The purpose of this report is not to give the answers to the questions themselves but to indicate what the examiner was looking for in the answers.

Overall,

- To pass each question, students had to identify the correct cause of action and show some application of the facts to the law.
- To be rewarded a credit, students had to satisfy the requirements of a pass, and show good application of the facts to the law.
- To be rewarded a distinction, students had to satisfy the requirements of a credit, and also identify and show great insight into the key issues.

For the subject overall, the highest mark was 94%.

**Question One:**

Before discussing the particulars of each part of this question, it is necessary to make a general comment about the students’ approach to the question. The best answers came from students who were able to not only meet all the elements, but were able to identify which elements needed more comprehensive discussion and analysis and then spend sufficient time indulging in this. Students who simply listed, as a shopping trolley, the elements of negligence with no real analysis of the issues or certain facts were given passes, and sometimes fails if they did not engage with the facts at all.

There were a number of contentious issues within this question that needed discussing. Duty of Care was not contentious, but Breach of Duty required due discussion. For a set of facts that resembled, quite closely, that of *Ferreira v Waverley Council*, it was important that students did not let that case affect their analysis of this problem. Questions of fact need independent analysis, as these facts differed from those in the aforementioned case. The Causation stage required an analysis of *Strong v Woolworths*, as there was an issue regarding whether having a teacher on duty could have prevented the accident, in the same way that the cleaning schedule in *Strong v Woolworths* affected Mrs Strong’s fall. It was also necessary to discuss the risk provisions under the Civil Liability Act and possibly even the common law defence of *volenti non fit injuria* as the facts did mention the possibility of Marco being aware of the actual risk involved in getting up on the roof.

All in all, with such an issue dense question like this one, it was important for students to ascertain all of the critical issues and address them to a degree of depth. Students who scored the higher marks were the ones who did this, and those who scored poorly in this question often may have displayed understanding of one or two of the issues, but missed entirely a number of others. The part done least well in this question was defences, which was either done in too briefer detail, or missed entirely.
**Question Two:**

This question tested the student’s grasp of the intentional tort of assault. In particular this question tests the student’s understanding of how words can amount to a threat. The best students assessed each threat made to Christine separately.

Each of the comments were testing something different. With Roy’s comment, the student needed to demonstrate an understanding of when a conditional threat amounts to assault. Terry’s comment tested the student’s ability to define whether there was a specific threat.

The student who tried to address both comments in the one go, overall, seemed to miss the nuances of the tort of assault, and did not tend to show a sufficient depth of understanding of the law.

The other significant issue that needed to be addressed was the criminal provisions of the Civil Liability threat, regarding potential excessive self-defence carried out by Ben towards Terry. Students needed to consider s3B, then go through the process of applying ss52 – 53 to the facts. Overall, this was done poorly. If the issue was missed, the student faced failing the question. The students who scored highly were able to show critical application of the provisions to the facts as they addressed the multiple battery, assault and false imprisonments in the facts.

**Question Three:**

This question was clearly a case of private nuisance. The loss of enjoyment came from the immaterial interference of the way that Scott flew his drone around his perimeter (in it’s flying course, camera and noise). A dive into the facts was necessary here, particularly around how the drone could have been flown differently, or whether other alternatives could have been used.

In the second part, firstly the student had to go through the cases of Oldham v Lawson, Khorasandjian v Bush and Hunter v Canary. Students were required to conclude that given the tort of nuisance is a land-based tort, then only people who have a legal or equitable right to the land can make a claim. This was made abundantly clear in lectures. Students were rewarded if they went as far as saying that this issue hasn’t been considered in Australia yet, and only the Victorian authority of Stockwell v Victoria has applied Hunter.