AQA AS and A-Level Tort

Answers to self-test questions and tasks for Part 1

Chapter 1

Task 1

The role of law in society is to regulate behaviour so the court will look at protecting pedestrians from harm caused by cricket balls. However, when doing this the court will need to balance the competing interests. This is not only the cricket club and the injured woman but the interests of society are into account, and it is this public interest which prevailed. Having cricket was judged as more important in these circumstances and it is interests of society as a whole. The level of fault was low because the club had built a high fence and taken other precautions. When balancing interests the judge will try to achieve justice, but there is no agreed definition of what justice is and there is unlikely to be agreement on whether it was achieved. The club took precautions so it seems just that it was not liable, but the woman may not feel justice was achieved. Finally, the woman may have felt she had a moral right to be compensated but she did not have a legal one.

Chapter 2

Task 2

You may have put it slightly differently but one way of putting it would be that you should take care not to do something, or fail to do something, that might harm others. This does not mean everyone but those who are likely to be affected by your actions, e.g., people you should have considered before acting. Applying this to **Donoghue v Stevenson**, a manufacturer should owe a duty to a consumer because a consumer is someone likely to be affected by the actions of a manufacturer. A consumer is also someone whom a manufacturer ought to have in mind when manufacturing the product, in this case ginger beer.

Task 3

Mrs D couldn't sue the shopkeeper because she had no contract with the shopkeeper, her friend bought the drink.

She sued the manufacturer and the HL decided that a manufacturer owes a duty to the consumer.

I think the manufacturers were negligent in not checking the contents properly or by allowing a snail to get into the production area.

Task 4

There are several types of relationships which arise in sporting situations and therefore many people could owe a player a duty of care. These could include the organiser of the event and a referee as in **Watson** and **Vowles**. It could also include a manager or coach, the club where the player was injured or played for, other participants in the sport or anyone who had a role to play in setting up the event.

Self-test questions

1. In **Sutherland Shire County**, Brennan J said, "It is preferable, in my view, that the law should develop novel categories of negligence incrementally and by analogy with established categories."

2. The three-part **Caparo** test is:
    a. there must be foreseeability of harm
    b. there must be proximity between C and D
    c. it must be fair, just and reasonable to impose a duty on D
3. Among others, police, hospitals, rescue services and local councils might be immune from owing a duty.
4. No duty was owed in **Bourhill v Young** because there was no proximity between her and the driver because she was not at the scene.
5. No duty was owed in **Caparo** because there was no proximity between the investor and the auditors, nor was it fair, just and reasonable to impose a duty.

Chapter 3

Task 5

Applying the factors to **Bolton v Stone 1951**, the *potential harm* would be serious as cricket balls are very hard and can kill. However, this is balanced against the low *degree of risk* (it had rarely happened) and the *precautions* the cricket club had taken (erecting a high fence). It is also arguable that it was *justifiable* due to the social benefit of the game of cricket. Finally, it was a '*desirable activity*' under the **Compensation Act**. On balance, the club was not in breach because it had done all that a reasonable cricket club would do.

Task 6

You may have chosen other cases, but here is one example. In **The Scout Association v Mark Barnes 2010**, the important factor was whether the activity had sufficient social value. The CA thought the value was limited and therefore the risk was not justified.

Applying the other factors, it can be said that the risk of harm was foreseeable because the main lights were off and the scouts were running around in the dark. The seriousness of harm would not seem that great though, because there is only a limited amount of harm that can be caused by people running around indoors. The club had taken some precautions by using the emergency lighting but arguably should have removed the furniture, at least at floor level. On balance, it seems the lack of social value was the deciding factor in finding the Scout Association had breached its duty.

Task 7

Here is the summary with some cases added

The standard of care expected is that of the reasonable person in those circumstances

Reasonable parent (Harris v Perry)

Reasonable employee (Daw v Intel)

Reasonable child (Mullins/Orchard v Lee)

Reasonable doctor (Bolam/Bolitho/Montgomery)

The standard expected is based on 4 factors:

The degree of risk (Bolton v Stone)

The seriousness of potential harm (Paris v Stepney BC)

Whether the risk was justifiable (Watts)

The expense and practicality of taking precautions (Latimer)

Self-test questions

1. The objective standard was explained by Baron Alderson in **Blyth v Birmingham Waterworks Co. 1856**.
2. The four factors which the court may consider when deciding what is reasonable, with a case example, are:
    a. the degree of risk – **Bolton v Stone**
    b. the seriousness of potential harm – **Paris v Stepney BC**
    c. the expense and practicality of taking precautions – **Latimer v AEC**
    d. whether the risk was justifiable – **Watt v Hertfordshire CC**
3. The standard expected of a professional is the standard of a person in that line of work
4. The standard expected of a child is the standard of a child of similar age, not an adult
5. The employers had not breached their duty in **Maguire v Harland & Wolff plc 2005** because at the time of C's exposure the risks of secondary exposure were unknown. The injury to a member of C's family was therefore not foreseeable.

Chapter 4

Task 8

The answer depends on your chosen cases but here is one example from the duty cases and one from breach.

In **Watson v British Boxing Board 2000**, the boxer Michael Watson suffered head injuries during a fight against Chris Eubank. He sued the Board on the basis that had proper medical treatment been given at the ringside he would not have suffered brain damage. It can be said that 'but for' the failure to provide medical treatment he would not have suffered brain damage. As regards remoteness of damage, it is foreseeable that if medical treatment is not available at a boxing match where people are hitting each other, then someone could suffer harm. As harm is foreseeable it is not too remote from the negligent act or omission (the failure to provide medical treatment) so the **Wagon Mound** test is also satisfied.

In **Palmer v Cornwall CC 2009**, a boy of 14 hit another boy in the eye while throwing stones at seagulls. The CA held that only one supervisor for around 300 children was clearly inadequate so the council was in breach of duty. It can be said that 'but for' this breach the boy would not have been injured. It is also foreseeable that if there is not adequate supervision the boys may do something like this (based on the idea that children are likely to "do the unexpected" as held in **Jolley**). The harm was therefore not too remote from the breach of duty (the failure to provide adequate supervision).

Task 9

Here are the questions with some cases added.

Would the harm have occurred 'but for' D's act or omission?

The 'but for' test comes from **Barnett v Chelsea and Kensington HMC**. In that case the man would have died regardless of treatment so the 'but for' test was not satisfied. The answer to 'but for the breach would he have died?' was 'yes, he would have died anyway'.

Was the harm foreseeable or was it too remote?

Under the **Wagon Mound** rule, causation in law is only proven where the harm was foreseeable. The damage from the fire was not foreseeable so it was too remote from the breach and D was not liable for this, only for the damage from the oil.

Was this *type* of harm foreseeable?

In **Hughes v Lord Advocate**, the court held that as long as the type of harm was foreseeable the exact extent of the harm need not be. Here the burns were foreseeable so D was liable for the greater injury caused by the explosion.

Does the thin-skull rule apply?

If there is something which makes V more vulnerable than other people this will not affect D's liability. In **Smith v Leech Brain 1962**, D's negligence caused a small burn, which activated a latent cancer from which C died. D was liable for the death, not just the burn.

Self-test questions

1. The 'but for' test asks 'but for D's action would harm have occurred?' It comes from **Barnett v Chelsea & Kensington HMC**.
2. **The Wagon Mound** case established the rule on foreseeability
3. **Hughes** added that if the *type* of harm is foreseeable this is enough; the exact harm need not be
4. The 'thin skull rule' means that if a person is harmed because he/she is particularly vulnerable (e.g., has a thin skull), D is liable for the full consequences even if someone without the vulnerability would not have been harmed to the same degree.

The point made in **Jolley** (in the HL) regarding children, was that they do the unexpected

Chapter 5

Task 10

There are many possibilities and you may have chosen others. Lawful visitors would include anyone called in such as a doctor, plumber, decorator or electrician. Others who may have implied consent to be on the premises would include the emergency services, delivery or postal workers, refuse collectors and meter readers.

Task 11

In **Glasgow**, the claim succeeded because the berries were attractive to a child, so classed as an allurement, and the child was old enough not to require the constant supervision of a parent as it was a public park (where children are expected to play). In **Phipps**, the court held that if the child is very young, a parent or other adult should take responsibility so D is less likely to be liable for an allurement.

