RESOURCES

A-LEVEL LAW

LAW04 – Law of Tort
Exemplar scripts with examiner comments

(2160)
Here is a selection of typical responses for you to consider. Using past papers, scenarios are set out and followed by the individual questions, mark scheme and typical answers. Commentaries on each answer are grouped together at the end of each topic. These can be used to give examples of answers with strengths and weaknesses identified, so that your students can look for improvements and refine their techniques. In some instances, two answers to the same question have been provided, along with commentary. These can be used for purposes of comparison and contrast. In most instances, part answers only have been provided.

Note that answers are reproduced exactly as written, including grammar and spelling.
Contents

Law of Tort ......................................................................................................................................... 4
  Scenario 1 ....................................................................................................................................... 4
    Student answer for consideration ................................................................................................. 5
  Scenario 2 ....................................................................................................................................... 8
    Student answers for consideration ................................................................................................ 9
  Scenario 3 .................................................................................................................................... 11
    Student answer for consideration ............................................................................................... 12
  Scenario 4 ..................................................................................................................................... 13
    Student answer for consideration ............................................................................................... 14
Commentaries ................................................................................................................................... 15
  Comment on Answer 1 .................................................................................................................. 15
  Comment on Answer 2 .................................................................................................................. 15
  Comment on Answer 3 .................................................................................................................. 16
  Comment on Answer 4 .................................................................................................................. 16
  Comment on Answer 5 .................................................................................................................. 17
## Law of Tort

### Scenario 1

Andy bought a large yard in a quiet, rural area. He used the yard to keep and maintain coaches to provide transport for school children and day-trippers. Rick, who owned the house next to the yard, was annoyed by the persistent noise and diesel fumes resulting from the operation of the coaches. After three months, Rick complained to Andy, who responded by causing even more disturbance by noise and fumes. In addition, Andy’s coaches were often parked in the narrow public road adjoining the yard, causing obstruction to motorists. Andy bought a large supply of diesel oil. He stored the oil in a tank in the yard. The tank was situated near to Rick’s garden. One night, some of the oil leaked from the tank and caught fire. The fire immediately spread to Rick’s garden and destroyed his fence and greenhouse.

Consider the rights and remedies, if any, of Rick and of the motorists against Andy. [25 marks]

### Potential content

(A) **In relation to the noise and fumes.** Possible liability in the tort of private nuisance. The need for an unreasonable interference with enjoyment of land and a consideration of possible relevant factors, especially the quiet, rural location and duration. The importance of possible malice/intentional interference following Rick’s complaint. Remedies of damages and injunction.

(B) **In relation to the obstruction, consideration of public nuisance.** Definition. The need for unreasonable interference, section of the public. Need for ‘special damage’ to support tort claim (no evidence of this on the facts).

**In relation to the damage to the fence and greenhouse.** Possible liability under the Rule in *Rylands v Fletcher*. The need for a ‘thing liable to do mischief ....’ accumulation, non-natural user, escape, damage, remoteness, remedy of damages. Strict liability.

**NB** *Rylands v Fletcher* only (no public nuisance) – *max weak sound*

Public nuisance only (no *Rylands*) – *max weak clear*
Student answer for consideration

Answer 1

Rick may wish to claim against Andy under the tort of nuisance for the annoyance he has suffered due to Andy’s coaches.

Private nuisance was described by Professor Winfield as ‘unlawful interference with a persons use or enjoyment of land, or some right over or in connection with it.’ It must be foreseeable and indirect such as fire as in Spicer v Smee, or smell and fumes a sin Bliss v Hall. In the scenario, the nuisance is indirect and foreseeable as it is fumes and noise pollution.

Only the person who is suffering from the nuisance as a result of owning etc the disturbed land can sue, not family members as in Malone v Laskey. This rule was changed in Khoransandjan v Bush, but was changed back in Hunter v Canary Wharf. Rick may sue since he is the one unable to enjoy / use his land. Anyone with a legal right / interest in the land from which the nuisance came can be sued (Tetley v Chitty). In this scenario, Andy can be sued as the creator of the nuisance and the owner of the land from which it came.

There are two types of nuisance; physical as in St Helens Smelting Co v Tipping, which results in physical damage and loss of use / enjoyment of land, as Rick is suffering from. Only unreasonable interference will be remedied. Some activity is considered reasonable i.e. screaming children in the garden. The courts have to balance the competing interests of both parties. In determining if the interference is unreasonable, constituting a nuisance, the courts look at several factors.

