

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

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 2022 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 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 those that discussed the cases of Donoghue and Caparo when discussing the application of the duty of care rules were in the minority. The vast majority of candidates showed a good understanding of the developments in this area and presented an excellent analysis of the court's modern approach and mindset.

Centres are advised to continue to emphasise this point when teaching this unit and its application ensuring candidates make a special effort when studying this area to, not only understand any changes such as these, but also the reasoning for them. Candidates must explain that 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 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. A better idea for conclusions is to save some information relating to the points that have been raised in order to conclude and directly answer the question whilst gaining points for 'fresh' facts/arguments, such as recommendations for any reforms.

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.

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.

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 the candidate answer 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 vital.

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.

In this session there were many entries that had information duplicated between (a) and (b), whereas, if both parts of the question had been looked at before beginning the answer, this information could have been separated accordingly and saved the candidate a lot of wasted time and effort. The information will only be expected from a candidate once and likewise, can only be credited the once.

There was a distinct lack of the use of IRAC for problem questions. This structured approach is strongly advised for candidates to be sure that they are covering all required elements to a scenario and applying those elements in full.

In scenario's where there is any 'grey areas', in which it is not clear whether an element has been established, it is perfectly acceptable to include in an answer the reasons as to why an element may be satisfied and then to raise alternative arguments to the contrary. In fact, this is advised for the

candidate to show greater understanding of the application of the law in these types of cases, in which discretion is a necessity and to avoid an incorrect answer.

In every session there are incomplete entries and comments have often been made in Examiners' Reports advising candidates to take care when allocating time to each question. This year the number of incomplete entries was very low. 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.

Only a couple of entries attempted more questions than is required and so candidates are advised to take a few minutes before they begin to run through the exams instructions and to pre-read the questions before attempting them. This may feel time-consuming but will prevent many common errors and so, ultimately, is a key time-saver and point-gainer.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1 (Causation)

An extremely common mistake made by candidates is that of simply reciting the rules and case law they know on a particular topic. Once identified, a topic is merely discussed in terms of the general rules that apply. A number of candidates were able to highlight incidents of the courts attempting to, for example, find a balance. However, only a few candidates were able to deliver the essay in such a way that when read, comes across as a discussion of courts approach and their reasonings. This would, obviously, entail including the rules and primary case law principles, however, simply stating this is simply not sufficient to gain more than a minimal number of marks. Knowledge and use of it in an essay must involve a discussion of the question asked, whilst using the rules and leading cases to help the reader better understand by seeing the law in action. This is the only way a candidate can gain marks for both legal knowledge *and* legal analysis.

This was the most popular of the essay questions and the majority of candidates had good knowledge of the rules of causation and the circumstances under which the chain of causation can be broken. This knowledge should be extended by further understanding the reasoning and mindset of the courts when the decisions in cases were delivered.

Question 2 (Private nuisance)

This was the second most popular essay question. As with the causation essay, there appeared to be no issues concerning candidates' knowledge of the rules governing this area of law. A vast number of cases were cited. However, the use of the rules, as stated above, were not developed sufficiently to directly answer the essay question and case law was not used to illustrate the law in action but, by many candidates, merely cited. This prevents a candidate being able to access over half the allocated marks for problem questions.

Question 3 (Defamation)

This was the third most popular essay question. There were only a few candidates that mistakenly included information within part (a) that was more suited to part (b). Whenever candidates notice that a question is split, they should take a few extra moments during the planning of their answer. Many candidates knew of the provisions of the Defamation Act 2013. However, there was little focus in part (b) on how the changes may have impacted the protection of reputation in favour of the freedom of expression. When candidates are covering an area of law, they should be also taking notes about comments that are made relating to, for example, the reasoning behind a decision or a change in the law, the impact of the introduction of a law or a change in the law or use the rules and leading cases to explain how they are used to fulfil the role of a particular area of law. Therefore, for example, when studying recent changes to law such as those relating to defamation, bear in mind the various impacts these may have and be prepared to adjust your knowledge of this to directly address the question asked. Simply knowing an area factually well will not enable a candidate to gain all the available marks.

Question 4 (Trespass to land)

This was the least popular essay question. For the few candidates that did attempt this question, issues and advice are the same as those mentioned for the essay questions above.

