following cases such as AM Mohamud v WM Morrisons Supermarkets plc (2020) and Barclays Bank plc v Various Claimants (2020)
- Court to assess if the relationship was sufficiently analogous to employment (akin to that between an employer and employee)
- In Trustees of the Barry Congregation of Jehovah’s Witnesses v BXB (2023) focus placed on the linking of the wrongful conduct of the employee’s activities
- Facts of case similar to Hawley and possibly constitute an effective transfer of control and responsibility
- Mattis indicates that even if the action is a grossly disproportionate response this will not prevent vicarious liability attaching, although in this case the employer had encouraged the employee to behave aggressively and forcefully

Daryl:

- A crime committed during the course of employment generally falls outside the scope of liability for the employer – unless the actions of the employer expressly authorise
- Lister v Hesley Hall [2001] - even if the act is not authorised the court can still consider the action to come within the scope of employment
- Facts similar to Mattis v Pollock (2003) in which the bouncer left the club, retrieved a knife and attacked the customer; Court of Appeal said employer was vicariously liable because of instructions for the bouncer to be aggressive
- Mohamud v Morrison [2016] - employee assaulted customer but close connection test determined he was within the scope of employment

- Burger v JD Wetherspoon and Risk Solutions BD (2025): Wetherspoon not liable for assault on customer by door supervisors – not disconnected from their role but an excessive and wrongful mode of performing their duties – court ruled the relationship was not one akin to an employment relationship
- If Daryl's relationship is deemed to be akin to an employment relationship and their actions can be seen as connected to the purpose of their employment, the employer will be liable

Eric:

- Andrew is directly employed by the employer therefore relationship test should be satisfied
- Likely to be seen as benefitting the employer based on Andrew's motivations for the incident

Question 2	25 marks
Good responses covered a debate over the assessment systems in place involving the occupier checking for, as in the question, torn carpets and adequate lighting. Many responses approached the incident involving Gary competently although there needed to be more debate relating to him making a mistake and the issues relating to the signage and the lack of him reading it. Many dealt with the incident involving the child, although some responses did not include a discussion relating to the liability of the parents in this situation.	
Suggested Points for Response:	

Fiona:

- Occupational control test used (Wheat v Lacon (1966))
- Occupiers' Liability Act 1957 (OLA 1957) s1(1) – duty relate to the state of the premises or to things done or omitted to be done on them
- 2(2) OLA 1957 – duty is to keep the visitor reasonably safe
- Fiona is a lawful visitor
- OLA 1957 applies
- Kempston Carvery is the occupier as per Wheat
- Adequate system to be in place and risks assessments must be undertaken
- Assessment to include processes in place for assessing such risk
- As per Hufton v Somerset County Council (2011) "it is not possible and the law does not require, the occupier to absolutely prevent any accident from ever occurring"

Gary:

- Originally lawful visitor as guest
- Status changes due to entering prohibited area
- Occupier's Liability Act OLA 1984 (OLA 1984) applies (s1(1)) to non-visitors if they are aware of the danger; aware of non-visitors in the vicinity; and could reasonably take precautionary measures to prevent harm)
- Spearman v Royal United Bath Hospitals NHS Foundation Trust (2017): state of mind or intention is an important factor; if the claimant made a mistake, they should not be considered a trespasser
- Ovu v London Underground Ltd (2021) – if there were clear barriers or signs to indicate someone would be entering a prohibited area, they would be considered a trespasser regardless of their state of mind
- 2(3) OLA 1957 – contributory negligence can be applied if an individual fails to take care of their own safety
- Contributory negligence a potential defence as Gary ignored the warning sign

- Due to Gary not considering the sign, it is likely he will be deemed to be a trespasser

Harry:
- Harry was lawful guest
- Occupiers are to expect children to be less careful than adults (s2(3) OLA 1957)
- Parental supervision would be expected (Phipps v Rochester Corporation (1955))
- Contributory negligence is a potential defence for the restaurant

Question 3a	10 marks
Many candidates showed a good understanding of the circumstances under which the police could be liable. More comparison with the leading cases in this area, rather than relying on historic cases, would have resulted in higher marks being obtained.	
Suggested Points for Response:	