Task 12

In **Woodward**, it was easy to check the work of the cleaner. In **Gwilliam**, D could not be expected to check how a 'splat-wall' had been set up (so this is more like **Haseldine**). In **Bottomley**, the cricket club should have checked insurance was in place whereas in **Gwilliam**, the hospital had specifically asked about insurance, and paid for it, so were not liable.

Task 13

Pete's injury may not be one he is expected to take precautions against, if it is seen as outside his area of expertise, so Tim may be liable. However, it could go either way. If, e.g., the plank is rotten due to the faulty water tank, it is arguable that he is in the exercise of his calling, and should guard against such risks.

Eddie is more clearly in the exercise of his calling, and should guard against the risk of being electrocuted. In this case Tim is unlikely to be liable.

Task 14

There is no set answer for this but hopefully you spotted some signs.

Self-test questions

1. The control test is used to decide who is an occupier – **Wheat v Lacon**
2. The occupier's duty is to take such care, as in all the circumstances of the case is reasonable, to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited to be there – **Poppleton**
3. An allurement is something attractive, especially to a child. In the case of children this could mean the **1957 Act** rather than the **1984 Act** applies, i.e., a child trespasser may become a lawful visitor by being 'invited' by the allurement – **Glasgow Corporation v Taylor**
4. An occupier may owe a duty for work done by an independent contractor when not taking reasonable care in selecting a suitable contractor, or not checking the work **Woodward v Mayor of Hastings**

Chapter 6

Task 15

I would explain to Paul the provisions of **s 1(3)** of the **1984 Act**, because he knows the neighbours' kids are coming in, and he knows the pool is deep so possibly dangerous. However, it may not be reasonable to expect him to protect against this risk more than he has done. I would also tell Paul that even if a duty was owed (and this is not very likely) under **s 1(5) OLA 1984**, an occupier can discharge any duty by putting up warning signs. The sign he erected may not be enough on its own, as it does not warn of any danger, but by also erecting a high fence he has taken such care as is reasonable in the circumstances so will not be liable. I would add that a swimming pool may be considered an allurement and could bring any claim within the **1957 Act**. However, I would reassure him that he has again discharged his duty by putting up a high fence and the sign.

As regards why my advice might be different on the later occasion, I would again explain the provisions of **s 1(3)** of the **1984 Act**, in particular that Paul now knows of the danger because it happened before. He has reasonable grounds to believe the neighbours' kids might come into the vicinity now there are gaps in the fence. It is reasonable to expect him to protect against this risk by mending the gaps in the fence. He is likely to be liable unless he can persuade the court that the harm was caused by the activity rather than the state of the premises, but as it would be easy to fix

the fence it is more likely that **BRB v Herrington** rather than **Tomlinson** or **Keown** would be followed.

Task 16

There is a diagram for this in the summary.

Self-test questions

1. **British Railways Board v Herrington** led to the **OLA 1984**
2. The case of **Scott and Swainger** illustrates the more limited duty under the **1984 Act**
3. The three points for proving the occupiers' duty under **s 1(3)** are:
    a. **D is aware of the danger or has reasonable grounds to believe it exists**
    b. **D knows or has reasonable grounds to believe a 'non-visitor' is in, or may come into, the vicinity of the danger**
    c. **The risk is one against which, in all the circumstances of the case, D may reasonably be expected to offer protection.**
4. There was no liability in **Ratcliff** because he knew what he was doing and the risk of hitting his head on the bottom would be obvious to anyone.
5. Cases involving child trespassers sometimes come under the **OLA 1957** if there is an allurement, something so attractive that it effectively 'invites' the child onto the premises.

Summary 1

Task 17

If a case is based on policy the judge will take into account what is best for society as a whole, so each case will depend on its particular facts.

Tasks 18 and 19

Duty

Based on the **Caparo** test

The loss must be foreseeable – **Donoghue**

There must be proximity between the parties – **Bourhill**

It must be fair, just and reasonable to impose a duty – **Hill**

Breach

The standard expected of D is that of the reasonable person – **Blyth**. Note, though the subjective element:

professionals **(Bolam/Bolitho/Montgomery)**

learners **(Nettleship)**

children **(Mullin)**

Add the four factors which apply in all cases:

the degree of risk – **Bolton v Stone/Maguire v Harland & Wolff plc 2005**

the seriousness of potential harm – **Paris v Stepney BC1951**

whether the risk was justifiable – **Watt v Hertfordshire CC 1954**

the expense and practicality of taking precautions – **Latimer v AEC 1952**

Causation

Add the other four points

Would the harm have occurred 'but for' D's act or omission**? Barnett v Chelsea & Kensington HMC** but note also **Fairchild v Glenhaven Funeral Services Ltd**

Was the harm foreseeable or was it too remote**? The Wagon Mound**

Was this type of harm foreseeable**? Hughes v Lord Advocate**

Does the thin-skull rule apply**? Smith v Leech Brain**

Task 20

Case	Brief facts	Principle
Glasgow Corporation v Taylor	A 7-year-old child died after picking and eating some berries in a park and the council was liable	if there is an allurement a child may be a lawful visitor
Phipps v Rochester Corporation	A 5-year-old C was injured on council land but was only with another child. The council was not liable	adults should be responsible for very young children
Jolley v Sutton LBC 2000	A 14-year-old boy was injured when working on a derelict boat on council land. The council were liable	children should be expected to do the unexpected
General Cleaning Contractors v Christmas	A window cleaner was injured when he fell off a building after a defective window closed on his hand	a professional is expected to guard against risks incidental to the job
Ogwo v Taylor	C was a fireman who was injured putting out a fire negligently started by D	if a professional is on the premises because D has been negligent, there is more likely to be a duty
Bottomley v Todmorden Cricket Club	A cricket club hired an uninsured stunt team to perform firework displays on its land and a helper was injured	taking reasonable care includes checking insurance is in place
Tomlinson	An 18-year-old dived into a lake	if an injury is caused by a voluntary activity rather than the state of the

	and sustained injury	premises D is not likely to be liable

Chapter 7

Task 21 examination practice

Answers for Year 1 exam practice

Multiple choice questions 1 to 10, 1 mark each

Question 1	C
Question 2	D
Question 3	D
Question 4	A
Question 5	C
Question 6	A
Question 7	A
Question 8	C
Question 9	B
Question 10	A

Question 11

There are two types of public bill.

Government bills are public bills introduced by a government minister, which is the most common form. Private members' bills are public bills introduced by an individual Member of Parliament. These are limited and rarely get through to becoming an Act unless they have government support. However, some important Acts have been passed this way as it is a means of introducing unpopular measures without including them in official government policy.

Private bills are used by local authorities and large companies, such as the railways.

Public bills affect the whole country. Private bills only affect a section of the community.

3 marks

Question 12

Brief explanation and application of **s 1(3)** of the **Act**

The occupier is aware of the danger or has reasonable grounds to believe it exists. Mr Jones must have known of the danger because he put up a fence. **1 mark**

The occupier knows or has reasonable grounds to believe a 'non-visitor' is in, or may come into, the vicinity of the danger. He knew this as he was 'fed up' with boys coming in. **1 mark**

The risk is one which, in all the circumstances of the case, the occupier may reasonably be expected to protect against. He had built an eight-foot fence and put up warning signs so could not reasonably be expected to do more. He is therefore unlikely to owe Shane a duty. **1 mark**

Question 13

I would advise Sam that he will need to prove duty of care, breach of duty and causation.

The **Caparo** test for duty is foreseeability, proximity and whether it is fair, just and reasonable to impose a duty.

In **Donoghue v Stevenson**, it was foreseeable that the manufacturer's actions could harm a consumer of the ginger beer. Here it is foreseeable that Andy's actions in leaving the bridge unattended would cause harm to passers-by, as it was in a dangerous state.

In **Kent v Griffiths**, an ambulance service was in proximity to a patient once it had accepted the call and dispatched an ambulance. Here Andy had a proximate relationship with motorists near the bridge, including Sam, as he had taken charge of the situation.

It is fair, just and reasonable to impose a duty in these circumstances because it will not open the floodgates to claims as only a limited number of people will be in the area. It will not make policing ineffective as in **Hill v CC for West Yorkshire**, where it was not in the public interest to impose a duty because it could lead to defensive policing.