The duration and continuity of the act would be assessed. One off instances are unlikely to constitute a nuisance, as seen in Bolton v Stone and Crown River Cruise v Kimbolton Fireworks, where the act only lasted twenty minutes. The fact that Andy had evidently been doing this for at least three months (in scenario) means it is likely to be a nuisance. Time and locality may be assessed also. In Sturges v Bridgman, Thesiger LJ stated that ‘what may be a nuisance in Belgrave Square may not be so in Bermondsey.’ Some things may be more suitable in commercial areas than rural, residential areas, as seen in Laws v Florinplace (sex shop). In the scenario Andy’s actions may be seen as
more suitable in an industrial area than in a residential one, as it is then seen as a nuisance.

Any malice shown by either party means their claim will fail, as shown in Christie v Davey. In the scenario, Andy demonstrates malice by causing more disturbance following a complaint. This would likely cause Andy to be liable.

In terms of remedies, the court may impose an injunction. It may be a part injunction as in Kennaway v Thompson, so Andy can only operate them in times that Rick is not at home, or a full injunction as in Leeman v Montague to prohibit the activity.

The motorist may wish to claim against Andy using public nuisance. This was described by Professor Rogers as ‘interference of the reasonable comfort and convenience of the public as a whole rather than an individual claimant.’ It must affect a class of people, described in AG v PYA Quarries as ‘something which affects the reasonable comfort and convenience of life of a class of her majesty’s subjects’, in the scenario, the motorists (general public). This usually involves interfering with a public right / acting contrary to public interest, in this scenario by causing obstruction.

The motorist could bring the claim in two ways. It could be reported to the police and prosecuted by the CPS as in R v Johnson, or the attorney general can seek an injunction on their behalf, as in AG v Gastonia Coaches. An individual can bring the claim, but they must prove they have suffered above and beyond that of the public and are not just one of the affected, as in Castle v St Augustine. The CPS / AG would likely order that Andy find another parking location so as to remove the nuisance / obstruction.

In regards to the oil leakage and destruction of Rick’s fence and greenhouse, the rule in Rylands v Fletcher would be applied. For a successful claim, four steps must be satisfied. Firstly, the defendant must have collected and brought something onto his land and kept it there for his own purpose. In law there is a difference between things which grow / naturally occur such as weeds in Giles v Walker and things that are artificially accumulated like diesel oil. The defendant’s use of land must have been extraordinary and they must have realised this. It must be non – natural usage of land such a sbulk
gas, chemicals as in Cambridge Water Co v Eastern Counties, or as in the scenario, a ‘large’ supply of diesel oil. The thing must have been likely to cause mischief should it escape. The defendant ‘keeps it at is own peril’, as in Hales v Jennings (funfair ride escaped.). Bulk oil was likely to cause damage since it is flammable. Lastly, the thing must have escaped to a place the defendant has no control over, as in Read v Lyons (neighbours house) and caused mischief. In the scenario, it did escape and caused fire damage, since all four elements are satisfied, this system of strict liability would mean Andy would have to pay Rick damages in form of compensation for property damage to his fence and greenhouse.
Scenario 2

Rick paid Marco, a roofing contractor, to replace broken tiles on his roof. Marco placed his ladder against the roof guttering in order to climb up to inspect the roof. He was not aware that the guttering was rotten. Marco was halfway up the ladder when the guttering gave way, causing his ladder to slip. Marco fell and struck his head on the ground. He suffered cuts to his face and was briefly unconscious. On admission to hospital, Marco told Dr Jones what had happened. Dr Jones, who had only recently qualified, treated Marco’s cuts but, without further examination, advised him to go home and rest. In doing so, Dr Jones ignored a commonly-held medical view that patients who suffered unconsciousness should receive a brain scan. The following day, Marco suffered a stroke and partial paralysis due to undiagnosed head injuries sustained in the fall.

Consider the rights and remedies, if any, of Marco against:

- Rick in connection with his injuries caused by falling from the ladder
- Dr Jones and the hospital in connection with his partial paralysis.

Potential Content

(A) Rick’s possible liability to Marco - relevant requirements of the Occupiers’ Liability Act 1957. Elements which must be proved to establish the duty, nature of the duty and breach of duty, with particular reference to s2(3)(b) (was the risk ‘ordinarily incident’ to Marco’s calling?). Reference to damages.

