



CHIEF EXAMINER REPORT

JUNE 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 June 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

As stated for previous sessions, 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.

For June 2026, there was a distinct improvement in the structuring of answers to problem questions in which the relevant law was laid out, followed by an application of the facts.

An additional observation for June 2026, is that candidates must avoid repeating the facts given in a problem question as no credit can be awarded for this. The inclusion of the wording within a problem question should only be incorporated into an answer when used to illustrate a candidate's reasoning.

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 1	25 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. Many responses contained high levels of case law knowledge and there were some attempts to provide reasoning behind the rulings in these cases. This aided in addressing the requirements of the question which focused on how this area of law has evolved to meet modern employment conditions.	
Suggested Points for Response Question 1a:	10 marks
General discussion of rules: • Principle results in an employer being liable for torts committed by employees if committed during the course of employment • Requires relationship of employment rather than employer-contractor relationship • Further case law developments include clarification of incidents which justify the imposition of a duty onto employers (e.g., Catholic Child Welfare Society v Various Claimants (2012)) • Recent case law has considered the status of ‘hybrid’ workers/employees such as in Hawley v Luminar Leisure (2006); Woodland v Swimming Teachers Association (2014) • Cases have considered circumstances involving the status of those considered self-employed e.g., Barclays v Various Claimants (2020); Uber v Aslam (2021) • Cases that have considered ‘unusual’ circumstances such as prisoners and foster parents (Cox v Ministry of Justice (2016); Armes v Nottinghamshire County Council (2017)) • Case law has seen the doctrine described as one that did not develop logically but on factors based on social convenience (ICI v Shatwell (1965) but more recently described as one “on the move” (Mohamud) Lady Hale in Barclays described the assumption of one status for employees in modern circumstances as “broken”; all factors and circumstances are to be considered	
Suggested Points for Response Question 1b:	15 marks
Discussion relating to adapting to modern circumstances: • Requires a close connection between the relationship of employment and the tort committed • Tort must be committed in the course of employment • Relevant test originated from Salmond (1907) and included consideration as to whether wrongful act was unauthorised mode of doing something authorised by the employer • For cases involving intentional serious wrongdoing by an employer, test formulated in Lister v Hesley Hall [2001] • Cases have considered the close connection to tasks and motives e.g., Various Claimants v Morrison [2020]	

- Cases have considered the conduct of an employee being divisible from that which is constituted by employment and that which constitutes a tort e.g., *Mohamud v Morrisons* (2016); *London Borough of Haringey v FZO* (2020)
- Organisations are strictly liable even though they may have made every effort to recruit, train and supervise their employees (e.g., *MXV v A Secondary School* (2022))

Question 2	25 marks
Candidates consistently showed 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:	
Definition and explanation of the elements of each tort, including defences available: • Assault is the deliberate act of the defendant which causes the claimant to reasonably apprehend the infliction of battery on them (<i>Collins v Wilcock</i> (1984)) • A conditional threat does not amount to an assault (<i>Tuberville v Savage</i> (1669)) • Claimant does not need to be in fear (<i>Stephen v Myers</i> (1830); <i>Read v Coker</i> (1853)) • Battery is the unlawful/unjustified intentional and direct application of force to an individual (<i>Collins v Wilcock</i> (1984)) • Application can be a mere touch (<i>Cole v Turner</i> (1704)) • Act must be intentional or negligent (<i>Blake v Galloway</i> [2004]) • Intention can be inferred (<i>Wong v Parkside Health NHS Trust</i> (2003)) • False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law • Claimant does not have to be aware that they have been restrained, e.g., <i>Meering v Grahame-White Aviation</i> [1920] • Restriction must be complete (<i>Bird v Jones</i> (1845)) • All three are actionable per se i.e. without need to prove the claimant suffered any harm Discussion of debates relating to the extent to which torts protect the relevant interests: • awareness of false imprisonment and its impact on amount of damages • vindication of civil liberties/human rights against state agents • availability of aggravated and/or exemplary damages in cases involving abuse of state power • Clarification regarding the requirement of hostility not being necessary for the tort of battery (e.g., <i>Faulkner V Talbot</i> (1981)) • establishing the boundaries of justification in cases of incidental contact in public places • implication in medical situations e.g., defence of necessity • Being actionable per se reflects overriding importance of the interests they protect • Broadly protects interests whilst allowing for justified infringements • Strict liability basis of false imprisonment highlights importance placed upon the right (<i>R v HMP Brockhill</i> (2000))	