Breach is based on what a reasonable person would do (**Blyth v Birmingham Waterworks Co**.). The courts will consider whether Andy had acted as a reasonable police officer should, by balancing several factors against each other.

Firstly, the degree of risk was high because the bridge was in a dangerous state. In **Bolton v Stone**, the risk was low so sufficient care was taken by erecting a fence. Here there was a higher risk, which raises the standard, so greater care should have been taken. The gravity of harm is high, as in **Paris v Stepney BC**, which again raises the standard expected. A collapsing bridge could potentially cause serious harm to anyone nearby. There appears to be no justification for taking the risk, which could have been the case, e.g., if Andy was called to an emergency. Then he could rely on **Watt v Hertfordshire CC**, where a fire service was not in breach because they were rushing to an emergency. Finally, taking precautions against the risk would not have been expensive or impractical; he could have put up cones or warning signs. In **Latimer v AEC** sufficient precautions were taken, but this is not the case here. On balance, he did not reach the standard expected of a reasonable police officer.

Sam would not have been injured 'but for' Andy leaving the scene unattended, unlike in **Barnett** where the man would have died anyway. The harm is not too remote from the breach (**The Wagon Mound**) because it is foreseeable that leaving a bridge in a dangerous state could cause harm. There is causation in fact and in law, so Sam may want to make a claim.

Claims are allocated onto different tracks. The first track is the small claims track and cases on this track are heard in a special room in the county court. The maximum claim for this track is £10,000, and in personal injury cases it is £1,000. A district judge presides over the case which is heard in private rather than the usual open court. The advantage of this would be that it is a much quicker and cheaper process than a full court hearing. Sam could be on this track as it says he only needed a week off work but it may be that his claim is for more than £1,000.

The next track is the fast track and this deals with claims between £10,000 and £25,000 and personal injury over £1,000. Cases on this track will start in the county court, again with a district judge. There is a strict time-table set by the judge so that the case is dealt with speedily and efficiently, and

costs are limited, which is an advantage. It is quite possible that Sam's claim will be allocated to this track.

The third track is the multi-track and all cases over £25,000 are allocated to this track. Cases on this track will start in the High Court. Again, the judge will manage the case and set a time-table, sometimes following a case management meeting. As Sam only spent a week off work it is unlikely that he will be allocated to this track unless the case is complex. Although on this track the judge will still manage the case and try to keep to a timetable, the disadvantage is that court costs in the High Court are more. Also, if the case is complex the lawyers' fees and costs for expert witnesses will be greater.

Although cases on the fast track start in the county court and cases on the multi-track start in the High Court there is a provision in the Civil Procedure Rules for the case to be moved up a track if it is very complex or down a track if it is relatively simple. This is a good thing because it means some simple cases can be heard in the county court even if the amount involved is quite high. Similarly, a complex case involving a relatively small amount of money may be heard in the High Court.

Overall the track system makes sense because the simpler the case the lower the costs. The flexibility provided by the Civil Procedure Rules is a clear advantage because the case will go to the court which is most appropriate and this will not be based solely on the value of the claim.

This scenario is based on ***Gibson v Chief Constable of Strathclyde Police 1999***

12 marks

Question 14

I would advise Xavier he may have a claim under one of **the Occupiers Liability Acts**. Which Act applies will depend on whether he is classed as a visitor or a trespasser. He started as a visitor but may have become a trespasser when he went beyond any implied permission by climbing the wall. Also, the harm arose from doing this. The HL said in **Tomlinson v Congleton BC**, that an occupier is not liable if harm is caused by C's activity, rather than the state of the premises and this was applied in **Keown v Coventry NHS Trust**, where a boy was injured when he climbed a fire escape in hospital grounds and the hospital was not liable. In **Kolasa v Ealing Hospital NHS Trust 2015**, C climbed a wall while waiting at a hospital and the hospital was not liable because his injuries were caused by his activities, not the state of the wall, as here. Xavier is unlikely to be owed a duty under either **Act**. If either did apply it would be the **1984 Act**. In **Kolasa** the court held that even though a visitor at first, he had gone beyond any implied invitation by climbing the wall, so was a trespasser. Also, the duty under the **1957 Act** is to keep the visitor reasonably safe in using the premises 'for the purposes for which he is invited to be there' and he was not at the hospital for the purpose of climbing a wall. For a duty under **s 1(3)** of the **OLA 1984**, the occupier must know or have reasonable grounds to believe in the existence of both the danger and the 'non-visitor'. As the wall is not dangerous this is not satisfied. Nor is the final requirement, as it is not reasonable to expect the hospital to offer protection against a non-existent risk.

In the unlikely event that Xavier has a valid claim, he will want compensation. He can claim for his injuries and any expenses resulting from these. He cannot claim for damage to his clothing because damage to property cannot be claimed for under the **1984 Act**. In conclusion I believe that, as in **Kolasa**, his claim will fail.

The Law Commission is a permanent body, set up in 1965 to review and develop both civil and criminal law. This involves not only suggesting reforms, but also simplifying the law by consolidation and codification. Consolidation is where the LC suggests bringing several Acts of Parliament on a particular topic together into one Act of Parliament. Codification is where law from various sources (both common law and Acts) is brought into an Act of Parliament. Both these influence the resulting law made by Parliament.

The Law Commission has an influential role because its reports pass through several stages before being presented to Parliament. A detailed 'scoping' paper is prepared which lays out the scope of the project and contains some provisional recommendations. This is available to various interested parties and there is wide consultation on the issues involved. It also goes to the relevant government department and the media. When feedback has been received a draft report is prepared and further debated before being made into a formal report containing a Draft Bill where appropriate.

The LC plays an important role because it is made up of lawyers and academics and has a large support staff, so it brings extensive technical and legal expertise to the process of preparing law. It is also independent. The fact that a draft bill is attached to a report ensures that the suggested reforms can be introduced to Parliament without delay. These bills are also accurate and detailed as they are the product of extensive research. Although this makes the LC's role a valuable one it does mean that there are sometimes huge delays before a bill even gets to Parliament. Reports may take years and then not be acted upon at all. An example is the work of the LC in attempting to reform the **Offences against the Person Act 1861**. The LC produced a report and Draft Bill In 1993, which never received parliamentary time. In 1998 the government produced its own Bill incorporating most of the recommended changes, but again little happened. In 2014, the Commission issued another consultation paper. A report, still based on the 1998 Draft Bill, followed in 2015 but nothing has happened. A more positive example is the **Occupiers Liability Act 1984**. This followed a decision by judges in the House of Lords that occupiers could be liable to trespassers who had been caused harm. The Government asked the LC to prepare a report on this issue which resulted in the Occupiers Liability Bill. The Bill was introduced to Parliament and became the **OLA 1984**. These examples of the LC's influence on parliamentary law-making show it is of mixed value.

12 marks

Question 15

Inga is a member of the club so is a lawful visitor and can claim under the **OLA 1957**. Matt is also a member of the club but has gone to an area where he is not allowed so is a trespasser. His claim would come under the **OLA 1984**.

The meaning of 'occupier' is anyone who is in control of the premises as established in **Wheat v Lacon**. Kevin is therefore an occupier as the manager of the hotel was in that case.

Kevin's duty regarding Inga comes under **s 2(2)** of the **1957 Act.** He should ensure that she, and other visitors, will be reasonably safe in using the premises for the purposes for which they are invited to be there, which is using the club facilities.

The main point here is **s 2(4)(b)** which provides that if the visitor suffers damage caused by the work of an independent contractor, the occupier will not be liable to the visitor provided that he acted

reasonably in selecting the contractor and used reasonable care in checking that the work was properly carried out. If the work is easy to check then he will have failed to satisfy this section as in **Woodward v Mayor of Hastings**. However, as it was of a technical nature **Haseldine v Daw** suggests he will not be liable. In **Maguire v Sefton MBC 2006**, C was injured while using an exercise machine at a leisure centre operated by the council. The council had an agreement with the seller of the machines to carry out a pre-contractual inspection and no defects were found in the machine C had used. The CA held that by arranging the inspection the council had taken reasonable steps and it was entitled to rely on the experts. As the facts are similar I would conclude that Kevin will not owe a duty under the **Act**. However, if he does the next step is to consider breach.