Section B

Question 1 (Defences)

(a) Ben and Carl

This was the most popular scenario question and the majority of candidates showed excellent knowledge of this defence and produced good applications of the defence to the facts of the scenario. Overall, this question was answered well.

(b) Donna and Aaron

This part of the problem question had the most incorrect answers. Many did not understand the impact of illegality on the facts of the question. If two parties are involved in a joint enterprise, the courts have ruled that it is impossible for them to assess (Pitts v Hunt).

For a defence of illegality to be successful, there must be no connection between the injuries or harm sustained and the illegal activity (e.g., Revill v Newbery) and the courts will look at how closely the injuries/harm and the illegal activities are (e.g., Cross v Kirkby).

The reliance principle in Tinsley v Milligan was overruled in Patel v Mirza in 2016 and a more flexible and balanced approach is now adopted by the courts. A claim will not fail if the court could, for example, simply put the parties in the position there were originally such as in Patel. Candidates should have balanced the facts that Donna had encouraged the illegal act of speeding and her injuries were directly connected to that illegality. The courts would have considered whether allowing her claim for damages for injuries sustained during the illegal activity would contradict public policy.

Many candidates appeared to simply assume consent would be the obvious defence and some answers went to great length to apply this defence to the facts, exhibiting great knowledge of case law. However, this was incorrect as this defence is prevented as per s149 of the Road Traffic Act 1988.

It was rare for a candidate to apply contributory negligence to this part of the answer. This may be due to candidates assuming that because they had discussed this defence in part (a) it would not appear in part (b). This separation of information is only relevant when the various defences are expressly separated in the wording of the question. In this case, the facts of the cases between the difference claimants and defendants give rise to the possibility of all three defences being potentially applied. The safest option in these situations is to always consider all three defences for a defendant unless instructed otherwise.

On that note, candidates were advised not to discuss the issues relating to whether a duty of care was established. This means that candidates should directly begin to address the matter of defences. When a candidate is instructed not to debate the issue of a duty of care, this includes the standard of care, causation and breach. All of these factors should be considered to have already been debated and established and therefore the answer should only consider which defences may be applicable. No points are available if information is provided relating to those factors and most importantly valuable time is spent on this unnecessary information that should be spent on directly answering this or other questions. Take time when planning an answer to ensure you understand which information to include.

Question 2 (Trespass to the Person)

This was the second most popular problem question. Most candidates exhibited good knowledge of this area of law and many answers produced great application of the rules to the facts.

The part that most candidates appeared to find difficult was those facts relating to the trespass of goods. When covering this area of law, it is advisable to make sure you cannot only apply the obvious torts of assault and battery but of those torts involving a person's property. Overall, this question was answered well.

Question 3 (Occupiers' Liability)

This was the second most popular question. Candidates showed extensive knowledge of this area of law. The primary failing for this question involved the allocation of information between the various claimants. A few candidates failed to address all the claimants and a vast number of candidates wrongly predicted the outcomes. Answers were good in relation to visitors that were skilled workers and the status of visitors, however, there was a lack of discussion relating to the status of a child visitor when they have been lured from an area, they are permitted to be into an area that results in them trespassing. Before answering questions that involve multiple claimants such as this one, candidates should ensure they plan answers carefully.

Question 4 (Damages)

This was the least popular question but still answered by many candidates. However, the inclusion of the facts relating to the disclosure of the risk to the claimant was lacking in most answers. Of those that did address the issue of disclosure, the majority of those did not develop these answers

sufficiently to gain the full number of marks available. No answers discussed the therapeutic exception that may have applied to this case. Ensure your knowledge is comprehensive and does not only cover the main areas discussed. Be prepared for a more detailed issue being included within a level 6 problem question.