Question 3	25 marks
Candidates showed general good knowledge of the leading cases in this area of law. Unfortunately, rather than using those cases and principles to address the question, many responses merely explained the existence of these cases. Responses required a discussion that centred on how these rulings found a balance when providing protection for all parties involved in these types of cases.	
Suggested Points for Response:	
Outline of Occupiers' Liability Act 1957: • Common duty owed by occupiers to keep visitors to their premises safe (s2(2)) • Covers lawful visitors – those with express or implied permission • Definition of occupier left to common law (s1(2)) • Occupational control test used in <i>Wheat v Lacon</i> 1966 • Covers claims for personal injury and property damage (s1(3)(b)) • Does not cover liability for dangerous activities voluntarily undertaken by the claimant, for example, <i>Tomlinson</i> • Breach tested objectively under ordinary common law principles – likelihood someone could be injured, seriousness of any injury that might occur (<i>Wagon Mound</i> 1967), any social value of the activity (<i>Watt</i>) and any preventative measures that were taken (<i>Latimer v AEG</i> 1953) • Higher standard expected if visitor is a child – they are to be expected to be less careful than adults (s2(3)) • Specialists and contractors are expected to understand and guard against any risks associated with their common calling (s2(3)) • Warnings given by an occupier may result in the duty being discharged (s2(4); <i>Roles v Nathan</i> 1963)) • An occupier does not have to guard against obvious risks, for example, <i>Tomlinson</i> Outline of Occupiers' Liability Act 1984: • Covers non-visitors • Requirements to be satisfied before occupier will owe a non-visitor a duty of care – aware of the danger, aware of the possibility of a non-visitor and a reasonable expectation that precautions should have been taken • Only covers claims for personal injury and not for property damage (s1(8)) Discussion of elements governing claims against occupiers: • Case law's role in limiting scope of statutory rules to protect occupiers from unfair claims • Both Acts cover dangers due to defective state of the occupier's premises, and also dangers arising due to things (e.g., activities) the occupier permits to take place on his premises • Further application of principle resulting in prevention of unjust claims seen in line of other cases e.g., <i>Keown v Coventry Healthcare NHS Trust</i> (2006) and <i>Poppleton v Portsmouth Youth Activities</i> (2008) • In assessing breach of duty, ordinary common law principles apply such as likelihood, seriousness, social utility and cost of preventative measures e.g., <i>Latimer v AEC</i> 1953 • Both statutes contain specific provisions relevant in assessing standard of care and whether it has been discharged, e.g., s2(3)(a) OLA 1957 requires higher standards of care re: child visitors • Principle limited in <i>Phipps v Rochester Corporation</i> (1955) to prevent transfer of parental responsibility; occupiers entitled to assume that young children are accompanied by a responsible adult when visiting their premises	

- S2(3)(b) OLA 1957 also allows occupiers to assume that specialists, such as contractors, will recognise and guard against risks commonly associated with their jobs whilst visiting premises (e.g., *Roles v Nathan* (1963))
- Similarly, s.2(4)(a) of the 1957 Act acknowledges that a warning provided by or on behalf of the occupier may discharge the duty of care, provided the warning is enough to enable the visitor to avoid the risk (see also s.1(5) OLA 1984)
- Courts confirm that the need to provide a warning does not apply in relation to risks which ought to be obvious to the visitor (*Tomlinson*)
- For example, in *Darby v National Trust* (2001) the Trust were not in breach of any duty for failing to provide warning signs discouraging persons from swimming in a pond
- Statutory provisions relating to risks voluntarily undertaken (s2(5) OLA 1957 & S1(6) OLA 1984)
- Case law relating to accidents resulting from dangerous activities voluntarily carried out by persons of full capacity not covered e.g., *Tomlinson v Congleton Borough Council* (2003); *Evans v Kosmar Villa Holidays* (2007); *Edwards v Sutton* (2016); *Taylor v English Heritage* (2016)
- Recent case law confirming that only premises are not expected to be completely safe, only reasonably safe (*Murphy v Milton Keynes Parks Trust* (2021); *Hollywood v English Heritage Trust* (2021))
- Therefore, whilst the Acts apply to a wide range of accident situations occurring on another person's premises, legislation is reasonably circumscribed, and courts interpret provisions sensibly so as to prevent unfair claims against occupiers