Student answers for consideration

Answer 2 (part – occupiers’ liability)

Rick could be liable for the cuts and unconsciousness suffered by Marco under the Occupiers’ Liability Act 1957. This act was put in place to protect lawful visitors against dangerous premises. The definition of occupier is found in S.1(1) as is anyone in control of the land (Wheat v Lacon) as Rick is in control as it is his house and he has employed Marco. According to S.1(2) the premises is any fixed or moveable structure including any aircraft, vehicle or vessel, which a ladder would satisfy (Haseldine v Daw, it was a lift).

Under S.2(1) of the act a duty of care is owed to all lawful visitors and S.2(2) describes it as one to take reasonable care to ensure that the visitor will be reasonably safe. Marco is a lawful visitor as he has express permission to be on the land due to his invitation from Rick when Rick had asked him to carry out the work. The case of Clare v Perry states that the duty applies only to activities which the visitor is entitled or permitted to take part in, which Marco is doing. Rick would then owe Marco a duty of care and would have breached that duty if he did not act as the reasonably competent occupier would in ensuring that the premises was safe.

However under S.2(3)(b) of the 1957 act Marco would be classed as an expert visitor and also expected to protect himself against known threats and risks in his line of work (Roles v Nathan). As a roofing contractor, Marco should be aware of the risk of rotten guttering and would be expected to have taken precautions against stepping on it as this risk was not created by the occupier (Ogwo v Taylor) nor did the occupier have the necessary skills to check the work (Woodward v Mayor of Hastings).

Therefore in conclusion, although Marco’s injuries were caused by the dangerous state of the premises it is unlikely that it is enough for Rick to have breached his duty as Marco should have been made aware of the potential risks.
Answer 3 (part – occupiers’ liability)

As Rick was the occupier of the premises as in S1(2) he is described as anyone who has the control over state of premises like in Wheat v Lacon. Premises is there described as any fixed or moveable structure including any vessel, vehicle or aircraft according to S.1(3) like in Haseldine v Daw included lifts. Marco is a lawful visitor according to the occupiers liability act 1957 under express permission as he has been invited. According to S1(2) the occupier owes a common duty of care to all visitors. S.2(2) goes on to state the occupier must ensure that the visitors are reasonably safe for the purposes of their visit unlike Clare v Perry. It is debateable that Rick could have checked the guttering before Marco had arrived. Rick is in breach of this duty if he has not acted as the reasonable man which I do not think he has as how was he to know the guttering was rotten. Therefore he is not the factual cause like in Barnett v Chelsea as it is not too remote like in Cambridge Water case. Rick could then go on to use the defence of the independent contractor S.2(4)(b) as the accident happened within his profession he should have known the risks and known to protect himself like in Roles v Nathan. Marco could attempt to claim for personal injury due to the cuts to his face.
Scenario 3

Sergio held a party at his new house to welcome his neighbours, including Carlos. During the party, Carlos told Sergio that he was studying for a degree in the history of pottery. Sergio then asked Carlos to advise him on the value of a vase which he had inherited from an aunt and which he wanted to sell. Carlos advised Sergio that it was worth about £50. The following week, Sergio sold the vase to Ben, a local antiques dealer, for £40 but Sergio later discovered that it was in fact very rare and worth £10000.

Consider the rights and remedies, if any, of Sergio against:

- Carlos in connection with the vase

Potential Content

(A) In relation to Sergio and Carlos. The tort of negligence in relation to misstatements. The need for a special relationship/proximity. The issue of Carlos's expertise, whether Carlos should have foreseen reliance by Sergio and whether reliance by Sergio was reasonable (e.g., the significance that the advice was given at a social occasion). The issue of breach of duty and standard of care in relation to statements. Carlos's likely lack of experience. Reference to damages.
Student answer for consideration

Answer 4 (part – economic loss)

Sergio may be able to claim against Carlos for pure economic loss. Usually this cannot be claimed for as defined by the Spartan Steel case. A good reason for this is also defined in Caparo v Dickman as it could potentially allow the floodgates to open for claims. However it is sometimes recoverable when there has been a negligent misstatement like in the scenario.

Sergio would argue that Carlos is liable as he gave him a negligent misstatement that caused him pure economic loss. The usual rule is that the advice given must be followed by the claimant. Carlos could argue that, as Sergio sold the vase for £40 rather than the £50 he advised, Sergio did not follow his advice and so he is not liable.

