

**CHIEF EXAMINER COMMENTS WITH
SUGGESTED POINTS FOR RESPONSES**

JANUARY 2021

LEVEL 6 - UNIT 13 – LAW OF TORT

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2021 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Several previous Examiner Reports had advised Learning Centres, Tutors and Candidates about the changes in the development of the Law of Tort. However, for several exam series, many candidates still referred to the previous precedents.

In this paper the majority of candidates showed a good understanding of this development and presented an excellent analysis of the judiciary's mindset and reasonings in this area of law. For the sake of consistency and for those remaining few centres/candidates that are not including the developments in the law of tort and still refer to the Caparo test, the advice given in earlier reports is included.

Candidates should be aware that the Caparo three-part 'formulation' is no longer regarded as a 'test' to be applied to a specific set of novel circumstances for the purposes of assessing the existence of a duty of care in negligence. In Caparo, Lord Bridge was at pains to point out that concepts such as 'proximity' and 'fairness' are merely convenient labels to attach to features of a situation where a duty of care may be recognised. As Lord Toulson, who delivered the majority

judgment in Michael v Chief Constable South Wales Police (2015) pointed out (at para 106), the 3-part formulation should not be taken as a blueprint for deciding cases involving novel facts. In February 2018 the Supreme Court handed down judgment in the case of Robinson v Chief Constable West Yorkshire Police (2018). The majority dismissed the idea that there is a Caparo 'test'. Lord Reed re-asserted (at para 29) that the starting point is to consider whether each factual situation gives rise to a duty of care according to existing precedents. If the claim is genuinely novel:

"The courts will consider the closest analogies in the existing law, with a view to maintaining the coherence of the law and the avoidance of inappropriate distinctions. They will also weigh up the reasons for and against imposing liability, in order to decide whether the existence of a duty of care would be just and reasonable." In other words, it is the 'incremental approach' that should be followed in novel circumstances. Therefore, candidates who persist in analysing the existence of a duty of care by reference to foreseeability, proximity and fairness/justice/reasonableness are no longer discussing good law.

Candidates should be advised that only information that can gain marks for legal knowledge, analysis or application should be provided in order to save the candidate time and effort in the exam. Many answers contained unnecessary introductions containing nothing worthy of credit in terms of answering the question and were, in fact, the candidate merely reciting text from the question or scenario or stating the purpose of their answer. The same applies for conclusions that merely repeat information that has already been credited earlier in the answer.

Essay questions, particularly at Level 6, will ask for candidates to focus on a particular issue within an area of law, however, many candidates spent sometimes as much as the first half of their answer laying out information about a duty of care in general. Candidates should be advised to make any such explanation, of the topic at hand, brief and focus should be concentrated on answering the specific focus of the question. In particular, at Level 6, examiners are not looking for a candidates' knowledge of basic rules of the duty of care but their increased ability to engage in debates surrounding these rules and laws.

In many answers, there was information provided, particularly in problem questions that could not be credited. For example, information relating to Law Commission reforms that have been recommended within the answer to a scenario. Here candidates must only provide the relevant law on the topic at hand and focus on analysing the facts.

For example, in the essay based on the development of the duty of care, many candidates wrote lengthy explanations as to the policy issues involved in imposing liability onto the police. Whilst the judicial mindset on this matter is an important part of that development, the question was much wider than that one particular issue. Candidates were expected to discuss the progression of the elements required to establish a duty of care and recent developments due to the Michael and Robinson cases. There was an element in many of the entries of a pre-revised template. This is not advised due to candidates finding it difficult to then adapt their 'scripted essay' to the particular focus of the question in the exam. Candidates are advised to understand the general elements, be able to

discuss a minimum of 3-4 issues relating to an area of law and be ready to discuss those concerns, criticisms, reforms etc, whilst directly addressing the wording of the specific question posed on the day of the examination.

Candidates should be prepared for varying topics from the specification to be combined, such as the duty/immunity enjoyed by Barristers and its subsequent removal in the negligence problem scenario. Very few candidates included the policy issue relating to the removal of the immunity for Barristers in this question, with many candidates falsely claiming that the victim would be unable to bring a claim for negligence for the advice given.