Question 4	25 marks
Many responses merely discussed principles relating to a duty of care being imposed and historical cases such as <i>Hill</i> . Better responses discussed the rulings and reasoning of the courts in cases such as <i>Robinson</i> and <i>Michael</i> .	
Suggested Points for Response:	
General outline: • General outline of historic principles • Brief outline of primary cases such as <i>Hill v Chief Constable of West Yorkshire</i> (1989) Discussion of debates: • Police subject to the same liability in negligence as private individuals and bodies (<i>Robinson v CC West Yorkshire Police</i> (2018)) and so have no specific 'immunity' • Distinction between positive acts of carelessness creating foreseeable risk of personal injury and pure omissions • Discussion of positive act cases e.g. <i>Robinson</i>, <i>Rigby v CC Northamptonshire</i> (1985) and <i>Alcock v CC South Yorkshire</i> (1991) • Discussion of cases involving pure omissions i.e. no duty to protect individuals from a danger not created by police, including injuries caused by third parties such as criminals e.g. <i>Hill v Chief Constable of West Yorkshire</i> (1989), <i>Smith v CC Sussex Police</i> (2008) and <i>Michael v CC South Wales</i> (2015) • Exceptional liability for omissions where police specifically assumed responsibility for an individual's safety e.g. <i>An Informer v A Chief Constable</i> (2012) and <i>Swinney v CC Northumbria</i> (1997) or where the police created the danger in the first place e.g., <i>AG for the British Virgin Islands v Hartwell</i> (2004)	

- Discussion of policy reasons for lack of duty in cases of domestic violence involving close proximity where the police were in a position to help, and criticism of this position e.g., Lord Toulson vs Lord Kerr/Lady Hale in Michael
- Possible discussion of contrasting human rights/public law position e.g., Arts 2 & 3 ECHR

Section B

Question 1	25 marks
Many responses showed good knowledge of the traditional law and cases in this area. However, more analysis involving the recent ruling in Paul was required. Many candidates mistakenly discussed Bilal as a secondary victim when in fact, due to him being on the train, he was clearly a primary victim. Many candidates missed the opportunity to discuss Carl as a rescuer. Many responses did well on Dia and the discussion of how she had witnessed what was likely to be considered the aftermath.	
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) • Delayed reaction and consideration of delayed impact must now be considered in light of ruling by court in Paul & Others v Royal Wolverhampton NHS Trust (2024) Application: Bilal: • Discussion of status as primary victim • Was on the train and therefore in zone of danger Carl: • Discussion of status as secondary victim • Satisfy element of being at the incident and seeing with own unaided senses • Would need a diagnosed disorder • Does not satisfy the close tie of love and affection • As rescuer does not receive special treatment • Presence within danger zone and exposure to danger can permit claim as primary victim Dia: • Claim would need to be as a secondary victim • Could satisfy the requirement of close tie of love and affection due to their relationship • Nightmares unlikely to be diagnosed as a psychiatric illness • Did not witness the event with their own unaided senses a determining factor	

- Discussion of witnessing the immediate aftermath and condition of scene witnessed (Paul v Royal Wolverhampton NHS Trust 2024)

Question 2

25 marks

This question was answered well, except for a common misunderstanding or omission of the ability for the MP to use the defence of privilege for the comments made in Parliament. Most responses were able to discuss the other defences well, such as the use of public interest.

Suggested Points for Response:

Primary provisions:

- 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

Erik v Kempston News:

- Newspaper publishes the story constitutes libel
- Identifies the claimant (s1 Defamation Act (DA) 2013))
- Statements likely to lower estimation and cause serious harm to Erik's reputation (s1 DA 2013)
- Potential defence of truth (s2 DA 2013) possible for the newspaper
- Potential defence of public interest (s4 DA 2013) possible for the newspaper
- Burden is on the defendant to substantiate the defence
- Any relevant case law

Erik v MP:

- Discussion of privilege
- Protected from legal claims relating to statements made within parliament
- Comments made on the TV show not covered by privilege
- Potential defence if can be shown comments were honest opinion or in the public interest
- Any relevant case law

Erik v Harry:

- spoken but not recorded statement is slander
- claimant does not have to show the recipient believes the statement
- must show harm

- Defence of truth possible (s2 DA)
- defence of honest opinion possible (s3 DA)
- court must find balance between freedom of expression and protection of reputation
- must state why they have the opinion, and no facts confirm their reasoning
- can show that an honest person would also have held the same opinion in the circumstances
- no harm can be shown based on the facts of the scenario
- Any relevant case law