To succeed in his claim, Sergio must prove Carlos has skill / expertise in the subject he gave a misstatement for. As he was studying a degree in the history of pottery, it seems that he does. However Carlos would argue that, as a student he does not have the appropriate skill / expertise to qualify. Chaudrey v Prabhaker counters this point anyway, as the defendant in that case was just a friend and had no qualifications in cars yet still was accountable.

The advice followed must be reasonable. For example the advice cannot be given after several drinks. Although it can be given in any form, vocally, written down etc. As Carlos gave advice at a party, it could be apparent that he had been drinking although it is not mentioned in the scenario. All in all it could be difficult to prove that Carlos qualified to give a negligent misstatement as he was not an expert in the field, nor did Sergio take his advice. However if Sergio did succeed in his claim, he would receive damages for the pure economic loss.
**Scenario 4**

Ben owned a long garden, at the bottom of which was a derelict garage. Having seen young boys trying to get over his garden fence near to the garage, Ben placed a large notice on the fence which stated: ‘Danger. Keep out.’ Later, for a bit of fun, Alan, another young boy, climbed over the fence and on to the garage roof. The roof suddenly collapsed due to its rotten condition, causing Alan to fall and rip his legs open on jagged tiles. Pam, a friend of Alan’s family, was passing by when she recognised Alan’s voice as he screamed for help. She immediately called an ambulance. She then phoned Alan’s mother, Jane, to tell her what had happened. Pam later saw Alan, in agony and covered in blood, as he was carried out of the garden on a stretcher. Jane arrived at the scene just as the ambulance was driving off. Both Pam and Jane suffered severe anxiety and shock.

Consider the rights and remedies, if any, of Alan … against Ben in connection with [his] injuries.

**Potential Content**

(A) In relation to Ben’s possible liability to Alan. Relevant requirements of the *Occupiers’ Liability Act 1984*. The need for a danger due to the state of the premises [s1(1)]. Requirements for the duty to arise [s1(3)]. Nature of the duty [s1(4)]. Was the placing of the notice a sufficient performance of the duty? Consideration of possible contributory negligence/volenti. Possible reference to ‘special’ rules in relation to children in the context of the *OLA 1984* (eg the occupier should realise that children are less careful than adults, that they are more likely to ‘come into the vicinity of the danger’ where there is an attractive feature, etc). Reference to damages.

**NB** Alternative claim under the *OLA 1957* on the basis that the garage might constitute an allurement to a child and that Alan is therefore an implied licensee and visitor – max weak sound (if combined with a detailed explanation and application of the *OLA 1957*).

Candidates who consider both *OLA 1984* and *OLA 1957* approaches should be given appropriate credit.
Student answer for consideration

Answer 4 (part – occupiers' liability to trespassers)

Alan could sue Ben under the trespasser's act 1984. Unlike the lawful visitors act 1957 this only covers personal injury. As Alan was not given express or implied permission, he must be placed under the trespasser's act.

The occupier can be sued. This is defined in Wheat v Lacon as the person in control of the premises. The premises was defined as ‘any fixed or moveable structure’ be it stairs, elevator or aircraft. Ben is the controller of the premises a sit is his garden. In order to be sued Ben must have been aware that the claimant was likely to trespass. Because he put up a sign it seems that he did know this. He must also be aware that his premises were dangerous. This is difficult as the 'rotten condition' of the garage may be tough to spot. Ben did not owe a duty of common humanity to Ben and it seems that it would be unfair to suggest that he did not comply to this because of a rotten garage. That being said, a special duty of care is owed to children. Being tat Alan is ‘young’ and that Ben was aware of him trying to get into his garden he should have put up more boundaries to stop it (Glasgow case) (Butlins case). It must be noted that Ben put up a sign to prohibit the boys from entering the premises. This must be considered as a reasonable attempt to prevent danger and harm (Tomlinson). Alan would likely fail to sue Ben.
Commentaries

Comment on Answer 1

(A) A response which strongly demonstrates the ability to explain the relevant elements of private nuisance fully, clearly and accurately. The student begins with an accurate definition of the tort, a brief explanation of the need for a proprietary interest vested in the claimant and a reference to the important point that, in determining whether an interference with the use and enjoyment of land is unreasonable, the court must balance the right of the claimant to enjoy his land free from interference and that of the defendant to use his land as he pleases. The various factors which are relevant to the issue of unreasonableness are identified and explained, namely, the duration of the interference, the nature of the (quiet, rural) locality, and Andy’s malice in intentionally increasing the interference following Rick’s complaint. Analysis of the facts of the scenario is perceptive and accurate, leading to arguable conclusions, for example, that “Andy’s actions may be seen as more suitable in an industrial area than in a residential one.” Relevant judicial authority is apparent throughout the answer. Finally, there is a brief reference to the possibility of the award of a total or partial injunction. In conclusion, the full and accurate treatment of all the important elements of private nuisance together with authority and detailed application leads to a ‘sound’ classification.