As well as the special provisions regarding independent contractors, the various breach factors will be balanced to decide if Kevin reached the standard of a reasonable fitness club manager. The courts will look at the cost and practicality of precautions when deciding whether Kevin had done what was reasonable in the circumstances. It may be that he had taken sufficient precautions (as in **Latimer v AEC**) by getting a specialist firm in. This will be balanced against the risk of harm, which is not very high, and the magnitude of potential harm, which is also low, unlike in **Paris v Stepney BC** where C was particularly vulnerable so was owed a higher standard of care. Finally, it can be said that a fitness club has a social benefit indicating any risk may be justifiable, as in **Uren v Corporate Leisure**, although in that case any social benefit was outweighed by the higher risk of harm and the lack of precautions. If breach is proved, causation would not be difficult as it is foreseeable that faulty equipment can cause harm so it is not too remote.

On balance Kevin is unlikely to have breached his duty because he took adequate precautions and, as in **Latimer** and **Bolton v Stone**, he has done all that can reasonably be expected.

Although Ian was a club member, so appears to be a visitor, he was a trespasser when he entered the climbing area. Kevin's sign on the door saying 'Danger No admittance' shows he clearly did not have permission to enter, so the **1984 Act** applies. **Tomlinson v Congleton BC** came under the **OLA 1984** because the boy ignored the 'No Swimming' signs, thus becoming a trespasser. So, Ian has become a trespasser even though invited as a member originally.

The duty under **s 1(1)** is to take reasonable care to see that the trespasser does not suffer injury due to the state of the premises. **S 1(4)** states that the duty is to take such care as is reasonable in all the circumstances. If a trespasser is injured by his own voluntary activities, rather than by a danger due to the state of the premises, the duty will not arise (**Tomlinson**). In **Poppleton v Trustees of the Portsmouth Youth Activities Committee 2008**, a man was injured when at an activity centre simulating rock climbing. The occupier was not liable because it was the activity rather than the premises that was dangerous. Here it is different because the climbing wall was faulty, so the danger is due to the state of the premises. Therefore, the provisions of **s 1(3)** need to be considered.

Under **s 1(3)** the duty only arises if:

> the occupier knows or has reasonable grounds to believe that the danger exists
>
> the occupier knows or has reasonable grounds to believe that a trespasser is or might be in the vicinity of the danger and
>
> it is reasonable to expect the occupier to protect the trespasser against the danger

Kevin knows of the danger because he put up a sign.

He may not 'know' or have 'reasonable grounds to believe' a trespasser may be present. The sign is not just a warning but forbids entry. He would therefore expect people not to enter. As with **Tomlinson v Congleton BC**, where the boy ignored the 'No Swimming' signs, this may mean there is no liability.

The third part may be satisfied because it is reasonable to expect Kevin to protect the trespasser against the danger of a defective piece of climbing equipment, which he knows about. However, even if a duty is owed, a warning sign will discharge any duty as long as it is adequate (**s 1(5)**). The notice mentions the danger as well as saying no admittance so may well be deemed sufficient to keep people safe (again, as in **Tomlinson**). Also looking at the breach factors, he has taken reasonable precautions; firstly, by getting in a specialist firm and secondly, by taking note of their comments about the equipment and putting up the sign.

If breach is proved causation would not be difficult as it is foreseeable that faulty equipment can cause harm so it is not too remote.

If either claim should succeed despite these issues, the remedy will be monetary damages to put Inga and Ian back in the position they would have been had a breach not occurred, i.e., compensation for the harm caused and any relevant expenses. The first will be general damages assessed by the court and the second special damages as they will be quantifiable. Ian would not be able to claim for any loss or damage to property, such as torn clothes, because under the **OLA 1984** he can only claim for personal injuries.

Question 16

Before the legislative process starts there are many influences on Parliament and pressure for changes in the law. There are many stages to go through before a suggested change becomes law, both informal and formal. Before the formal procedure starts the proposals are discussed with various organisations and people who may be affected by them. At this informal stage, the government may publish Green and White Papers. These are 'consultation documents', which give people an opportunity to comment on the proposals and thus influence the final Bill. This is an important part of having a democratic process for making law. Also, the Law Commission may propose changes or a decision in court may lead to Parliament changing the law to confirm (or possibly reject) that decision, often at the same time reasserting its supremacy. An example is the **OLA 1984** where both these occurred. In **BRB v Herrington 1972**, the HL held that an occupier owed a duty to trespassers. The Law Commission were asked by the Government to prepare a report, and this eventually resulted in the **Occupiers Liability Bill**. The Bill was introduced to the House of Lords and gained Royal Assent in 1984. This is an example of a judicial decision in a case influencing the law. It is also an example of parliamentary supremacy being reasserted following a law being established in court, which is seen as undemocratic. When Parliament passed the **OLA** in 1984 it retook the position of law-maker. Finally, the **OLA 1984** is an example of a bill being introduced to the Lords rather than the House of Commons, which is the more usual procedure. Unusually, the **OLA 1957** is an example of both. It had been introduced to the Lords in 1956 but ran out of time before going to the Commons. The following year it was reintroduced to Parliament, this time to the Commons. It then went through both Houses and became law the same year. The only bills that must be started in the Commons are Finance Bills. The role of the House of Lords is that of a revising chamber and it has more time for debate so can have a good effect on the process. However, it does mean it is more time-consuming and there are examples of a ping-pong procedure where bills

get sent back and forth between the two Houses with various amendments and objections. This can go on for a considerable time before the Bill eventually becomes law, an example being the **Immigration Bill in 2016**. The House of Lords can delay but cannot veto a Bill. This is because the **Parliament Acts** allow the Commons to bypass the House of Lords after a period of time and send the Bill through for Royal Assent without the consent of the Lords. This happened with the **Hunting Bill** and highlights the greater power of the elected chamber.

The introduction of the Draft Bill into one or other Houses of Parliament as discussed above starts the formal procedure. For public bills this is usually done by the relevant government minister. At this point there is a first reading. This merely notifies the House of the Bill and its subject matter. There is no debate, but there is a vote. The second reading is where the main debate on the principles of the Bill occurs, followed by a vote. The next stage is the committee stage where a committee of Members of Parliament examines the details of the Bill clause by clause and suggests amendments. This is where there is the greatest scrutiny and the chance of correcting any errors. This is an advantage of parliamentary law-making, but there is a down side in that the law may be affected by political influences rather than genuine debate. In the Commons, the report stage is next; this is where the committee report the amendments back to the House. This stage usually goes along with the third reading, and then a vote is taken. The Bill then goes to the other House for similar procedures, although in the committee stage in the Lords the whole House acts as a committee and there is no report stage. The final stage is Royal Assent; this is where the Monarch gives approval to the Bill. This is a formality and not undertaken by the Queen personally. The last time Royal Assent was refused was by Queen Anne in 1707. The bill is now an Act of Parliament although not necessarily law as sometimes time is given for implementation of the Act and it becomes law later. The Act may specify a date on which it will come into force, or give power to a Minister to bring it in at a later date, as with the **Human Rights Act 1998**. This also started in the Lords and is an example of how lengthy the process can be. It took over two years to go through the two Houses and another two years before it was brought into law by the Home Secretary. This is one of the main problems with the process: it is very time-consuming. However, it is more democratic than unelected judges making law, and taking time allows for greater scrutiny of the law. Having said it is more democratic, it should be noted that only the Commons is elected so it is not a fully democratic process and there have been some calls for making the Lords an elected House.

In conclusion, the value of the legislative process lies firstly in its democratic nature. This is shown by the fact that the elected chamber has the greatest power. Secondly, despite the problems of the process being time-consuming, it does mean that issues are properly debated and made public via media reporting.

20 marks

Answers to self-test questions and tasks for The Bridge and Part 2

Task 22

There is no answer for this task but hopefully you have made some notes.

Chapter 8

Task 23

The difference in **KPMG** was that the accountants knew that the information would be passed to the Law Society, because this was a legal requirement. They also knew that they would rely on the reports. In **Caparo**, the auditors did not have such knowledge so did not owe a duty.

Task 24

It is arguably unfair for the court to have found the friend owed a duty in **Chaudhry** because he was doing a favour for a friend. On the other hand it could be said to be fair because he was an expert on the matter and it was reasonable for her to rely on his advice.