Answers addressing the assessment of damages exhibited good knowledge of the facts that could give rise to a claim for damages such as travel expenses and lost earnings. Overall, this question was answered well.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 – UNIT 13 – LAW OF TORT

SECTION A

Question Number	Suggested Points for Responses	Max Marks
1	<p>General discussion could include:</p> <ul style="list-style-type: none"> - Discussion of the three categories of cases. - Lord Bingham (Corr v IBC Vehicles): principles are based on fairness. - Issues relate to a breach of duty by a defendant, combined with an unrelated, subsequent, event that increases the loss/harm suffered by the claimant. <p>Candidates should, to gain full marks, raise a minimum of 2-3 examples for detailed analysis, and these may include (not an exhaustive list):</p> <ul style="list-style-type: none"> - Separate causes that happen near-simultaneously e.g., Knightley v Johns. - No intervening event to be found if harm caused is within the scope of the defendant’s duty e.g., Home Office v Dorset. - Rulings based on ensuring a claimant is not under-compensated e.g., Baker v Willoughby. - Rulings based on ensuring a claimant is not over-compensated e.g., Jobling v Associated Dairies. - Rulings involving injury leading to mental health, such as suicide e.g., Wright v Davidson; Corr. - Cases involving the behaviour of a claimant e.g., Spencer v Wincanton. - Cases involving negligent medical treatment e.g., Webb v Barclays. - conclusion based on the principles being policy-driven and the judicial aim of fairness and provision of corrective justice. 	25
Question 1 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
2	<p>General discussion should include:</p> <ul style="list-style-type: none"> - Factors limiting liability, such as, locality, duration and abnormal sensitivity. - Type of damage and its impact on a claim, for example, if physical damage, the locality and duration factors are irrelevant (St Helen's Smelting Co. v Tipping). - Recent clarification in Coventry v Lawrence, particularly in relation to the award of damages or an injunction, using tests in Shelfer v City of London Electrical Lighting Co.). <p>Candidates should, to gain full marks, raise a minimum of 2-3 examples for detailed analysis, and these may include (not an exhaustive list):</p> <ul style="list-style-type: none"> - Whether the requirement that a claimant has a proprietary interest is sustainable in modern law due to the impact of human rights. - Courts reluctant to stifle economic growth, such as building works and, so, public policy a possible factor, for example, if an injunction being granted would impact local employment. - Grey area involving locality including multiple interpretations and the impact of policy (e.g., Sturges v Bridgman; Andrae v Selfridge & Co.). - Debates concerning planning permission not being determinative, however, if dictates, for example, days and hours, can be a relevant factor (Coventry). - Debates surrounding the imposition of the tort as one of strict liability due to, for example, that, once an unreasonable interference has been established, it is no defence for the defendant to claim they had taken all precautions to prevent the nuisance (e.g., Adams v Ursell). - However, some personal fault on the part of the defendant is required as the claimant must show the interference was beyond 'give and take.' - Reasonable foresight of the type of harm is required e.g., Cambridge Water v Eastern Counties Leather pls. - Rylands v Fletcher is a strict application of private nuisance in that if there is physical damage there is no requirement of an unreasonable interference. - However, there are claims that the Rylands tort is almost redundant and so not useful for modern private nuisance cases (Transco v Stockport MBC). - Relevance of tort recently reaffirmed in Barr v Biffa, particularly in terms of permits, planning permission and the changing nature of modern localities. - More judicial flexibility and less injunctions likely being granted, in a move away from the trend of semi-automatic application of established principles (HKRUK II (CHC) Ltd v Heaney). - a conclusion that directly addresses the requirements of the question. In this case, the candidate will provide a conclusion 	25

	based on the principles being focused on achieving a 'give and take approach' outcome.	
Question 2 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
3(a)	<p>Discussion of changes introduced by the Defamation Act 2013:</p> <ul style="list-style-type: none"> - 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. 	10
3(b)	<p>Candidates should, to gain full marks, raise a minimum of 2-3 examples for detailed analysis, and these may include (not an exhaustive list):</p> <ul style="list-style-type: none"> - 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 <i>Lachaux v Independent Print Ltd</i> 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. - Burden of proof is on the defendant to provide evidence of truth. - S1(1) 's interpretation is determined by the facts of the case and the impact of any statement(s) (<i>Lachaux</i>). - Inferences can be drawn as to the level of harm suffered based on, for example, scale of publication and gravity of any statement(s) (<i>Lachaux</i>). - 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. 	15