When candidates use case law, in essays, it is important that the reasoning for the inclusion of the case is included, for example, how does the case support, address or illustrate a question/point? Many candidates simply inserted case names. Whilst this shows knowledge it does nothing to indicate understanding of the role of the case in meeting the requirements of the specific question that has been asked. Developing an answer to show why a particular case has been used is a vital way to gain full marks.

In addition, many simply provided general information about, for example, the duty owed by the police or described a defence but provided no analysis. For these answers, only a minimal number of marks can be awarded for legal knowledge as the majority of marks are going to be awarded for discussions that focus on analysis.

Candidates should be advised to read very carefully what is required of them whether in an essay or problem question. Issues arose relating to what information should be included in essay questions that were separated into (a) rules and (b) focused analysis. Candidates should be advised to be clear on what is required from each question and to allocate their time and knowledge accordingly.

Quite a few candidates clearly run out of time and were either unable to submit a sufficient number of answers or were unable to complete an answer in a developed way. Candidates must be more aware of timing and allocate their time more evenly. An alternative to not attempting a question due to time restraints, is to outline or bullet-point the information as, this way, there is the opportunity to gain some credit for basic knowledge rather than missing out altogether.

On a positive note, there appeared to be much more well-structured answers this year with many candidates using IRAC or similar methods in which to structure their advice to claimants in problem questions. This approach to problem questions is a hugely important part of a candidate being able to achieve the maximum number of marks available.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1 (Defences)

This was one of the most popular essay questions and was, for the most part, answered quite well. For those candidates that received poor grades for this question, this was due to them only discussing the defences in general and provided little in the way of focus and analysis on the requirements of the question.

Candidates were asked to discuss the ability of each defence to provide a balance between claimants and defendants. However, many candidates either did not do this at all, or merely referred to this focus in a sentence or two or attempted to summarise the ability of any defences to do this in a conclusion.

When studying these topics, candidates are advised to, alongside the rules and requirements for these areas of law, also investigate issues that arise within tort law and ensure they are able to analyse, for example, criticisms or case law developments.

Question 2 (Psychiatric Harm)

This was one of the most popular questions and many candidates showed a great understanding of the law relating to these torts.

Many answers contained much of the case law involved and the distinctions created by these. However, only around half of the candidates were able to discuss the issues/concerns relating to these restrictions, nor the reforms that had been suggested in order to alleviate these criticisms.

As mentioned, candidates must be aware, and prepared to discuss, issues relating to each area of law within the specification. By only providing general information relating to restrictions and/or case examples, candidates cannot gain full marks. Analysis of the question is required which focuses on the particular content of the question rather than an overview of an area of law.

Question 3 (Trespass to the Person)

Many of the answers to this essay question showed a general understanding of the torts that are involved but hardly any provided information or analysis in relation to the interests these torts protect and the common law framework that provides that protection.

For example, the fact that a tort is actionable per se enables a claimant to avoid the burden of proving harm – this is due to the importance of the interests at stake.

The separation of points into two parts gave rise to a common problem – candidates including information in the incorrect section, or repeating information they entered for (a) again in (b). These types of questions will ask for specific information in one part and, then, request a focus on a particular issue or part of an area of law in the next part. As previously mentioned, candidates must take time to ensure they plan the information they include into questions that are split in this way.

Question 4 (Development of the Duty of Care)

This was the most commonly answered essay question by far. Many candidates showed a good understanding of the requirements essential to establishing the existence of a duty of care.

Again, as with earlier essays, many candidates simply provided information and cases that outlined the law in a very generalised way rather than engaging in a discussion relating to the recent developments.

Many of the answers were heavily focused on the policy issues in relation to a duty of care being imposed in relation to claims against the police. Whilst the judicial mindset on this matter forms a part of the development, this question actually required the candidates to focus on developments based on the cases of Michael in 2015 and Robinson in 2018.