(B) The student gives a full and accurate discussion of both public nuisance and *Rylands v Fletcher*. In relation to public nuisance, the answer contains an accurate legal definition of public nuisance and an explanation of the requirement of an interference with the reasonable comfort and convenience of the public or a class of the public, which is correctly identified in relation to the scenario as the obstruction of the highway to motorists. Although the rule that a public nuisance is a crime is not expressly stated, this is clearly implied, for example, by the statement that the Attorney-General can seek an injunction. The answer correctly states that an individual can obtain a remedy only if he/she can show ‘special damage’ over and above that suffered by the public generally, but the fact that none of the motorists in the scenario can establish such special damage is not expressly stated, although the answer concludes that the likely outcome will be that the Attorney-General will seek a remedy, thereby implying that the motorists are unable to sue personally. The answer concerning Andy’s possible liability under the Rule in *Rylands v Fletcher* correctly identifies and explains the main elements of liability – an accumulation on land of a ‘thing’ likely to ‘do mischief’ if it escapes, an escape, a non-natural user of land and damage, together with reference to some authority and convincing application of the rules to the scenario. Moreover, the strictness of liability under the Rule is referred to and, although the requirement of foreseeable damage, emphasised in *Cambridge Water v Eastern Counties Leather*, is not considered, the answer is sufficiently strong to merit ‘sound’.

(A) Sound  (B) Sound  25 marks

Comment on Answer 2

(A) This is an extract from the full answer to the question, and includes only the discussion of the *Occupiers’ Liability Act 1957*. The general requirements of a claim under the *OLA 1957* are accurately and clearly explained. The student correctly explains that the duty arising under the Act is owed by the ‘occupier’ of the relevant premises, that the duty is owed to any ‘visitor’ on the premises and that the duty owed is the ‘common duty of care.’ The student then proceeds accurately to define the ‘occupier’ as the person ‘in control of the land’, the ‘common duty of care’ as one ‘to take reasonable care to ensure that the visitor will be reasonably safe’, ‘premises’ as ‘any fixed or moveable structure’ and, although the term ‘visitor’ is not expressly defined, the student clearly recognizes that Marco is a visitor by virtue of having Rick’s express permission to enter the premises. All of the above terms are accurately applied to the facts of the problem. Breach of duty is also addressed. The student correctly states that Rick would be in breach of duty ‘if he did not act as the reasonably competent occupier
would in ensuring that the premises were safe’. The important issue in the scenario relating to breach of duty is whether Rick would be entitled to rely on s.2(3)(b) of the Act, which states that the occupier may expect that a person in the exercise of a calling will appreciate and guard against any special risks ‘ordinarily incident to it.’ The student demonstrates a good understanding and application of this provision in stating that Marco is ‘an expert visitor’ who is ‘expected to protect himself against known threats or risks in his line of work’ and that, ‘as a roofing contractor… he should be aware of the risk of rotten guttering.’ Unfortunately, the treatment is slightly undermined by the failure of the student to distinguish between risks which are ‘ordinarily incident’ to the visitor’s calling and those which are not. Moreover, the student is confused in suggesting that Rick should be entitled to rely on s.2(3)(b) since he did not have the skill to check Marco’s work, a point which is relevant to s.2(4)(b). Taking into account the strength of the explanation and application of the general requirements of the Act, the good use of authority and the good, albeit slightly flawed, treatment of s.2(3)(b), the response merits ‘weak sound.’