Task 25

When proving a breach of duty the usual standard that D is measured against is that of a reasonable person. If D is a professional the difference is that the standard becomes that of another professional in the same field. A case example is **McDonnell v Holwerda 2005**, where a GP was compared to a reasonably competent GP (and had breached the duty by not recognising the possibility of meningitis in a child after a second examination).

Task 26

It depends on which case you chose but here is an example using **White v Jones**. The solicitor was found to owe a duty based on his assumption of responsibility to do his job properly and had breached it by not doing as asked by the man wanting to change his will (the testator). We can say that but for his failure to act the daughters would have received their inheritance so would not have suffered loss (**Barnett**). It is foreseeable that a beneficiary will suffer loss if a solicitor fails to do as asked by the testator so it is not too remote from the breach (**The Wagon Mound**). Both factual and legal causation are therefore shown.

Self-test questions

1. A special relationship exists where:
    a. a special skill is possessed by D, who makes the statement
    b. C reasonably relies on D's statement
    c. D knows that C is 'highly likely' to rely on the statement
2. The claim failed in the **Mutual Life** case because the advice was outside D's area of expertise.
3. **Smith *v* Bush** shows a surveyor may not owe a duty to a buyer in a commercial transaction.
4. The above case was distinguished in **Scullion v Bank of Scotland plc 2011**.
5. In **White v Jones**, the emphasis was on the assumption of responsibility by a professional.

6. Longmore LJ summarised the position in **Customs and Excise Commissioners *v* Barclays Bank** by saying that in cases of economic loss it was appropriate to use each of the following tests:
    - the 3-fold **Caparo** test:
        - foreseeability
        - proximity
        - whether it is fair, just and reasonable to impose a duty
    - the 'assumption of responsibility' test
    - the 'incremental' test

Chapter 9

Task 27

The relationship between Mrs McLoughlin and the victims was very close, that of wife and mother. In **Bourhill**, there was no relationship between the driver and Mrs Bourhill.

Mrs McLoughlin was not at the scene but was sufficiently proximate because she saw the 'immediate aftermath'. Mrs Bourhill did not have proximity because she was some distance away.

Both would satisfy the rule that there must be a sudden shock which caused a recognisable illness but this alone is not enough.

Task 28

The difference between the passenger in **Page** and the police in **White** was that the passenger in **Page** was in danger himself and so a primary victim. The police claims failed because they were classed as secondary victims and so had to satisfy the control mechanisms. They could not do this as they had no relationship to any of the victims.

Task 29

In **Chadwick**, the rescuer was in danger himself and so a primary victim. The **Caparo** test applied. He was owed a duty because harm was foreseeable and he had proximity to the accident. It was therefore fair to impose a duty. In **McFarlane**, a duty was not owed because the man was a secondary victim. The control mechanisms applied. He did not have proximity to the people or the accident because he was too far away. The HL made clear in **White** that rescuers are treated as secondary victims if not in any danger, so the control mechanisms must be applied. This is best supported by the **McFarlane** case.

Self-test questions

1. **Page v Smith** highlighted the distinction between primary and secondary victims.
2. A primary victim is in foreseeable danger of harm, whereas a secondary victim is not directly affected but witnesses the event. The distinction is important because if C is a primary victim there is no need to apply the control mechanisms; the **Caparo** test applies as for physical harm.
3. **McLoughlin v O'Brien** was the first successful claim for nervous shock by a secondary victim (in the HL).

4. The Lords said the following needed to be looked at in such claims:
    a. the relationship between C and the victim
    b. the proximity of C to the accident
    c. how the shock was caused
5. **Alcock** added that there must be a sudden shock which causes a recognisable psychiatric illness.

Summary 2

Tasks 30 and 31

You may have done your diagram in a particular way but should have included the following:

Duty

Physical harm: Donoghue/Caparo test

The loss must be foreseeable, there must be proximity between the parties and it must be fair, just and reasonable to impose a duty

Psychiatric harm: Alcock test

C must have close ties of love and affection with the victim

C must have been present at the accident or its immediate aftermath

There must have been a sudden shock

Economic loss: **Hedley/Customs & Excise** tests

There must be a 'special relationship'. This means D possesses a special skill, C reasonably relies on D's statement and D knows that C is 'highly likely' to rely on it

The **Caparo** test is as for physical harm.

The assumption of responsibility test comes from **White** and applies to professionals

Breach

The standard expected of D is that of the reasonable person, **Blyth**. Note, though, the subjective element:

professionals **(Bolam/Bolitho)**

learners **(Nettleship)**

children **(Mullin)**

Add the four factors:

the degree of risk – **Bolton v Stone/Maguire v Harland & Wolff plc 2005**

the seriousness of potential harm – **Paris v Stepney BC1951**

whether the risk was justifiable – **Watt v Hertfordshire CC 1954**

the expense and practicality of taking precautions – **Latimer v AEC 1952**

Causation

Add the following four points

Would the harm have occurred 'but for' D's act or omission**? Barnett v Chelsea & Kensington HMC** but note also **Fairchild v Glenhaven Funeral Services Ltd**

Was the harm foreseeable or was it too remote**? The Wagon Mound**

Was this type of harm foreseeable**? Hughes v Lord Advocate**

Does the thin-skull rule apply**? Smith v Leech Brain**

Chapter 10

Task 32

In **Bolton**, the cricket balls were very infrequently hit over the fence. This meant there was neither a breach of duty (for a negligence claim) nor sufficient frequency (for a nuisance claim). In **Castle**, the siting of the tee was near a road and the golf balls frequently reached it, therefore in this case C's claim succeeded.

Task 33

Again, the main difference between **Bolton** and **Miller** is frequency. In **Miller**, the cricket balls frequently landed in her garden so she succeeded in her claim.

Task 34

There is no answer for this but hopefully you saw or heard, or even smelt, something that could constitute a nuisance.

Task 35

Bolton v Stone 1951 – frequency and social benefit

Miller v Jackson 1977 – frequency and social benefit

Sturges v Bridgman 1879 – locality

Hirose Electrical UK Ltd v Peak Ingredients Ltd 2011 – locality

St Helen's Smelting Co v Tipping 1865 – locality

Adams v Ursell 1913 – social benefit and locality

Barr v Biffa Waste Services Ltd 2011 – social benefit and locality

Robinson v Kilvert 1889 – sensitivity

McKinnon Industries v Walker 1951 – sensitivity

Christie v Davey 1893 – malice

Self-test questions

Any 3 of the following:

Frequency and duration

Locality

Social benefit or usefulness

Seriousness

Sensitivity

Malice

A one-off occurrence may amount to a nuisance when it is a state of affairs **(Spicer v Smee)**

Only a person with an interest in the property can sue and **Hunter v Canary Wharf** re-established this

Resources or means are relevant when D has adopted rather than created the nuisance

Abatement is a self-help remedy where C can take steps to eliminate the nuisance

Chapter 11

Task 36

Rickards v Lothian

Mason v Levy Auto parts

Hale v Jennings Bros

The material was flammable but was stored near to machinery which was known to get very hot

Task 37

Giles v Walker 1890	D was not liable as he did not bring on the thistles, they were naturally there
Rickards v Lothian 1913	D was not liable as water is natural in a basin
Read v Lyons 1947	D was not liable as high-explosive shells were natural in war-time
Mason v Levy Autoparts 1967	D was liable because combustible materials were not natural because of the quantity and the way in which they were stored
Read v Lyons 1947	D was not liable as there was no escape as C was on D's land at the time
Gore v Stannard 2012	D was not liable as the thing that escaped was fire not something that D had brought on to the land
Cambridge Water Co. v Eastern Counties Leather 1994	The **Wagon Mound** test of foreseeability applies so D is not liable if damage could not have been foreseen

Task 38

Mary is the occupier of land. She has brought something onto her land which is not naturally there (a lamb). The lamb has escaped and caused damage to C's land (the garden centre). The only question is whether her use of land is non-natural. A lamb is not 'exceptionally dangerous' but could be said to be sufficiently 'mischievous' to do damage if it escapes. As Mary lives next to a garden centre she would realise that there was a high risk of damage occurring if the lamb escaped. It is also unusual to keep a lamb in a residential property so the rules as restated in **Gore v Stannard** may be satisfied.