Mrs Lake:
- Traditional view based on ruling in Hill v Chief Constable of West Yorkshire Police (1989) is that police immune from claims for negligence by the general public
- Robinson v Chief Constable of West Yorkshire (2018): liability can arise if the defendant created the source of danger or assumed a responsibility to protect the claimant or had a special level of control over the source of danger, or had a status which created an obligation to protect the claimant from that danger; police are permitted to make discretionary decisions but cannot escape liability if their actions directly result in harm
- As per Robinson, Mrs Lake is likely to have a successful claim

Question 3b	15 marks
Suggested Points for Response:	

Matilda and non-attendance:
- Police can also owe a duty under the Human Rights Act 1998 where there is a real and immediate risk to life or a real and immediate risk of that person being subject to serious harm or other inhumane treatment
- Michael v Chief Constable of South Wales (2015): no duty owed for failure to attend in a timely manner based on operational discretion; police are not liable for failing to prevent a crime due to prioritising calls which is within their discretion
- As per Michael, Matilda's family unlikely to have successful claim

Matilda and failure to notify:
- Woodcock v Chief Constable of Northamptonshire Police (2025): police owed a duty of care once they had been informed, however, the court ruled they had owed no duty to protect the victim, beyond providing the warning; Court ruled this was not positive action but an omission and there needs to be an assumption of responsibility; confirmed rule in Tindall v Chief Constable of Thames Valley Police (2024) which stated that an ineffectual response by the police does not constitute an assumption of responsibility
- As per Woodcock, there is the potential of a successful claim by Matilda's family

Question 4	25 marks
Many responses a lack of discussion relating to conditional threats and the impact of this on the required element of immediacy. Many responses showed that candidates attempted to assess each incident that occurred. The wording of the question will indicate the area of law that will be credited within the mark scheme and candidates must be careful to only focus on the information requested within the question. Candidates were weaker in the area of false. Threats can be included within false imprisonment.	
Suggested Points for Response:	

Hussain threatening to slap Juno:

- An assault causes the claimant to apprehend the infliction of battery on them (Collins v Wilcock (1984))
- Act must be intentional or negligent as to causing the apprehension
- Claimant must have reasonably apprehended the infliction
- Can be no assault if the claimant did not reasonably expect the defendant to carry out the threat (Thomas v NUM (1986))
- A conditional threat does not amount to an assault (Tuberville v Savage (1669))
- Claimant does not need to be in fear (Stephen v Myers (1830); Read v Coker (1853))
- Words alone can constitute an assault (R v Ireland (1998))
- Intended to cause apprehension with initial threat
- Apprehension and unlawful elements satisfied
- Immediacy element not satisfied as the wording of the threat is conditional
- No defences appear to apply

Hussain grabbing Juno's hair, dragging and throwing onto sofa:

- Battery is the direct application of unlawful force to an individual
- Application can be a mere touch (Cole v Turner (1704))
- Act must be intentional or negligent (Blake v Galloway [2004])
- Intention can be inferred (Wong v Parkside Health NHS Trust (2003))
- Immediacy is a requirement of this tort
- The application of force must be unwanted and therefore unlawful
- Hostility is not required, and each case is considered on its merits (Faulkner v Talbot [1981])
- Can be liable for all harm suffered even if did not intend harm (Williams v Humphrey [1975])
- Contact is inflicted when Hussain grabs and restrains Juno
- Additional batteries relating to the dragging of Juno and for throwing her on the sofa
- No defences appear to apply

False imprisonment by Hussain:

- False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law
- Act must be intentional or negligent
- Restriction must be complete (Bird v Jones (1845))
- If there is an alternative and/or reasonable 'escape' route, there is no liability
- Restriction must be unlawful
- There does not need to be a physical barrier but could be due to a fear of the consequences of leaving, e.g., Jalloh
- The length of time involved is irrelevant, e.g., Walker v Commission of the Police of the Metropolis [2014]
- Words such as a threat can amount to false imprisonment, e.g., Davidson v Chief Constable of North Wales [1994]
- Juno was aware they were being restricted
- All elements appear to be satisfied
- Further potential charges for assault relating to the threats preventing Juno from leaving

Remedies:

- Potential for Juno to request an injunction