Question 3	25 Marks
This question caused many issues for candidates and the use of the defence of consent. As the claimants were passengers in the defendant's vehicle, this defence was not available to the defendant as per section 149 of the Road Traffic Act 1988. The defence of contributory negligence was done well. There were some errors and limitations on the use of the defence of illegality. Some candidates did recognise the similarity between the facts and the case of <i>Pitts v Hunt</i> [1991]. In that case the claim was denied as both the defendant and claimant were intoxicated together on a motorbike; the claimant had known about the driver's intoxication, unlicensed and uninsured status and encouraged the illegal behaviour. If this defence would fail, there would have been a good chance of contributory negligence being successful.	
Suggested Points for Response Question 3a:	10 marks
General outline of defence: • S1(1) Law Reform (Contributory Negligence) Act 1945 – reduce damages to deliver just and equitable outcome • Claimant partly at fault for harm caused • Can apportion liability between parties on a percentage basis – share responsibility and damages are reduced accordingly • Percentage reduction depends on causative potency of each party's conduct (e.g., vehicle operator and pedestrian) • Common example is claimant not wearing seatbelt (<i>Froom v Butcher</i> 1975) • Consent - complete defence • Must prove claimant had full knowledge of the nature and extent of the risk and that consent was freely given • Can be express or implied • Under s149 Road Traffic Act 1988 drivers cannot use this defence in claims made by their passengers Iris v Jenny: • Consent is not available to Iris • Contributory negligence is a potential defence • Failure to wear a seatbelt, although irrelevant in relation to causation of the accident, may result in greater damage being sustained. It can therefore result in damages being reduced due to contributory negligence (<i>Froom v Butcher</i> [1976]; <i>Hazlett v Robinson</i> [2014]) • Failure to wear a seatbelt due to a medical condition may result in contributory negligence failing as a defence (e.g., <i>McKay v Borthwick</i> [1982]). This is likely to apply here, as there is clearly a medical condition and an application for medical exemption is being pursued. The medical	

exemption is directly relevant to criminal liability for failing to wear a seat belt but would obviously be relevant evidence to support a case that the claimant could not be expected to wear a seat belt.

- Getting a lift with a driver known to be under the influence of alcohol is likely to be contributory negligence: *Dann v Hamilton* (1939)
- Passengers are not under a duty to enquire as to the level of intoxication of the driver (*Booth v White* [2003])

Suggested Points for Response Question 3b:

15 marks

Outline of defence:

- Illegality relates to when a claimant is the victim of a tort whilst involved in serious wrongdoing
- There must be a close connection between the tort and the wrongdoing, e.g., *Delany v Pickett*; *Joyce v O'Brien*
- Defence based on public policy

Iris v Kyle:

- The primary defence will be illegality, which is a complete defence. A claim may be defeated if it involves the claimant's own criminal conduct
- Before 2016 a defendant could use the defence if the claimant had to rely on their own illegality
- Reliance principle replaced with three-part test *Patel v Mirza* [2016]
- Court considers whether the objectives of the law would be advanced if the claim was denied, if any public policy would be less effective if the claim was denied and if denying the claim was a proportionate response to the illegality. The illegality must therefore be significant and closely connected to the activity
- *Pitts v Hunt* [1991] – the claim was denied as both the defendant and claimant were intoxicated together on a motorbike; the claimant had known about the driver's intoxication, unlicensed and uninsured status and encouraged the illegal behaviour
- If illegality fails as a defence, the defendant is likely to seek to rely on contributory negligence.

Question 4	25 marks
This question was answered well. Many candidates ran through the required steps such as the nuisance needing to be continuous. Many candidates discussed the mitigating steps taken by the school to lessen the nuisance and the impact this would have on any injunction being granted. The most likely remedy would be damages to compensate for the lack of being able to enjoy his garden during this time, but considering all reasonable steps had been taken by the school, the likelihood of an injunction was unlikely.	
Suggested Points for Response:	
General outline: • 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)) • 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 • 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)) • Recent ruling in Bakhaty v Hampshire County Council (2025) in which excessive noise and footballs entering the claimants garden ruled as a nuisance Leighton v Kempston Primary School: • Footballs likely to be deemed a nuisance • Entering with quiet enjoyment of property • Planning permission would not have resulted in authorisation to create nuisance • Injunction unlikely due to defendant taking preventative measures • Damages a possible remedy for loss of enjoyment	