Candidates must take the time to break down an essay question in order to make sure they know exactly what is being asked of them. Only a small portion of the marks for these types of questions can be allocated for general information. The point of these questions at Level 6 is to determine if candidates can discuss these areas of law beyond legislative provisions and common law principles.

Section B

Question 1 (Negligence)

This question was a popular choice with candidates, and many did well on the first part of this question in relating to the accident.

Many candidates showed a good understanding of the principles involved in establishing the claimant's chance of a successful claim and their answers were concise and comprehensive.

Answers, in relation to the damages the claimant would potentially be able to claim, were not so well set out with many answers lacking detail to the specific facts of problem question.

Question 2 (Vicarious Liability)

This was an extremely popular choice and most candidates were easily able to discuss the law in relation to what a claimant would need to establish to bring a successful claim against an employer for a tort committed by an employee.

Most candidates were able to distinguish whether a claimant was an employee and many showed a good understanding of the circumstances surrounding whether an employee had been in the course of employment.

There were some minor issues in relation to the tort involving an employee attacking a third party and whether this would constitute a close connection in terms of being to the advantage of the employer, therefore, considered in the course of employment.

Many candidates showed a good awareness of relevant case law that could be used as citation for their analysis and application of the common law to the facts.

Question 3 (Defamation)

This was the least popular problem question, but was, nevertheless, answered quite well.

The most common issue identified with this problem question was the comprehensive coverage of answers, for example, many candidates did not cover all potential claims available to the 'victim'.

Many candidates showed a good understanding of the requirements and the legislation involved, such as sections and definitions.

More could have been done in relation to defences available to potential defendants in order to gain full marks. Around a third of candidates mistakenly stated the MP, Rosie, could be sued for defamation and did not address the issue of privilege.

Question 4 (Occupiers' Liability)

This was the most popular problem question and was answered very well by most candidates.

Answers contained a wealth of legal knowledge from both of the Occupiers' Liability Acts and relevant case law. Most candidates correctly answered in relation to the child visitor whilst she was both a lawful visitor and a trespasser. The majority of answers addressed the fact that the courts would consider the question of parental responsibility and the age of the claimant being compared against that of a reasonable child of the same age.

There were some issues in relation to the last part of this question regarding whether the claimant, Wesley, had in fact been a lawful visitor or not before the incident during which he fell. The best solution for this, during an exam, is to cover both possible answers – if there is doubt as to him being one type of visitor, address the elements that can be addressed, state the facts that cannot be confirmed and then provide an alternative potential outcome dependent on what those facts may be once they had been confirmed.

SUGGESTED POINTS FOR RESPONSES

LEVEL 6 - UNIT 13 – LAW OF TORT

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Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Section A

Question Number	Suggested Points for Responses	Marks (Max)
QA1	Define the elements and explain any or all of the factors below for each defence Contributory negligence: <ul style="list-style-type: none">• Partial defence• S1(1) Law Reform (Contributory Negligence) Act 1945 – reduce damages to deliver just and equitable outcome• Claimant partly at fault for harm caused	25

- Not usually applicable re: rescuers unless they are foolhardy and have unreasonable disregard for their own safety
- Child claimants should be held against standard of reasonable child of the same age (Gough v Thorne)
- Court can make allowance for workers sense of danger if it is impaired by noisy or repetitive tasks, fatigue or confusion (Caswell v Powell Duffryn Associated Collieries)
- 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 (Froom v Butcher)

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
- Exceptions relating to sporting events and medical procedures
- Issues relating to workers who are forced to accept the risks due to financial pressures (e.g., Smith v Baker)

Illegality:

- 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

Additional Points:

- Contributory negligence achieves balance as results in relative culpability
- Contributory negligence most frequently invoked as best promotes fairness as takes account of mutual culpability
- Courts reluctant to allow defence of consent, especially in light of the possibility of alternative remedies via contributory negligence
- Consent difficult to establish and rarely successful
- Consent only likely in cases where claimant willingly accepts risks without any inducement or pressure (e.g., ICI v Shatwell)
- Illegality highly circumscribed and rarely successful