Task 39

Here are some case examples added to the principles.

D brings onto land – **Ryland v Fletcher** itself is an example of 'bringing on' and **Giles v Walker** is an example of not doing so

Something non-natural – water was found to be non-natural in **Ryland v Fletcher** itself but not in **Rickards v Lothian**

Which is likely to do mischief – fire was found to be likely to do mischief in **Mason** and **LMS**

Which escapes onto other land – this was not the case in **Read v Lyons** because the damage was caused on D's land

Which causes foreseeable damage – **Cambridge Water** illustrates this part of the rule as it was not foreseeable that the chemicals could cause the loss

To property belonging to C – in **Gore v Stannard** the CA confirmed that what escapes must cause damage to C's land

Self-test questions

1. The facts of **Rylands** were that a land owner employed a contractor to build a reservoir on his land. The contractors discovered some disused mine shafts but they appeared to be filled in so they didn't seal them. When the reservoir was filled water flooded through these shafts and caused damage to C's mine.
2. D was not liable in **Transco** because the accumulation of water was held to be a natural use of the land
3. Three defences are:
    a. Statutory authority is where something is permitted under an Act of Parliament
    b. Act of a stranger is where an unforeseeable act by someone else breaks the chain of causation
    c. Default of the claimant is where C has failed to do something and this has led to the damage
4. The importance of **Cambridge Water** is that the HL held the test of foreseeability (as per **The Wagon Mound**) applied to **Rylands** (as well as nuisance and negligence).

Chapter 12

Task 40

There is no answer for this task but hopefully you made some notes.

Task 41

In **Century**, the employee was doing his job at the time, i.e., delivering petrol. In **Graham**, the employee had been spraying inflammable liquid around as a prank and this was outside the scope of his employment.

Task 42

Jack is an employee so the question is whether he was acting in the course of his employment. Jack's act can be said to be an 'authorised act done in a wrongful way', and also, in the later definition, an act 'connected with his employment' (**Lister**). The trial judge and the CA disagreed in **Mattis**, so it could be argued either way. The CA said a doorman was expected to use physical force in his work, and as the stabbing was connected to an earlier argument in the club, the club was vicariously liable. The case could be distinguished on the basis that there was no argument at the club in my example; Jack had a personal grudge. However, it is probably more likely that the CA decision will be followed so the club may be liable.

Self-test questions

1. In one case against the London bus company a driver was racing. This is a *wrongful* way (racing) of doing something *authorised* (driving). In the other, the employer was not liable because driving was not within the scope of his job as a conductor, so it was not authorised.
2. The names of these two cases are **Limpus v London General Omnibus Company1862** (where the driver was racing), and **Beard v LGOC 1900** (where the conductor was driving).
3. **Trotman v North Yorkshire CC 1999** was overruled by the HL in **Lister** and the new test for establishing whether an employee is within the scope of employment is that the court should consider the closeness of the connection between the nature of the employment and the tort.

Chapter 13

Task 43

Case	Which defence was used	The effect
Jones v Livox Quarries 1952	Contributory negligence	Reduction in damages
Sayers v Harlow 1958	Contributory negligence	25% reduction in damages
Barrett v MOD 1995	Contributory negligence	66% reduction in damages
Yachuk v Oliver Blais Ltd 1949	Contributory negligence	Full liability as the defence failed
Smith v Baker 1891	Consent	Full liability as the defence failed
Gannon v Rotherham MBC 1991	Contributory negligence	Reduction in damages
Morris v Murray 1990	Consent	No liability
Condon v Basi 1985	Consent	Full liability as the defence failed
Froom v Butcher 1976	Contributory negligence	Reduction in damages

Self-test questions

1. **S 1(1)** of the **Law Reform (Contributory Negligence) Act 1945** provides that the court may use its discretion to reduce the damages awarded, 'to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage'
2. In **Sayers v Harlow 1958**, a lady got locked in a public toilet and was injured trying to get out. The court held she was partly to blame and reduced her damages by 25% for contributory negligence
3. The defence of contributory negligence succeeded in **Gannon** because he was 14 and so was expected to recognise the danger. In **Yachuk**, he was only 9 and the court held that he should be judged by the standard expected of a 9-year-old child
4. The defence of consent is likely to fail in rescue cases because there is a moral duty to act. **Haynes v Harwood** is an example
5. It is also likely to fail in employment cases because there is no true consent; an employee may consent to a risk of harm in order to keep a job

Chapter 14

Task 44

Damages – an amount of money intended to compensate the claimant

Special damages – loss of earnings and expenses to the date of the trial

The multiplier – a figure representing the number of C's likely working years

Pecuniary damages –financial loss

Non-pecuniary damages – losses other than financial ones

Loss of amenity – something which relates to C's quality of life, such as a hobby or special interest

General damages – non-pecuniary losses such as pain and suffering and loss of amenity which must be assessed by the court

Task 45

There are several cases you could have chosen. Here are three examples:

In **Regan v Paul Properties Ltd 2006**, C had complained about D's building blocking his light and he had lost several thousands of pounds in the reduction of value of his property. An injunction helped him because he wanted D's building stopped rather than an award of money.

In **De Keyser's Hotel v Spicer 1914**, a partial injunction helped C because it limited the pile-driving to the daytime.

In **Tetley v Chitty**, an injunction was granted to stop the go-kart racing. This helped C because it didn't just limit the activities, it stopped them altogether.

Self-test questions

1. Special damages are easy to quantify and cover things like damage to belongings, transport and medical costs. General damages are not quantifiable so have to be assessed by the court; these include pain & suffering and any injuries
2. Pecuniary loss is financial loss so would include wages and most special damages. Non-pecuniary loss would be most general damages which are not quantifiable in monetary terms

3. A structured settlement is where the compensation is paid into an annuity and C is paid in regular instalments. These are most commonly used for larger awards or where there is long-term loss, e.g., if C is unable to work again
4. Mitigation of loss is where C is expected to take reasonable steps to minimise any losses
5. An injunction is a court order used to prevent D carrying out some type of act. It is most commonly used in nuisance cases, to stop the nuisance continuing

Summary

Task 46

There is no answer as your diagrams may be different but hopefully you have a useful revision chart using the cases from Chapters 10 and 11.

Chapter 15 Examination practice

Task 47

Both the neighbour and Sue may have committed nuisance. Particularly relevant is that the neighbour's noise is 'continuous' and that Sue acted 'in retaliation'. Both these are factors the court will consider when deciding if the act was unreasonable. Both could amount to a nuisance but Sue is the one likely to be found to be unreasonably interfering with someone's enjoyment of land because she acted with malice, as in **Christie v Davey**.

Tom also may have committed nuisance. Particularly relevant is that although the storm is an act of nature, he left the tree lying there. This suggests that he has 'adopted' the nuisance caused by an act of nature, as in **Leakey v NT**. Secondly, even though it appears to be an isolated incident the tree 'lying there' may be a state of affairs, as in **Spicer v Smee**.

Andrew may have committed a tort under the rule in **Rylands v Fletcher**. As it is a one-off occurrence it is unlikely to be a nuisance. However, it has escaped to 'the next garden' so he will be liable under **Rylands** if it caused damage, as in **Crown River Cruises**. It is foreseeable that a firework can cause damage, unlike in **Cambridge Water**.

Tony may have been negligent but the scenario suggests that his employer may have vicarious liability for his actions if the passenger is harmed. Tony is an employee so the question is whether he is acting in the course of his employment. The scenario says that he is making a delivery so this is quite likely, as in **Century Insurance**. However, the words 'against the orders of his employer' are also relevant. His employer may not be vicariously liable as he ordered him not to give lifts, as in **Twine v Beans Express**. On balance it is more likely that the employer is vicariously liable as the negligent act was the way he was driving and he is employed to drive, so the act is closely connected with his work. In **Lister**, the test for whether someone was in the course of employment was adapted to the idea of having a close connection, and in Tony's case the connection is even closer than in **Lister**. In **Graham**, the CA said an employer could be liable for authorised acts done in a wrongful way or for unauthorised acts which were 'so connected with' acts the employee was authorised to do that they could be deemed to be methods of doing those acts, even though in an improper way. Tony could come within either of these. He is doing an authorised act (delivering) in a wrongful way (giving a lift and driving negligently). It could also be said he is doing an unauthorised act (giving a lift while making a delivery) but this is closely connected to his employment as a delivery driver.

