

GCE

Law

H018/02: Law making and the law of tort

AS Level

Mark Scheme for June 2023

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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MARKING INSTRUCTIONS**PREPARATION FOR MARKING
RM ASSESSOR**

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *RM Assessor Online Training*; *OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are posted on the RM Cambridge Assessment Support Portal <http://www.rm.com/support/ca>
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **number of required** standardisation responses.

YOU MUST MARK 10 PRACTICE AND 10 STANDARDISATION RESPONSES BEFORE YOU CAN BE APPROVED TO MARK LIVE SCRIPTS.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the RM Assessor 50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone or the RM Assessor messaging system, or by email.

5. Crossed Out Responses

Where a candidate has crossed out a response and provided a clear alternative then the crossed out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM assessor, which will select the highest mark from those awarded. *(The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.)*

Multiple Choice Question Responses

When a multiple choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only **one mark per response**)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. *(The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)*

Short Answer Questions (requiring a more developed response, worth **two or more marks**)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space.)

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there, then add a tick to confirm that the work has been seen.
7. Award No Response (NR) if:
 - there is nothing written in the answer space

Award Zero '0' if:







- anything is written in the answer space and is not worthy of credit (this includes text and symbols).

Team Leaders must confirm the correct use of the NR button with their markers before live marking commences and should check this when reviewing scripts.

8. The RM Assessor **comments box** is used by your team leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.**
If you have any questions or comments for your team leader, use the phone, the RM Assessor messaging system, or e-mail.
9. *Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.*
10. For answers marked by levels of response: Not applicable in F501
- To determine the level** – start at the highest level and work down until you reach the level that matches the answer
 - To determine the mark within the level**, consider the following

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

11. Annotations

Annotation	Meaning
	Not Relevant or no response or response achieves no credit
	Point
	Case development / Q4 & Q8 Developed point
	Developed point extended
	Correct (for Q8, indicates conclusion)
	The highlight tool may also be used to draw attention to a word or phrase which means that the statement or reasoning is inaccurate
APP	Applied point
REP	Repeated point
	Citation of case / legal authority

	Answer	Marks	Guidance
1	<p>Explain Treaty Articles, Regulations and Directives as sources of European Union Law.</p> <p>Answers may include the following:</p> <p>Treaty Articles</p> <ul style="list-style-type: none"> • Treaties are the primary source of EU Law (e.g. Treaty of Rome 1957) and signing means Member states (MS) agree to create laws to meet the principles and aims in the Treaties • Treaties are divided into Articles which are directly applicable meaning that they take force within the legal systems of MS without further action by those MS • Where Treaty Articles contain rights on which individuals can rely then these rights are said to have direct effect which national courts must protect • Where Treaty Articles have direct effect, this can be vertical (relied on against the state (<i>Van Gend en Loos v Netherlands</i>) or horizontal (between individuals (<i>Defrenne v SABENA</i>)) <p>Regulations</p> <ul style="list-style-type: none"> • Regulations are made by the Council, Commission and Parliament acting together (Art 288) • They are also 'directly applicable' and are 'binding in their entirety' meaning that member states cannot pick and choose which elements to follow • The aim of Regulations is to achieve legislative uniformity (e.g. EU Roaming Regulation) • If there is a conflict between a MS law and a Regulation, the Regulation will be given primacy (<i>Re Tachographs: Commission v United Kingdom</i>) • Regulations are capable of giving rise to both horizontal (<i>Munoz y Cia SA v Frumar Ltd</i>) and vertical direct effect (<i>Politi SAS v Ministry for Finance of the Italian Republic</i>) <p>Directives</p> <ul style="list-style-type: none"> • Directives are made by the Council, Commission and Parliament acting together (Art 288) 	<p>8 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant examples. <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant examples. <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some citation of examples. <p>Level 1 (1-2 marks)</p> <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of examples will be limited. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

- Directives are harmonising measures which seek to create legislative uniformity across MS
- A Directive is not a law itself but rather a flexible instruction to a MS to make a law at the domestic level to comply with the Directive. The form that the law takes at the MS level is left to the MS who are also given a time scale for implementation (usually 2 years)
- Directives are 'binding as to the result to be achieved' (e.g. EU Money Laundering Directive)
- If a Directive is properly implemented, any individual rights contained within it become available through the new domestic enabling legislation. However, where the MS fails to implement, the time limit for implementation has passed or the measure has not been implemented correctly, the CJEU has ruled that if the measure gives rise to rights upon which individuals can rely, and it is sufficiently clear and precise, then it can have vertical direct effect (*Marshall v Southampton and South West Hampshire Area Health Authority*) but it cannot have horizontal direct effect (*Macarthy's Ltd v Smith*)

Credit any other relevant point(s).