Total: 25 marks

Question Number	Suggested Points for Responses	Marks (Max)
QA2	<p data-bbox="371 271 1347 342">An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <ul data-bbox="427 376 1347 1973" style="list-style-type: none"> • Alcock, Page v Smith and White • Framework of rules that are control mechanisms • Physical and psychiatric harm • From medical perspective no qualitative difference • If claimants' symptoms fall just short of criteria they may still suffer just as much as those who met the requirements • Distinguishes 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) • 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; limits of this, e.g., North Glamorgan v Walters • Progressive deterioration is excluded (Sion; Ronayne) • Will still be considered the immediate aftermath so long as the scene has not been cleaned up (Galli-Atkinson v Seghal); limits of this Taylor/Taylorson. • Presumptions - Law Commission recommended fixed list of relationships in which love and affection would be presumed • Timing of immediate aftermath developed in McLoughlin v O'Brian – rules are arbitrary and unfair • Legal tests contradicting with medical tests, for example, the requirement that claimant be present at the incident or its aftermath does not match any medical criteria • Requirement of sudden shock – claimants, for example, that have to care for a victim of an incident for the rest of their life may develop depression over time but would not meet the criteria • Exclusion of cases where the shocking event witnessed by the claimant is different from the original harm into the primary victim, e.g., Taylor v A Novo • Policy fears relating to floodgate concerns • Vulnerable victims exposed to cross-examination due to requirement of close tie of love and affection • Inconsistent application of sudden shock and aftermath in borderline cases 	25

	<p>Reforms suggested by the Law Commission:</p> <ul style="list-style-type: none">• Recommended removing unnecessary constraints on claims• Recommended removal of sudden shock requirement• Recommended removal of close tie of love and affection requirement• Reforms were not adopted	
Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
QA3a	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p>Definition and explanation of the elements of each tort, including defences available:</p> <ul style="list-style-type: none"> • Assault is the deliberate act of the defendant which causes the claimant to reasonably apprehend the infliction of battery on them • Battery is the unlawful/unjustified intentional and direct application of force to an individual • False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law • All three are actionable per se i.e., without need to prove the claimant suffered any harm <p>Identification and outline only of the interests protected:</p> <ul style="list-style-type: none"> • Aim is to protect against threatened or actual deliberate/direct physical interference • Preserves individual rights of autonomy and self-determination • False imprisonment protects the same rights as assault and battery and also the rights of liberty and free movement (e.g., Murray v MoD) 	10
QA3b	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Discussion of debates relating to the extent to which torts protect the relevant interests:</p> <ul style="list-style-type: none"> • 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., Faulkner) • 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 	15
Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
QA4	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p>Recent clarification provided in Robinson regarding modern test for duty of care</p> <p>General identification and explanation of the development of duty of care:</p> <ul style="list-style-type: none"> • Case law framework including, for example, Donoghue, Anns, Junior Books, Murphy, Caparo, Barclays Bank v Customs & Excise, Michael, Robinson, Steel v NRAM, Darnley v Croydon, James-Bowen v MPC • Discussion of changes to burden of proof and scope of liability • Discussion of courts wishes to develop duty of care in incremental manner <p>Developed discussion of debates, for example:</p> <ul style="list-style-type: none"> • Involvement of policy i.e., fair and just requirement • Acknowledgment that novel cases have precedential value • Recognition that novel cases result in a retrospective approach • Liability for omissions • Issues relating to the nature of duty in pure economic loss cases 	25
Total: 25 marks		