Theo may have committed a tort under the rule in Rylands v Fletcher. The way he stored the petrol and the fact that there were several gallons will be relevant circumstances in deciding whether it was non-natural use, as in **Mason v Levy Auto Parts** and **LMS International**.

Examination practice Tasks 48 and 49

There are no answers for these two tasks.

Task 50 Examination paper 7162

Multiple choice questions 1 to 5, one mark for each correct answer.

Question 1	B
Question 2	C
Question 3	C
Question 4	B
Question 5	C

Question 6

Tribunals have been set up under different Acts of Parliament dealing with various social and welfare rights. The main role of administrative tribunals is to provide an alternative to taking a case to court to help people who have a complaint against the state. The role of the First-tier Tribunal is to hear cases and the role of the Upper Tribunal is to hear appeals. There is a separate tribunal for employment cases. Tribunals are an alternative to the courts but after any appeal from the Upper Tribunal the case will enter the court system, so tribunals only provide alternatives for the early stages. The procedure in tribunals is less formal than the courts but is similar. A qualified lawyer hears the case and is sometimes assisted by two non-lawyers who have expertise in the area under consideration. It is usually quicker than the courts but, as with the courts, the decision of a tribunal is enforceable. 5 marks

Question 7

The final thing Brad has to prove is that Ivan's breach caused the damage both in fact and in law. In fact he has to show that but for Ivan's breach he would not have been injured. In **Barnett v Chelsea and Kensington HMC**, this was not the case and the claim failed. Brad will also have to show his injury was not too remote from the breach, that it was foreseeable using the test from the **Wagon Mound**. This is causation in law. He does not have to show the specific injury was foreseeable but it must be of a type that was foreseeable as established in **Hughes v Lord Advocate**. The exact way that the damage occurred does not have to be foreseeable, nor its full extent. This is shown in **Bradford v Robinson Rentals** where some injury was foreseeable and this was enough even though it was more extensive than expected. 5 marks

Examiner's comment: *Note that the following answers may contain more than you would have time for, but show you what you would need to address. The main thing in an application question is to be sure you can accurately identify and state the law, and then apply it in a logical manner to reach your conclusion. That way you should earn good marks even if your answer is a little briefer.*

Similarly, in an essay you should identify the issue in the question and then deal with these issues in a logical way leading to a conclusion as appropriate.

Question8

Stan may be able to make a claim in nuisance. In **Hirose Electrical UK Ltd v Peak Ingredients Ltd 2011**, the CA held that nuisance was where someone had 'unreasonably interfered with the claimant's enjoyment of the premises'. In **Coventry Promotions v Lawrence 2014**, the SC defined nuisance as an act or omission which causes 'an interference with the claimant's reasonable enjoyment of his land'. Either definition requires unreasonableness. This is decided by balancing several factors. One of these is frequency and duration and it would seem that the bees are a permanent problem. Another factor is locality as where the nuisance happens will be relevant to assessing reasonableness. Much depends on the type of area and this is not clear. However, a large garden and a house being built sounds more like a residential area than an industrial one, which makes nuisance easier to prove. Something that is a social benefit may not be a nuisance but this is rarely enough alone and keeping bees is unlikely to be sufficiently beneficial for the wider public. In **Barr v Biffa Waste Services Ltd 2011**, residents claimed in nuisance because of smells from a landfill site. The CA restated that the relevant control mechanism was whether or not there is reasonable use of the land in all the circumstances. On the facts, especially considering the residential character of the area, there was a case in nuisance. It is likely that this case would be followed here if it is a residential area. One other factor is malice. In **Christie v Davey**, both neighbours were causing a nuisance but one had acted in malice and this tipped the balance in the other neighbour's favour. This could harm Stan's claim because he has acted in malice. The factor relating to sensitivity does not seem to apply here. The requirement that the claimant must have an interest in land as re-established in **Hunter v Canary Wharf** is satisfied assuming that Stan owns the house or is a tenant. Peter could try to argue that Stan had 'come to the nuisance' but this is unlikely to succeed, as in **Sturges v Bridgman**.

On balance, despite the malice, it may be that Stan is able to show that keeping bees is unreasonable. He will want an appropriate remedy which would be an injunction to prevent the nuisance of the bees. Although an injunction used to be the normal remedy, this may no longer be the case. In **Lawrence v Fen Tigers Ltd (No 2) 2014**, the SC suggested that the principle that an injunction should be the remedy unless there are exceptional circumstances was out of date. However, it is possible that as damages will not help Stan and, unlike **Miller v Jackson**, the bee-keeping has limited social benefit an injunction will be awarded. Also it would be hard for a court to assess any loss in financial terms. The court may award a partial injunction as in **Kennaway v Thompson**. This could be to keep the bees at a distance or only let them out at certain times. 10 marks

Question 9

Both criminal and civil liability is based on the idea of people being responsible for their actions. This means they should either be punished (criminal law) or made to pay compensation (civil law) for any wrongdoing and this should have the effect of preventing similar behaviour in the future. Liability usually relies on proving some level of fault in this sense of wrongdoing or blameworthiness. In civil law we can see this in negligence. A person is not liable unless negligence can be shown and this is done by proving breach of a duty of care and that this breach caused foreseeable harm. The fault element lies in not achieving the standard of the reasonable person, or in professional cases the

reasonable person in that profession. The law recognises that children may be less likely to foresee a risk of harm and so children are only expected to reach the standard of a child of the same age, as can be seen in **Mullin v Richards**. This is a lower level of fault but it seems fair. What seems unfair in relation to showing negligence is that a learner is expected to reach the same standard as someone trained. This is illustrated by **Nettleship v Weston** where a learner driver was found to be negligent because she was expected to reach the standard of an experienced driver. In **Rylands v Fletcher** there is no requirement of negligence. This is why it is traditionally called a strict liability tort. The essentials of **Rylands** are that something was brought onto the land, and it escaped and caused damage. The thing that was brought onto the land needs to be not naturally there and likely 'to cause mischief'. All these elements indicate some level of fault and strict liability means liability without proof of fault. This usually means that however much care a person has taken there can still be liability. An example would be if I owned a fierce dog but because he is fierce I am careful to keep him tied up and have made sure the garden has a proper fence. If he gets out despite my precautions I could be liable under the rule in **Rylands** for any damage he causes. However as shown above, there is some element of blameworthiness required by the different elements in **Rylands** and also a person is not liable for unforeseeable damage. It might be possible for me to say that my dog getting out and causing damage was not foreseeable because I had tied him up carefully. In **Cambridge Water**, a company was not liable when chemicals got into a water supply because at the time it was not foreseeable that harm could be caused. In **Transco**, the HL interpreted non-natural to mean a use that was 'extraordinary and unusual'. In **Gore v Stannard** the CA held that D must realise there was a 'high risk' of danger or mischief if that thing should escape. Both these suggest that **Rylands** requires some level of blameworthiness. Defences of act of God or act of a stranger also indicate that **Rylands** is not a strict liability tort. D is not liable for escapes that are from natural causes as in **Nichols v Marsland**, nor for third party actions as in **Rickards v Lothian**.

In conclusion, it can be said that although **Rylands v Fletcher** is traditionally described as imposing strict liability, some level of fault is required. This is mainly seen in the 'non-natural' part of the rule as discussed in **Transco** and in the foreseeability of harm required by **Cambridge Water**. Overall, I would suggest it would be better described as a 'low-level fault tort' rather than a strict liability tort. 15 marks

Question 10

Jamil has suffered physical injury so he can sue Dan in negligence using the rules on duty from **Caparo v Dickman**. The others have all suffered psychiatric harm and there are different rules on proving a duty in such cases, which come from **Alcock**. All the victims will also have to prove breach of duty and causation.