	<ul style="list-style-type: none"> - S4 and the public interest defence helps protect the freedom of expression. - 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. - Honest opinion no longer requires the presence of public interest as a justification. - 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. - conclusion based on the impact of the legislative changes upon the protection of reputation and that of the freedom of expression. 	
Question 3 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
4	<p>General discussion should include:</p> <ul style="list-style-type: none"> - Principles permitting claims against interference with an interest in land. <p>Candidates should, to gain full marks, raise a minimum of 2-3 examples for detailed analysis, and these may include (not an exhaustive list):</p> <ul style="list-style-type: none"> - Tort being actionable per se shows the fundamental importance of protecting interests in land and continued need. - Invaluable tort as covers many circumstances/types that other torts do not (Kelsen v Imperial Tobacco). - Low thresholds render requirements easy to satisfy supports a continued use: <ul style="list-style-type: none"> • E.g., the simple act of a direct interference or mere intentional interference can give rise to liability. • E.g., not need to show the defendant intended the trespass, only the activity (e.g., Gilbert v Stone). • Claimants can bring claim for innocent/mistaken entry (Conway v George Wimpey). • Claimants can bring claim for a negligent entry (League Against Cruel Sports v Scott). 	25

	<ul style="list-style-type: none"> - Changes to the ability for owners to bring claims made by Infrastructure Act 2015 permitting statutory automatic drilling rights (s43) resulting in compensation rather than litigation. - Drilling would continue to be trespass if above 300m (Star Energy Basin Ltd v Bocardo). - Although a owners' consent is still required for drilling above 300m under land the number of potential claims has been severely reduced limiting future need of the tort. - Conclusion based on the relevance of this tort in modern cases. 	
Question 4 Total:		25 marks

SECTION B

Question Number	Suggested Points for Responses	Max Marks
1(a)	<p>Ben v Carl:</p> <ul style="list-style-type: none"> - Question states that a duty and breach has been assumed and so only a discussion relating to damages and defences can gain marks. - Defence available: contributory negligence - Law Reform (Contributory Negligence) Act 1945 governs this defence. - Damages will be reduced in proportion to blameworthiness of the claimant in relation to the harm. The claimant does not have to be responsible for the accident. Not wearing a seatbelt is blameworthy. - The leading case for claimants that were not wearing their seat belt is Froom v Butcher where failure to wear a seat belt makes no difference to the injuries, the injured person's damages should not be reduced; where injury would have been prevented, the damages should be reduced by 25 per cent; and where injuries would have been less severe, the damages should be reduced by 15 per cent. - Ben is likely to succeed in his claim but will have his damages reduced in accordance with the above scheme. 	12
1(b)	<p>Donna v Aaron:</p> <ul style="list-style-type: none"> - Defence available: illegality. - Claim is likely to be prevented due to public policy grounds e.g., Ashton v Turner. - The court will assess the relative moral culpability of both parties as per Shelley v Paddock; Thackwell v Barclays Bank. - The court use a 'middle-ground' approach; they aim to not aid a claimant that has engaged in illegal activity but, at the same time, to not automatically deny a claim due to the presence of illegality as per Saunders v Edwards. 	13

	<ul style="list-style-type: none"> - When parties are involved in a joint criminal enterprise, the court has claimed it is impossible for them to determine liability as per <i>Pitts v Hunt</i>. - A claimant could succeed if damages are unrelated to any criminal conduct as per <i>Revill v Newbery</i>. - The court do not base their rulings on a public conscience test but on how closely connected the damages claimed for are to the illegal activity e.g., <i>National Coal Board v England</i>; <i>Cross v Kirkby</i>; <i>Tinsley v Milligan</i>; <i>Clunis v Camden & Islington Health Authority</i>. - Donna's damages (injury suffered) are closely connected to his illegal activity with Aaron. - The facts state that Donna "encouraged" Aaron to engage in the illegal activity, however, <i>volenti</i> is excluded by s 149 (3) Road Traffic Act 1988 - Contributory negligence - probably 50% by analogy with <u><i>Pitts v Hunt</i></u> 	
Question 1 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)	<p>Usman v Rashid:</p> <ul style="list-style-type: none"> - Rashid potentially liable for assault when he makes Usman think he is about to be stabbed. - Assault is the deliberate act of the defendant which causes the claimant to reasonably apprehend the infliction of battery on them. - Does this go beyond what is acceptable in the context of such horseplay: <u><i>Wilson v Pringle</i>; <i>Blake v Galloway</i></u>. - Rashid potentially liable for false imprisonment when he locks Usman in the room. - False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law. - Actionable per se i.e., without need to prove the claimant suffered any harm. 	10
2(b)	<p>Rashid v Usman:</p> <ul style="list-style-type: none"> - Usman potentially liable for battery when he grabbed hold of Rashid. - Battery is the unlawful/unjustified intentional and direct application of force to an individual. - Actionable per se i.e., without need to prove the claimant suffered any harm. - Usman potentially liable for trespass to goods when he destroyed the television and laptop. - Trespass to goods is the deliberate interference with goods in the possession of another. 	15

