



Examiner's Comments

03 TORTS

September 2025 Examinations

The exam comprised of two questions. Candidates were required to answer two questions. Both questions were of equal value (40 marks each).

Question 1

The first question sought to test students' understanding of the nature of the duty of care owed by a school to students, particularly the duty of supervision and control. The question also sought to test breach of duty. Students were required to identify the content of the duty of care and to evaluate whether that duty had been breached (for instance, by a failure to check bags or a failure by employed teachers to intervene to stop the dance battle). The question also presented the issue of whether Jane was engaged in a dangerous recreational activity, whether Jane was contributorily negligent and the effect, if any, of Jane's intoxication on the duty of care, breach of duty and damages.

The first question also sought to test students' understanding of the nature of the duty of care owed by Sunny's parents to Jane and whether that duty had been breached. Importantly, the first question sought to test students' understanding of causation. Specifically, it invited students to consider whether the negligence of Sunny's parents remained a cause of the injuries Jane sustained at the formal.

Finally, the first question also sought to test the duty of care owed by the hospital to Jane, whether that duty had been breached and whether any breach of duty remained a cause of Jane's injuries.

Question 2

The second question sought to test students' understanding of battery, both in the sporting context and in the medical context. The second question invited students to consider the defence of consent to battery in sport and the limits of this defence and the available heads of damages for battery and particularly the availability of aggravated and exemplary damages on the facts, as well as the effect of provocation on damages for battery. It also invited students to consider whether consent to medical treatment had been effectively withheld and whether the defence of necessity might be available. The second question also raised an issue about medical negligence.

Characteristics of poor or average responses

There were different characteristics of poor or average responses noticeable in the examination papers. Some poor or average responses did not use full sentences to express reasoning but instead had dot points or made notes towards an answer, rather than providing an answer. Some poor or average responses made little or, in cases, no reference to relevant legislation or case law. Some poor or average responses restated the facts or asserted that a conclusion was self-evident, rather than reasoning towards it.

Characteristics of very good or excellent responses

Very good or excellent answers identified the relevant issues and provided a clear, structured, well-reasoned response to it, providing relevant authority for legal propositions.

Common mistakes

A number of students tried to rely upon proportionate liability when advising on these questions. As neither question involved property damage or economic loss, proportionate liability had no application to the facts.

A number of students wrote 'I.R.A.C.' repeatedly throughout their examination papers. 'I.R.A.C.' should be implemented in your answer, not written down repeatedly in your answer.

Areas for improvement

An understanding of causation in negligence remains an area for improvement.

Other comments

There was discernible improvement in students' time management skills, which was pleasing to observe. Far fewer students mismanaged their time in the examination by giving unequal treatment to equally weighted questions.