Taking each person in turn:

Jamil first needs to show that Dan owes him a duty. This is not difficult as it is not a novel situation and it has already been established that drivers owe other road users a duty of care. It would anyway be easy to satisfy the **Caparo** test as it is foreseeable that Dan's driving could cause harm, there is clear proximity between road users and there is no policy reason to suggest it would not be fair just and reasonable to impose a duty as there is no possibility of opening the floodgates to claims. A duty is owed so now Jamil must prove breach and causation. It says that Dan was driving too fast so he has probably not reached the standard expected of a reasonable driver, as in **Nettleship and Weston**. Balancing the various factors to establish the expected standard, it can be

said that driving too fast has a high degree of risk (unlike in **Bolton v Stone**), the potential harm is serious as people can be killed by such actions (**Paris v Stepney BC**), the cost of preventing the risk would be nil as he only had to slow down, unlike in **Latimer v AEC** where it would have been impractical to do more, and finally there is no social benefit to his actions. His negligent driving has directly caused Jamil's injury so there is no causation issue.

In cases of psychiatric harm, a distinction was made in **Page v Smith** between primary and secondary victims.

Pascal will be a primary victim as he was clearly cycling nearby and at risk of being hit by the car, therefore Dan will owe him a duty as long as he satisfies the normal tests for physical harm. Applying **Caparo**, it is foreseeable that driving too fast can cause harm, he is in proximity to Danny as he 'narrowly' missed being hit by him, and finally there are no policy reasons to suggest it will not be fair just and reasonable to impose a duty and doing so will not open the floodgates to other claims. Breach will apply as for Jamil as the same points arise. Causation is also easy to prove. The negligent driving has caused the harm in fact as 'but for' Danny's breach Pascal would not have suffered harm (**Barnett**). Legal causation is also proved as harm was foreseeable and therefore not too remote from the breach (**Wagon Mound**). As long as some harm was foreseeable that is enough, the exact type does not have to be foreseeable (**Hughes**), nor does psychiatric harm have to be foreseeable in the case of a primary victim.

Sadie is unlikely to prove Dan owes her a duty because, like the woman in **Bourhill**, she was not in close proximity to the events and she has not suffered physical injury. She is not in any danger herself so is a secondary victim and must satisfy the **Alcock** control mechanisms. These are that she must be a witness to the event or the immediate aftermath and must have a close relationship or close ties of love and affection to the victim. She did not witness the crash and there is no mention that she went to the 'immediate aftermath'. There is no evidence of any relationship to a victim here so she will fail in her claim at the first hurdle as she cannot prove a duty.

Tarquin may also be a secondary victim. However, he may be classed as a rescuer and if **Chadwick v BTC** is followed he will be owed a duty. However, the situation is different here because it does not seem that he is in danger himself, so he is more likely to be classed as a secondary victim, as in **White**. This means applying the **Alcock** rules. He has proximity in time and space as he stops to help so this is likely to be seen as the 'immediate aftermath' as in **McLoughlin**. However, he has no relationship to the victims so, as in **White**, although he has proximity his claim will fail, because all the criteria must be met.

In conclusion, Jamil and Pascal will be able to claim compensation for their injuries and any related costs. Tarquin's claim is arguable but may fail unless there was still some danger involved. There is no indication that, e.g., the car was leaking fuel or in an unstable position. Sadie's claim will definitely fail as explained above. 30 marks

Question 11

Kanye may have a claim under the **Occupiers Liability Act 1984**. He is a trespasser because he got through the fence. It is arguable the apples are an allurement as in **Glasgow Corporation v Taylor** and confirmed in **Jolley v Sutton LBC**, where it was made clear that something attractive to children could bring a child claimant under the **1957 Act**. We do not know how old Kanye is but it is unlikely these cases help as it is a private house not a park or council land. Also, he is old enough to walk to

school so **Phipps v Rochester** won't apply. The duty to trespassers is more limited than that owed to a lawful visitor. There are three things to show under **s 1(3) OLA 1984**. The first is that Jack knows of the danger or has reasonable grounds to believe it exists. As we are told that Jack was worried about it this point is satisfied. The second point is that Jack must know of the trespasser or, again, have reasonably grounds to believe in the possibility of trespassers. Here he was worried the children might get in, so even if he doesn't specifically know of them, the reasonable grounds part is satisfied. The final point is that the danger must be one which Jack should reasonably be expected to protect trespassers against. This may be more difficult. However, it seems reasonable to expect him to take greater care either by mending the fence or the shed, or even by putting a warning up if he hasn't had time to do that. Jack may argue that the harm was caused by Kanye's activity rather than by the state of his shed and if he succeeded in this he would not be liable. The courts have made clear that if harm is caused by a person's voluntary activity rather than the state of the premises then the occupier will not be liable. This has applied to several cases covering various situations and climbing onto a shed to steal apples is likely to be seen as a voluntary activity, as in **Tomlinson v Congleton BC** and **Sidorn v Patel**. In Kanye's case, although his injury was partly caused by his activity in climbing the shed, the difference is that unlike in the cases cited, the shed was in a dangerous state so he can argue that the harm was caused by the state of the premises not his activity. This was the case in **Young v Kent CC 2005**, where a schoolboy climbed onto a roof at school and fell through a skylight. If a duty is established, it is likely that Jack is in breach of duty as he has not acted as a reasonable occupier. Under **s 1(4)** he should take 'such care as in all the circumstances of the case is reasonable'. Taking into account the usual breach factors to establish whether he reached the expected standard we can say that there is a higher than normal risk due to the nearby school. Also, even if would cost a lot to mend the shed properly, it would not cost much to mend the gaps in the fence and this would not be seen as impractical, as was the case in Latimer v AEC. He knows there is a school nearby so should take greater care. As in the case of the semi-blind worker in **Paris v Stepney BC**, children are more vulnerable so greater care is needed where they may be in danger.

It is possible that Jack could use the defence of consent or contributory negligence. The first is less likely to succeed as although under the Act there is no liability for risks 'willingly accepted' by Kanye, the court may decide a schoolchild is too young to fully recognise the risk of danger so a lot depends on his age. Contributory negligence is a possible alternative. This is not a full defence but can reduce the amount Jack has to pay to Kanye in compensation. This defence is governed by the **Law Reform (Contributory Negligence) Act 1945**. **S 1(1)** of the Act allows the court to use its discretion to reduce the damages awarded in accordance with how far Kanye is seen to be at fault. A case that covers both defences is **Ratcliff v McConnell 1999**. The court decided D was liable but that damages should be reduced because C contributed to his own injuries. The CA reversed the decision and held that D was not liable because under **s 1(6)** it was a risk 'willingly accepted'. If Kanye succeeds, at least in part, he will claim compensation for the injury and any related costs. He cannot, however, claim for the torn trousers under the 1984 Act because damage to property cannot be claimed for, only personal injuries.

Similar points will apply to Ben as he is also trespassing. We established that Jack knew of the danger and that he should have at least taken some precautions but it is less clear whether Jack knows, or has reasonable grounds to believe that someone is in the vicinity as regards Ben. He may not know someone is sleeping in his shed but there may evidence that he had reasonable grounds to

suspect Ben's presence and so should have mended or locked up the shed. There would be no applicable defences so Ben will want to make a claim. There is very little legal aid available for civil claims and even though he is homeless and sleeping rough he will not get state help for his case. He will therefore need an alternative and as his claim is by no means certain, a conditional fee agreement may be difficult to arrange. This is where a solicitor takes a claim on a no win, no fee basis so gets nothing if the case is lost but can charge up to 25% extra (as it is a personal injury claim) if the case succeeds. The extra fee is based on the risk of losing and as it does not say Ben is badly injured he may be claiming less than £1,000 so is better going through the small claims procedure in the county court. If he needs advice about this his local Citizen's Advice Bureau can help with information about what to do and what solicitors may be available to help with his actual case (though solicitors are not normally used for small claims, he may want some preliminary advice about his options). Ben is clearly a needy person so he may well be able to get some free legal advice from LawWorks. This is the solicitor's pro bono charity which aims to increase the delivery of free legal advice to people in need. This charity could help with the early stages of negotiation for example, as Ben would be in a much weaker position than a lawyer when trying to reach an agreement with Jack. Negotiation is always a good first step and is encouraged by the courts too. Ben wants to be compensated for his injuries but may have difficulty negotiating directly with Jack as Jack may think he can offer less than Ben deserves because he is in need of money. The solicitor could write a letter before action to Jack and set out the details of what Ben is claiming. This is an attempt to reach a settlement without the need for a court case. It may well succeed if it is under £1,000 because Jack will know that if it goes to court and he loses he will have to pay all the costs so he may decide it is better to settle. 30 marks