	<ul style="list-style-type: none"> - Interference must be direct. - Sufficient to merely touch the property. - Moving, damaging and using property is sufficient. - Damage, loss or interference must directly affect the goods. - Actionable per se. - Due to being actionable per se, any interference constitutes a wrong. - Liability is strict in that they do not need to act intentionally or negligently but their actions must be voluntary. - If wilfully break or destroy goods this is conversion/trespass to goods. - Usman potentially liable for trespass to goods when he took the CD. - Person in possession can maintain trespass against all person, except a person with better title. - The taking of property does not in itself constitute conversion. - Something must be done which is inconsistent with the title. - No need for intention to deprive or actual permanent deprivation of possession. - Trespass is absolute so can be liable even if act in good faith and are not aware that actions are wrongful. 	
Question 2 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
3	<p>Frank v PB:</p> <ul style="list-style-type: none"> - PB are the occupier as the only potential defendant as per Wheat v Lacon. - Frank is a lawful visitor as invited onto premises. - OLA 1957 applies. - Personal injury and damage to/loss of property can be claimed for. - S2(3)(b) Frank entered premises for his 'calling' and so should have appreciated the associated risks. - By not ensuring the electricity supply was turned off, Frank has not performed his professional tasks and has suffered injuries well-known to be associated with that profession, therefore, no breach of the common duty of care <p>Haima PB:</p> <ul style="list-style-type: none"> - PB is the occupier. - Haima is a lawful visitor because she is an invitee. - OLA 1957 applies. - Personal injury and damage to/loss of property can be claimed for. - Nature of the common duty of care. 	25

	<ul style="list-style-type: none"> - Common duty of care may be satisfied by a specific warning which enables Haima to be safe (s 2 (4) (a) OLA 57. - Unlikely to be successful claim. <p>Gaia v PB:</p> <ul style="list-style-type: none"> - PB is the occupier. - Gaia was a lawful visitor as she was an invitee but when she entered the room marked for staff only, she probably became an unlawful visitor. - If so OLA 1984 applies. - Facts state that the occupier aware of the danger, aware of potential of unlawful visitors and it would be reasonable to expect the centre to take precautions, for example, locking the door. - Even as unlawful visitor, if all requirements are satisfied, a claimant can be awarded damages for personal injury. Risk is not obvious, and no evidence of willing assumption. - According to Phipps and the age of the claimant, the court will question the degree of parental/guardian responsibility in order to apportion blame as opposed to imposing full liability on PB. - Alternatively: Facts state that “tempted”, therefore, allurement principle applies as per Glasgow Corporation v Taylor. A child visitor allured off limits remains a visitor and OLA 57 applies. A fortiori reasonable to eliminate the allurement by locking the door. 	
Question 3 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
4	<p>Issues relating to disclosure of risks:</p> <ul style="list-style-type: none"> - As per Chester v Afshar; Montgomery v Lanarkshire Health Board the ‘but for’ test is considered as satisfied to protect autonomy and dignity. - Jack likely to have successful claim due to lack of disclosure resulting in consent not being valid. - Possibility of therapeutic exception (Montgomery). <p>Issues relating to damages:</p> <ul style="list-style-type: none"> - Damages for loss of earnings in relation to his employment as a solicitor, for example, Ogden Tables, Wells v Wells and Damages Act 1996. - Net loss compared to current post. - Damages in relation to the loss of a promised promotion and increased earning potential; potential for Smith v Manchester award. - Damages in relation to loss of ‘previous lifestyle’, for example, the use of Judicial College Guidelines. 	25

	<ul style="list-style-type: none">- Damages in relation to medical treatment, for example, able to choose private healthcare. No NHS costs are recoverable. Any savings made whilst using the NHS are deductible (s5 Administration of Justice Act 1982).- Damages for expenses associated with hospital visits (Donnelly v Joyce; Hunt v Severs).- Damages relating to any adaptations to the home (Povey v Governors of Rydal School).	
Question 4 Total:		25 marks