Section B

Question Number	Suggested Points for Responses	Marks (Max)
QB1a (i)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Apply the rules of negligence to the facts of the scenario</p> <ul style="list-style-type: none"> • Loss – Cody sustains personal injury, property damage and consequential economic loss, which are all recognised forms of loss in a negligence action • Duty owed – well established category of a duty owed by road users • Standard to be expected – qualified and competent driver – Nettleship • Breach objectively assessed and here clearly breached – loose animal in the car • Causation – but for defendants breach the claimant would not have suffered harm (Barnett) and breach is the only cause of the harm caused (Bonnington) <p>Use of new clarification of test laid out in Robinson</p>	6
QB1a (ii)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Apply the rules of negligence to the facts relating to damages</p> <ul style="list-style-type: none"> • Damages relating to car damage • Damages relating to time not able to work; basis of calculation of net loss of earnings • Treatment of state benefits • Damages relating to medical and travel expenses • Damages relating to pain and suffering due to diagnosis of intermittent pain for the rest of the claimant's life • Lump sum based on assessment of likely impact. Possible Smith v Manchester award <p>Recognition of aim of damages and effect of speculative claims</p>	12
QB1b	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Identify elements and explain factors relating to a duty of care</p> <ul style="list-style-type: none"> • Liability for professional negligence based on assumption of responsibility/Caparo criteria: Barclays Bank v Customs and Excise • The former immunity of barristers removed in relation to advice (as opposed to advocacy): Hall v Simon 	7

	<ul style="list-style-type: none">• The court must assess the likely outcome if competent advice had been given• Discussion of issues relating to policy and the removal of immunity for barristers:• For example, removal of immunity from Rondel v Worsley in Hall v Simon	
Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
QB2	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Discussion of common law test for whether a claimant is an employee and in the course of employment and combination of all factors being recommended (Cable and Wireless)</p> <p>Label applied by the parties not conclusive, e.g., Autoclenz v Belcher</p> <p>Control and mutuality are key aspects</p> <p>Vicarious liability may apply to a non-employee where the relationship is akin to employment (Christian Brothers), but not to someone who is genuinely in business or practice on his own account (Barclays Bank v Various Claimants)</p> <p>Apply the rules of vicarious liability to the facts relating to whether the claimants are employees</p> <ul style="list-style-type: none"> • Lewis – contract states self-employed and pays own tax and NI • Lewis – accepts assignments and is paid per assignment based on time taken • Lewis – wears uniform and has to comply with rule book • May be employee on full analysis, but almost certainly a relationship akin to employment given the degree of control • Martin – contract of service as administrator and so considered an employee <p>Vicarious liability applies to acts which are sufficiently closely connected to the sphere of activity assigned to the employee (Mohamud v Morrison; Morrison v Various Claimants). This includes, but is not limited to, the authorised wrongdoing or unauthorised mode of performing unauthorised act covered by the old Salmond test. It may include deliberate unauthorised wrongdoing if the necessary connection is present</p> <p>Apply the rules of vicarious liability to the facts relating to whether the claimants were in the course of employment</p> <ul style="list-style-type: none"> • Lewis – trip to community centre – authorised act but in careless manner (Century Insurance) - in course of employment • Lewis – sofa being taken to his home – not in course of employment and so considered a frolic of his own • Lewis – assault on person in car park – close connection or for employer's benefit and so considered in the course of employment • Martin – unauthorised act and so a frolic of his own 	25
Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
QB3	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Define the elements and explain the factors and defences involved for defamation:</p> <ul style="list-style-type: none"> • Governed now largely by the Defamation Act 2013 (DA) • Written defamation is libel and verbal defamation is slander • Different tests for slander claim – must have suffered actual harm (s1) • Two exceptions to test for slander – if the claimant has been accused of criminal conduct (Webb 1883) or of being incompetent in their business/professional dealings • Statement must either lower the estimation of the claimant in the mind of right-thinking members of society (Sim 1936), or disparage them in business, trade or profession, or expose them to hatred, ridicule or contempt, or, cause them to be shunned or avoided • Identify the “sting” – the precise defamatory meaning, e.g., Chase levels of allegations of criminality • S1(1) DA – statement must have caused or is likely to cause serious harm to the reputation of the claimant • S1(2) DA – if the claimant trades for profit they must have actually suffered serious financial loss • The statement must refer to the claimant • A reasonable person would need to understand that the statement refers to the claimant • The statement must be communicated or published • 12-month limitation for bringing a claim • Can be committed negligently – harm must be foreseeable • Defences include truth (s2), honest opinion (s3), privilege, public interest (s4), innocent dissemination (s10) • S13 DA – court can order the removal or prevention of distribution of defamatory statement <p>Apply the rules of defamation to the facts of the scenario (10)</p> <ul style="list-style-type: none"> • Pauline – personal assistant – giving of information to the Mercury - clearly defamatory to allege extramarital affair/immorality. The defence of truth appears to apply. • Mercury – upcoming revelations – libel; clear reference and publication; obvious defamatory meaning. Staying appears to be immorality reinforced by the allegation of perversion. The sadomasochistic element may allow the use of the defence of truth unless the reference to Oscar as a paedophile constitutes a separate sting. Potential public interest defence, but insufficient information as to whether proper journalistic standards have been applied. The 	25