	Answer	Marks	Guidance
2	<p>Explain the way the mischief rule is used to interpret statutes.</p> <p>Answers may include the following:</p> <p>The mischief rule has its origins in <i>Heydon's case (1584)</i> which stated that "Four things are to be discussed and considered:</p> <ul style="list-style-type: none"> • What was the common law before making the Act? • What was the mischief and defect for which the common law did not provide? • What remedy hath Parliament resolved and appointed to cure the disease of the commonwealth? • What is the true reason for the remedy? Judges shall make such construction as shall suppress the mischief and advance the remedy" <p>Alternatively:</p> <ul style="list-style-type: none"> • What was the common law before the making of the Act? • What was the problem for which the common law did not provide? • What solution did Parliament create to solve the problem? • The courts should interpret the statute to make the solution as effective as possible <p>Put simply, the mischief rule is where words are interpreted so as to give effect to the intention of Parliament in the light of some pre-existing problem for which the common law did not provide a solution</p> <ul style="list-style-type: none"> • Explain that the mischief rule is similar to the purposive approach except that it does require identification of a problem or 'mischief' before it can be used. In <i>Re Sussex Peerage</i>, it was held that the mischief rule should only be applied where there is ambiguity in the statute • Explain that the mischief rule may often rely on the use of extrinsic aids to help discern the intention of Parliament and/or the mischief that preceded the Act <p>Use any relevant case in illustration: <i>Jones v Wrotham Park Settled Estates; Smith v Hughes; Royal College of Nurses v DHSS; DPP v Bull; Corkery v Carpenter; Gardiner v Sevenoaks RDC; Elliott v</i></p>	8 AO1	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant examples. <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant examples. <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some citation of examples. <p>Level 1 (1-2 marks)</p> <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of examples will be limited. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

Grey; Alphacell v Woodward; Whittaker v Campbell; Bradford v Wilson; R v Chief Constable of Kent (ex parte the Police Federation)

Credit any other relevant point(s).

	Answer	Marks	Guidance
3	<p>Explain statutory instruments and bylaws as forms of delegated legislation</p> <p>Answers may include the following:</p> <p>Statutory instruments:</p> <ul style="list-style-type: none"> • Introduced by Ministers of Government Departments under powers given in enabling Acts • Approximately 1,500 brought into force each year (1,634 in 2020) and they are introduced by either an affirmative or a negative resolution procedure • They are enacted in the form of Orders, Regulations, Rules and Codes • They are national in effect and can allow provisions of an Act of Parliament to be brought into force at a later date • They provide the detail that would be too complex to include in the broad framework of an Enabling Act • They employ the necessary expertise relevant to the area concerned • They can amend, update and enforce provisions in existing primary legislation • Give any examples e.g. The Motor Cycles (Protective Helmets) Regulations 1998 made under the Road Traffic Act 1988 <p>Credit mention of Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006 but not necessary for full marks</p> <p>Bylaws:</p> <ul style="list-style-type: none"> • Made by local authorities to cover local issues or by public corporations to cover the services they provide • They are mostly created under the Local Government Act 1972 and the Local Government (Miscellaneous Provisions) Act 1982. Some bylaws fall under the policy remit of a government department and are made under relevant enabling Acts (e.g. the Open Spaces Act 1906 which governs, inter alia, local burial grounds) • Bylaws require approval by the relevant Secretary of State before they come into force • Notice and publication in local press will often be required and copies must be available for inspection at local authority offices • They can be based on guidelines (The Byelaws (Alternative Procedure) (England) Regulations 2016) and limited to a geographical area • Bylaws may be subject to judicial review and can be quashed as <i>ultra vires</i> if they go beyond the limits of the enabling Act 	8 AO1	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant examples. <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant examples. <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some citation of examples. <p>Level 1 (1-2 marks)</p> <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of examples will be limited. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

- Examples of local bylaws: bans on outside drinking, skateboarding and dogs fouling footpaths or, public corporation bylaws: banning smoking on the underground or your local water company banning the use of hose pipes. A specific example is the Padstow Port and Harbour Byelaws 1991

Credit any other relevant point(s).

