

# **Mark Schemes for the Units**

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**January 2010**

**H134/H534/MS/10J**

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Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

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Any enquiries about publications should be addressed to:

OCR Publications  
PO Box 5050  
Annesley  
NOTTINGHAM  
NG15 0DL

Telephone: 0870 770 6622  
Facsimile: 01223 552610  
E-mail: [publications@ocr.org.uk](mailto:publications@ocr.org.uk)

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# G151 English Legal System

This mark scheme must be used in conjunction with the Advanced Subsidiary GCE Law Levels of Assessment Grid.

When using the mark scheme the points made are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all will receive no marks.

# G151 English Legal System

## Section A

- 1 (a) Describe the jurisdiction of **both** the High Court **and** the County Court in civil cases including the track system. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Identify the County Court and the High Court as the main civil trial courts. Show good knowledge and understanding of the main types of case that can be heard in each court.

County Court:

- contract, tort, recovery of land to any value;
- partnerships, trusts, and inheritance up to £30,000;
- personal injury less than £50,000;
- Small Claims – actions involving up to £5,000.

High Court:

- Queen's Bench Division – contract and tort over £50,000 and some from £25,000 (multi-track). Includes Commercial Court, Admiralty Court, Technology and Construction Court and judicial review;
- Chancery Division – insolvency, mortgages, trusts, property disputes, copyright and patents, intellectual property and probate disputes;
- Family Division – Children Act 1989 cases, and other family matters.

Show clear understanding of the allocation of cases to different tracks:

- Allocation questionnaire;
- Small claims for cases up to £5,000 (£1,000 for personal injury cases);
- Fast-track for cases from £5,000 to £25,000;
- Multi-track cases over £25,000 or in cases involving complex points;
- All tracks usually heard in County Court, only claims over £25,000 or very complex claims heard in the High court;
- Explain time limits for each track;
- Limit on number of witnesses.

Credit will be given for any other details.

To be placed in level 4 **both** the jurisdiction of the courts **and** the track system need to be covered.

- 1 (b)\* Discuss the advantages and disadvantages of the small claims track. [12]

Mark Levels	AO2	AO3
Level 4	8-9	-
Level 3	6-7	3
Level 2	4-5	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 2

Discuss the advantages and disadvantages of the small claims track:

- The cost of taking a claim is low if the claim is under £1000 but there is a £100 allocation fee for any higher claim;
- People do not have to use lawyers but businesses often do so as an unrepresented individual can be at a disadvantage;
- The District Judge should help the parties to explain their case but research by Baldwin has shown this is not always the case with unrepresented claimants;
- Legal funding is not available but a no win no fee arrangement may be possible;
- If you lose you do not have to pay the other person's legal costs but if you win you only have a 60% chance of being paid what the court has awarded;
- The procedure is quicker than for other types of case;
- Credit will be given for any other relevant point.

To be awarded level 4 marks **both** advantages **and** disadvantages need to be discussed.

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.

[Total marks 30]

- 2 (a) Describe the various types of publicly funded advice and representation available in criminal cases. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Demonstrate knowledge and understanding of the Criminal Defence Service.

Demonstrate knowledge of the Duty Solicitor scheme at the police station:

- Run by local contracted solicitors with relevant qualification (Police Station qualification);
- Available to anyone questioned at the police station but will only be by telephone unless attendance will “materially progress the case”;
- Covers advice and attending interviews but attendance is limited unless the client is vulnerable;
- Free to all no means or merits testing.

Demonstrate knowledge and understanding of Advice and Assistance:

- Franchised solicitor;
- Covers advice and some preparatory work for someone charged with an offence and help with their application for legal representation limited to one hour’s work;
- Means tested – only those on very low incomes qualify;
- If at the Magistrates’ Court – contracted solicitor with relevant qualification (Magistrates’ Court qualification);
- Free for anyone in custody.