	<p>potential for serious harm clearly present, especially given the charitable work.</p> <ul style="list-style-type: none"> • MP – comments in the House of Commons – absolutely privileged • Sajid – statement made at the dinner party – slander; adopts the words used earlier but no privilege here. Sting is clearly related to potential paedophile activity. To the extent it is comment the defence of honest comment is available as there is a clear reference to privileged material which is the basis of the opinion. • Mercury – publication of article – libel as before. The defence of truth appears to be available and there is nothing in the article and to justify an extension to impropriety with children. 	
Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
QB4a	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Define and explain relevant factors from the scenario relating to occupiers' liability:</p> <ul style="list-style-type: none"> • Occupiers Liability Act 1957 (OLA 57) governs lawful visitors • S2(1) – common duty of care • S2(2) duty to keep visitor safe for the purposes for which he is invited or permitted • S2(3)(a) – occupiers should expect children to be less careful than adults • Taylor – allurements principle – should take additional precautions • Phipps – whereabouts of parents/guardian questioned dependent on age of the child • Occupiers Liability Act 1984 (OLA 84) governs unlawful visitors • S1(3) - occupier owes a duty only if aware of trespassers or reasonable belief of the possibility of trespassers being on their property, must be aware of the danger and be reasonably expected to take precautions • Under OLA 57 can claim for personal injury and property damage • Under OLA 84, unlawful visitors can only claim for personal injury <p>Apply the rules of occupiers' liability to the facts of the scenario:</p> <ul style="list-style-type: none"> • Kayla was lawful visitor – spillage renders occupier liable for personal injury and property damage • Kayla may become an unlawful visitor when entered storeroom – s1(3) OLA 84 would have to be satisfied • however, given that there is no instruction to keep out and the antique dolls will constitute an obvious allurements, it may be concluded that insufficient has been done to alert Kayla as to the boundary of the permitted area, as in <i>Pearson v Coleman Brothers</i>, so she remains a visitor. 	13
QB4b	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Define and explain relevant factors from the scenario relating to occupiers' liability:</p> <ul style="list-style-type: none"> • OLA 54 governs claim as Phil is lawful visitor • S2(3)(b) – skilled workers are expected to appreciate risks associated with their common calling 	5

	<p>Apply the rules of occupiers' liability to the facts of the scenario</p> <ul style="list-style-type: none"> Phil should have taken precautions and checked the electric had been disconnected 	
QB4c	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Define and explain relevant factors from the scenario relating to occupiers' liability:</p> <ul style="list-style-type: none"> OLA 84 governs the claim involving Wesley as he entered the property as a trespasser S1(3) (as above) will have to be satisfied S1(6) – no duty owed in relation to risks willingly accepted by the claimant S1(5) – duty may be discharged by deterrence/warnings <p>Apply the rules of occupiers' liability to the facts of the scenario:</p> <ul style="list-style-type: none"> danger of missing floorboards. Facts silent as to whether or not there have been problems with trespassing. Given the nature of the site reasonable to offer some protection. Warning signs and fencing will be considered to determine if they were appropriate in the circumstances Wesley may be seen to have willingly accepted the risk by entering despite the fences and warnings. 	7
Total: 25 marks		