	Answer	Marks	Guidance
4	<p>Discuss the advantages of delegated legislation.</p> <p>Candidates may develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column.</p> <ul style="list-style-type: none"> • Saves Parliamentary time - compared to legislative process for primary legislation • Allows Parliament to concentrate on broader policy issues rather than getting bogged down in detail • Allows technical matters to be dealt with by properly qualified experts • Consultation brings in expertise and public opinion • Flexibility – quick to respond to changing conditions (e.g. updating the classification of certain drugs) • Fast – provides a very quick solution to emergency situations • Allows large scale legislative change to be achieved incrementally (e.g. Access to Justice Act 1999) • A range of controls are available to ensure no abuse of power • Political convenience – getting legislation through ‘by the back door’ of delegated legislation may avoid media scrutiny and political opposition • Locally accountable – allows for de-centralised decision-making and local accountability through bylaws • Respects constitutional doctrines – by recognising the role of the monarch in Orders in Council when dealing with prerogative powers • The ability to make law when Parliament is not sitting • Administrative expedience – Parliament is not the appropriate forum to deal with the constant review and updating of administrative matters <p>Credit reference to disadvantages where used to contextualise an advantage (e.g. lack of accountability, potential for abuse, lack of democratic involvement, publicity and control and scrutiny, overuse/volume)</p> <p>Please note: the question is not restricted to the two types of delegated legislation set out in question 3 meaning that candidates can be credited for discussion of Orders in Council and/or Legislative Reform Orders</p> <p>Credit any other relevant point(s).</p>	<p>8 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal concepts. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed. <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal concepts. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed. <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic analysis and evaluation of legal concepts. • The response is partially focused on the question. • Some of the key points are discussed and partially developed. <p>Level 1 (1-2 marks)</p> <ul style="list-style-type: none"> • Limited analysis of legal concepts. • The response has limited focus on the question. • Discussion of any key points is minimal. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
5	<p>Explain the risk factors taken into account when determining if the standard of care has been breached in a negligence claim.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Foreseeability of risk - The defendant is only required to guard against risks that are within their reasonable contemplation. <i>Roe v Minister of Health</i> • Magnitude/size of the risk - The court will consider the likelihood that the defendant's conduct could cause damage and the extent of the damage that is risked. <i>Bolton v Stone, Haley v London Electricity Board</i> • Seriousness of the injury - the more serious the potential injury the more likely the defendant will be found to have fallen below the required standard. This will include any special characteristics of the claimant. <i>Paris v Stepney BC</i> • Practicality/cost of prevention/precautions - the court considers the risk against the cost of taking adequate precautions against such risk. There is no requirement to eliminate every risk, but the defendants need to show that they have taken reasonable steps to reduce the risk of injury. <i>Latimer v AEC</i> • Benefit to taking the risk (social utility) - the court will assess the social utility of the defendant's conduct, looking at whether there was public benefit to taking the risk. <i>Watt v Hertfordshire CC</i> • Common practice - a negligent act cannot be excused simply because it is common practice or industry guidelines. The common practice itself may be considered negligent. <i>Brown v Rolls-Royce</i>. <p>Credit any other relevant point(s).</p>	8 AO1	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant examples. <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant examples. <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some citation of examples. <p>Level 1 (1-2 marks)</p> <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of examples will be limited. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
6	<p>Advise whether or not Alex will be able to make a successful claim under the Occupiers' Liability Act 1984.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Alex's will claim that the premises were unsafe due to the spilt nectar • The Birds & Nests bird park will be considered premises (s1(3)(a)) • Birds & Nests will be considered the occupier as they control the premises (s1(2)(a)) • Alex enters Birds & Nests park as a lawful visitor - she has paid a fee to enter and followed the set path • Alex becomes a trespasser when she enters the room marked "No Entry" • Birds & Nests should have been aware of the danger – spilt nectar would be considered sticky/a slip hazard (s1(3)(a)) • The office was used by staff therefore Birds & Nests would have reasonable grounds to believe that someone else is in the vicinity of the danger or may come into the vicinity of the danger (s1(3)(b)) • It is reasonable to expect Birds & Nests to offer some protection (s1(3)(c)) • Birds & Nests would be unable to discharge their s1(5) duty as: <ul style="list-style-type: none"> ○ a "No Entry" sign would not be considered to be taking such steps as are reasonable in all the circumstances of the case to give warning of the danger concerned ○ A "No Entry" sign might not be considered enough to discourage persons from incurring the risk • Alex will be able to make a successful claim under the Occupiers' Liability Act 1984 <p>Credit any other relevant point(s).</p>	<p>8 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used. <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good application of legal argument application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used. <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. <p>Level 1 (1–2 marks)</p> <ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