Demonstrate knowledge and understanding of Legal Representation:

- Franchised solicitor or independent barrister;
- Covers representation and all steps in preparation of a case;
- Merits tested (interests of justice);
- Means test in the Magistrates’ Court – difficult to qualify unless on benefits or under 18 years old;
- Convicted defendant may be ordered to pay costs at end of case.

To be placed in level 4 **both** advice **and** representation need to be covered.

- 2 (b)\* Discuss the problems associated with the funding of criminal cases. [12]

Mark Levels	AO2	AO3
Level 4	8-9	-
Level 3	6-7	3
Level 2	4-5	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 2

Discuss the problems associated with the funding of criminal cases:

- Budget has not been increased with inflation which has led to cuts in availability;
- Attendance at the police station now limited to situations which “materially progress the case” – most advice now by phone. Seen as a defect with the scheme in the past but to save money phone advice is now more common;
- Merits test – in the interests of justice is now applied very strictly which leads to repeat offenders having representation but first time offenders not getting representation as they are less likely to be imprisoned. This cannot be seen as fair;
- Means testing for criminal legal funding for representation in the Magistrates’ Court has been re-introduced and only 25% of adults are eligible. There are plans to introduce means testing for Crown Court cases which could seriously disadvantage some defendants as they are much more expensive to fund;
- Few lawyers are willing to work for the fixed fees offered by the government so it is difficult for defendants to find a local solicitor to take their case;
- Introduction of Public Defender Service – not successful as worked out more expensive;
- Discuss whether there should be a finite funding for criminal legal funding or whether it should be demand-led.

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.

**[Total marks 30]**

3 (a) Describe the qualifications, selection and training of judges.

[18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Demonstrate knowledge and understanding of the qualifications of judges:

- Set out in the Courts and Legal Services Act 1990;
- Supreme Court Judges (formerly Law Lords): 2 years high judicial office or 15 years High Court qualification;
- Lords Justices of Appeal; 10 years High court qualification or existing High Court Judge;
- High Court Judges – 2 years as a Circuit Judge;
- Circuit judges – 3 years as a District Judge, Recorder or Tribunal Chair;
- Recorders: 7 years relevant qualification; (just changed from 10 years);
- District Judges: 5 years general qualification; (just changed from 7 years);
- Tribunal Courts and Enforcement Act 2007; opened up eligibility to Fellows of ILEX and others.

Demonstrate knowledge and understanding of the selection of judges:

- Organised by the Judicial Appointments Commission;
- Selection by a mixed panel of judges, lay people and lawyers;
- Mainly by application with references;
- Interviews assess attitude and aptitude;
- Lord Chancellor has limited power to object to selection;
- Applicants for higher appointments are expected to show competence at a lower level (appointment at assistant recorder level is usually used to try out potential judges for more permanent positions).

Demonstrate knowledge and understanding of the training of judges:

- Conducted by the Judicial Studies Board;
- For superior judges – training is voluntary;
- For an inferior judge training is compulsory mainly for newly appointed assistant recorders and consists of a one week course which deals with sentencing, running a criminal court and human awareness;
- Inferior judges also have to spend a week shadowing an experienced judge before sitting themselves;
- One day courses are run from time to time to update judges on major changes in the law some of which are compulsory eg Human Rights Act 1998.

To be placed in level 4 qualifications, selection **and** training need to be covered.

- 3 (b)\* Discuss whether or not the changes to the selection of judges is leading to a wider cross section of people becoming judges. [12]

Mark Levels	AO2	AO3
Level 4	8-9	-
Level 3	6-7	3
Level 2	4-5	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 2

Discuss the usual background of judges before the changes in selection:

- Were originally only selected from the ranks of barristers but had been extended to solicitors for the more junior judges;
- Appointed on recommendation of Lord Chancellor with secret soundings;
- Very few women or ethnic minorities;
- Superior Court Judges over 80% went to public school and “Oxbridge”;
- Came from wealthy backgrounds.