(A) Weak Sound

Comment on Answer 3

(A) This is an extract from the full answer to the question, and includes only the discussion of the Occupiers’ Liability Act 1957. The elements of a claim under the OLA 1957 are referred to, in that the terms ‘premises’, ‘occupier’, ‘visitor’, and ‘the common duty of care’ are explained and applied, together with some reference to relevant authority, but the explanation and application is limited. Moreover the answer would have been enhanced by an explanation of the overall structure and purpose of the OLA 1957 (compare, for example, the first two sentences of the answer in the previous script). There is some treatment of breach of duty, in that the student argues that Rick did not fail to act as the reasonable man, but the response is undermined by a weak and superficial consideration of the issues raised by s.2(3)(b). The student gains some credit by suggesting that ‘the accident happened within his profession’ and that ‘he should have known the risks’, but the explanation and analysis are both very limited and fail to refer to the facts of the scenario. Overall, the answer contains some accurate explanation and application, both of which are fairly limited, leading to a classification of ‘weak clear’.

(A) Weak Clear

Comment on Answer 4

(A) This is an extract from the full answer to the question, and includes only the discussion of the issues relating to negligent misstatement. The student gains credit by accurately explaining, in the opening paragraph, that claims in the tort of negligence for pure economic loss generally fail and that claims for such loss which result from a negligent misstatement constitute an exception to this rule. The question obviously required students to explain and apply the elements of a ‘special’ or ‘proximate’ relationship as laid down in Hedley Byrne v Heller and later authorities, and the response of this student is undermined by error and omission in this connection. The student correctly refers to the requirement that the advisor must possess skill or expertise relating to the subject-matter of the statement but, although there is some credit in the suggestion that Carlos, as a student, did not possess sufficient expertise, the explanation relating to Chaudhry v Prabhakar is inaccurate as, although the advisor in that case was a friend, he did possess some knowledge of cars. Moreover, the student fails to identify that the Chaudhry decision clearly suggests that a special relationship can arise in a social situation, a point which is highly relevant to this scenario. The student correctly explains that the claimant must rely on the advice but argues that, since Sergio sold the vase for £40 rather than the £50 as advised by Carlos, Sergio did not rely on the advice. This is a dubious
argument, given that there is little difference between a price of £40 and £50! The student also demonstrates some confusion in stating that the advice must be reasonable, rather than the reliance on it but his/her argument that the giving of advice at a party is unreasonable deserves some credit as it is clearly arguable that it was unreasonable for Sergio to rely on Carlos’s advice in such a situation. There are several important omissions from the response. To begin with, there is no reference to the important element of a special relationship that the advisor must have realised that it was highly likely that the claimant would rely on the advice given. Moreover, issues relating to breach of duty and the standard of care expected of an advisor are not referred to, including, for example, the inexperience of Carlos in relation to pottery as a student of the subject. In conclusion, the response explains and applies some of the relevant rules but is significantly undermined by superficiality, error and omission, together with minimal reference to authority.

(A) Some

Comment on Answer 5

(A) This is an extract from the full answer to the question, and includes only the discussion of the issues relating to the Occupiers’ Liability Act 1984. Despite the inaccurate description of the 1984 Act as the ‘Trespasser’s Act’, the response contains a brief but reasonably accurate knowledge of some of the relevant statutory principles. The distinction between visitors and trespassers is clearly understood, as is the term ‘occupier’, and ‘premises.’ The requirements for the duty to arise under s.1(3) are briefly explained and applied, but both are imperfect in that the student states that the occupier must ‘be aware’ that the claimant ‘was likely to trespass’ and that the premises are dangerous, thereby failing to understand the fundamental point that it is sufficient that the occupier has ‘reasonable grounds to believe’ that these circumstances exist. The consequence of this misunderstanding is that the student failed to realize (i) that the fact that Ben knew that his garage was ‘derelict’ arguably gave him reasonable grounds to believe that it might be in a dangerous condition and (ii) that the fact that Ben knew that children had in the past been trying to get over his fence gave him reasonable grounds to believe that children might be in the vicinity of the danger in the future. There is no reference in the response to the further requirement for the duty to arise that it must be reasonable to expect the occupier to protect the trespasser against the danger nor that, in order for the duty to arise, there must be a danger due to the state of the premises. Although the nature of the duty owed to the trespasser, as articulated in s.1(4), is not expressly stated, the student gains some credit by referring to the ‘duty of common humanity’ and to Ben’s ‘reasonable attempt to prevent danger and harm’ and there is also a creditworthy consideration of whether Ben sufficiently performs the duty by placing the notice on the fence, given the special considerations applicable to child trespassers. In conclusion, the response contains an explanation and application of some of the aspects of the OLA 1984, but is undermined by its failure to address important aspects of the Act and by its lack of depth in both explanation and application, thereby justifying a classification of ‘weak clear’.

(A) Weak Clear