7	<p>Advise Alex what remedies she may claim for if 'Birds & Nests' are found liable</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Alex will seek damages to restore her to the same position she would have been if the tort had not been committed • Alex would likely receive any damages as a lump sum • Alex will seek special damages - out of pocket quantifiable expenses from before the trial including: <ul style="list-style-type: none"> ○ travel costs to and from the hospital for treatment ○ loss of wages - 12 x £500 • Alex will seek general damages in respect of: <ul style="list-style-type: none"> ○ pain and suffering caused by the accident including the constant pain caused by the broken back ○ loss of amenity - Alex is no longer able to exercise or play hockey ○ mental anguish/emotional distress - Alex now has depression • Alex must mitigate any losses - keep the loss to a reasonable level: <ul style="list-style-type: none"> ○ If there is suitable physiotherapy treatment at the local NHS clinic, she will be unable to claim for private treatment but, as the waiting list for NHS treatment is six months and the private treatment can start immediately, Alex may be successful. <p>Credit any other relevant point(s).</p>	<p>8 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used. <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good application of legal argument application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used. <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. <p>Level 1 (1–2 marks)</p> <ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
8	<p>Discuss the extent to which the Occupiers' Liability Act 1957 successfully balances conflicting interests by providing justice for both occupiers and their visitors.</p> <p>Candidates may develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column.</p> <p>Provides justice for occupiers:</p> <ul style="list-style-type: none"> • An occupier is not required to show that the premises were safe for the particular visitor - the duty is to keep the visitor safe under s2(2) • The occupier is only expected to do that which is reasonable to ensure the visitor will be reasonably safe - they are not obliged to maintain completely safe premises • The claimant has to prove fault - that a duty of care exists, that the occupier breached that duty and that the breach of that duty led to the damage complained of • There is an obligation on visitors to take responsibility for their own safety. There is acknowledgement that unfortunately accidents happen. <i>Dean and Chapter of Rochester Cathedral v Debell</i> • The occupier has the right to expect a person exercising their calling to guard against any special risks linked to their work s2(3)(b), independent contractor s2(4)(b) • If the occupier can show that there was an effective warning there will be no liability - s2(4)(a) • Two defences are available to the occupier - contributory negligence and <i>volenti non fit injuria</i> • The test as to whether the occupier has kept the visitor safe is an objective test. Using an objective test is the standard approach in tort law <p>Provides justice for visitors:</p> <ul style="list-style-type: none"> • The Act protects a wide range of 'lawful visitors' including invitees, licensees, those with contractual permission and those with statutory rights to enter • The occupier is required to keep the visitor safe including eliminating any danger to the visitor • There is no statutory definition of an occupier and the term is not limited to just owners or tenants. This allows a visitor to sue a person 'in control' giving them a greater chance of success. <i>Wheat v Lacon, Harris v Birkenhead</i> 	<p>8 AO3 1a</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks)</p> <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal concepts. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p> <p>Level 3 (5-6 marks)</p> <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal concepts. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p> <p>Level 2 (3-4 marks)</p> <ul style="list-style-type: none"> • Basic analysis and evaluation of legal concepts. • The response is partially focused on the question. • Some of the key points are discussed and partially developed. <p><i>The information has some relevance and is presented with basic structure. The information is supported by limited evidence.</i></p> <p>Level 1 (1-2 marks)</p> <ul style="list-style-type: none"> • Limited analysis of legal concepts. • The response has limited focus on the question.

<ul style="list-style-type: none">• There is no full statutory definition of premises. This allows the claimant greater opportunity to claim as it will include a wide range of structures including a ladder. <i>Wheeler v Copas</i>• Justice is provided to children under s2(3)(a). Occupiers owe a 'higher' duty of care towards children and must be prepared for children to be less careful than adults• Additional justice is provided to children as the doctrine of allurement treats children who would otherwise have been trespassers as visitors as they have been drawn to the premises by something enticing yet dangerous. <p>Credit any other relevant point(s).</p>	<ul style="list-style-type: none">• Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>
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Need to get in touch?

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