Discuss the changes:

- Appointments from applications and on merit;
- Vacancies advertised and require applications;
- Positive steps to diversify the judiciary – more women and ethnic minorities being encouraged to apply but in practice the senior appointments have still been very predominantly white and male;
- Promotions from current inferior judges to the more senior positions rather than appointments directly to senior positions;
- Tribunals Courts and Enforcement Act 2007 has opened up eligibility for judicial appointments to Fellows of ILEX and others;
- Credit any reasonable conclusion eg Judicial Appointments Commission is leading to greater diversity.

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.

[Total marks 30]

- 4 (a) Describe the various roles lay magistrates play in **both** criminal **and** civil cases.

[18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

#### Assessment Objective 1

Demonstrate knowledge and understanding of role of lay magistrates in criminal cases:

- Magistrates' courts try 97% of all criminal cases from start to finish;
- Deal with the other 3% criminal cases at least at a preliminary level with Early Administrative Hearings;
- Decide guilt or innocence and are responsible for sentencing offenders;
- Deal with warrants and extensions to detention;
- Deal with preliminary matters such as bail and mode of trial hearings;
- Specially trained panels of magistrates deal with young offenders aged 10-17 years in Youth Court;
- Sit with judge in Crown Court to hear appeals from the Magistrates' Court;
- Lay magistrates deal with the vast majority of cases as the use of district judges is still relatively limited.

Demonstrate knowledge and understanding of role of lay magistrates in civil cases:

- Deal with the enforcement of debts owed to the utilities (eg electricity);
- Deal with non payment of TV licences and council tax;
- Hear appeals against refusal of alcohol licences;
- Special panel deals with certain matters under the Children Act 1989 in the Family court eg orders for protection against violence and adoption.

To be placed in level 4 **both** criminal **and** civil roles need to be covered.

- 4 (b)\* Discuss the advantages of having lay magistrates in the English legal system. [12]

Mark Levels	AO2	AO3
Level 4	8-9	-
Level 3	6-7	3
Level 2	4-5	2
Level 1	1-3	1

Potential answers **MAY**:

#### **Assessment Objective 2**

Discuss some of the advantages of using lay magistrates:

- Three people making a decision rather than one so less likely to be prejudiced;
- Good range of people sitting – more of a cross section of society than judges but still a limited age and social class range;
- Express society's disapproval of defendant's actions when they convict;
- Public involvement in the criminal justice system, sign of a democracy – not just the state charging, convicting and sentencing;
- Local knowledge although this may be limited to particular parts of the area;
- Magistrates' training has improved which leads to less inconsistency in sentencing;
- Public confidence;
- Cheaper than using legal professionals;
- Not as case-hardened as judges as they are only part time.

#### **Assessment Objective 3**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.

**[Total marks 30]**

- 5 (a) Describe the powers of the police to stop and search a person on the street. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

#### Assessment Objective 1

Demonstrate knowledge and understanding of powers to stop and search as set out under the Police and Criminal Evidence Act 1984, the Codes of Practice, the Criminal Justice Act 2003 and other relevant legislation:

- Section 1 of PACE – police have the power to stop and search a person in a public place if they have reasonable suspicion that prohibited articles, stolen goods or articles made, adapted or intended for use in burglary or criminal damage are in their possession (prohibited fireworks were added in the Serious Organised Crime and Police Act 2005);
- Meaning of reasonable suspicion;
- Code of Practice A sets out guidance for police on stop and search;
- Police officer must give his name, station and reason for the search;
- Only a request to remove outer coat, jacket and gloves is permitted;
- No “voluntary search” there must be a statutory power for any search;
- Written report required for every stop and search;
- Identify other statutes that give power to the police to stop and search eg Misuse of Drugs Act 1971 and Terrorism Act 2000;
- Section 60 Criminal Justice and Public Order Act 1994 and the different rules that apply when that is in force.

- 5 (b)\* Discuss whether the balance of interests between crime prevention and individual rights is maintained by the current rules on stop and search on the street. [12]

Mark Levels	AO2	AO3
Level 4	8-9	-
Level 3	6-7	3
Level 2	4-5	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 2

Discuss the importance of the police having the powers to combat crime:

- Important to be able to ask people to remove items that may conceal their identity or they may avoid detection;
- Searching for prohibited items does prevent some crime – Tottenham leaflet experiment led to 50% reduction in stop and search but increases in both burglary and street robbery in the area;
- Discuss the safeguards that have been put in place to protect the individual;
- Fact that the police officer has to identify himself and give a reason for the search protects the individual from random searches illustrated by *Osman (1999)*;
- Code of Practice A setting out what is not reasonable suspicion should protect individuals from harassment because of their appearance or previous record;
- Abolition of “voluntary search” so that now all searches are in accordance with the current law.

Problems however:

- Reasonable suspicion still very open ended and easy to justify;
- Stop and search has increased tenfold since 1986;
- Only 10-13% of people stopped are then arrested;
- Many people do not know their rights which may make the rights ineffective;
- Misuse of section 60 CJPOA to deal with street robbery or other crimes rather than its original purpose of dealing with riots;
- Credit any other relevant comments.

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.

[Total marks 30]

## Section B

- 6 (a) Describe how it is decided in which court a criminal trial of an adult offender will be heard. Include all categories of offence. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Describe the categories of offence:

- Summary offences – less serious offences always tried in the Magistrates' Court eg driving offences and common assault;
- Triable either way offences – middle range offences which can vary in the degree of harm caused. Can be tried either in the Magistrates' Court or in the Crown Court eg theft and assault occasioning actual bodily harm;
- Indictable offences – more serious crimes which must be tried in the Crown Court eg murder, manslaughter and rape.

Describe the process of deciding which court a triable either way offence will be heard in:

- Plea before venue – the defendant is asked whether he pleads guilty or not guilty to the offence. If guilty the case is automatically heard by the Magistrates' Court but they retain the option of sending the defendant to the Crown Court for sentencing if necessary;
- If the defendant pleads not guilty a mode of trial procedure must take place;
- The magistrates first consider whether they think the case is suitable for trial in the Magistrates' Court. If they feel it is not they will transfer it to the Crown Court for trial;
- If the magistrates feel prepared to accept jurisdiction of the case the defendant is given the choice of which court he wishes to be tried in.

- 6 (b)\* Pedro is pleading not guilty to a charge of the theft of a wallet from his colleague's desk at work. Theft is a triable either way offence.

Discuss the matters Pedro should consider when choosing in which court to be tried.

[12]

Mark Levels	AO2	AO3
Level 4	8-9	-
Level 3	6-7	3
Level 2	4-5	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 2

Identify that Pedro could be tried in either the Crown Court or the Magistrates' Court. Discuss the advantages and disadvantages to Pedro of choosing trial by jury or being tried in the Magistrates' Court.

Magistrates' Court trial:

Advantages

- Speed and lower possible penalties;
- Less publicity and magistrates may be less daunting than Crown Court.

Disadvantages

- Higher conviction rate;
- Less likely to get legal funding so may need to represent himself and can be sent to Crown Court for sentencing anyway if Magistrates want to give a higher sentence than they are allowed.

Crown Court trial:

Advantages

- Lower conviction rate, as juries less case hardened and more likely to believe Pedro's story;
- More likely to get legal funding should have better advocates.

Disadvantages

- Slower, if on remand may spend longer awaiting trial than eventual sentence;
- Higher possible penalties.

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.

[Total marks 30]

- 7 (a) Describe the custodial and community sentences available for adult offenders convicted in both the Magistrates' Court and the Crown Court. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Demonstrate knowledge of the sentences available to the Magistrates court and the Crown Court for adult offenders under the Criminal Justice Act 2003.

Custodial sentences:

- Crown court powers are not limited but in the Magistrates' Court the limit is 6 months for any one offence and 12 months for two or more offences;
- Mandatory or discretionary life sentences;
- Fixed sentences – terms of months or years released after serving half sentence;
- Minimum sentences for certain crimes eg firearms offences or third burglary conviction;
- Home detention curfew;
- Indeterminate sentences for dangerous offenders for public protection;
- Extended sentences for certain violent or sexual offences;
- Suspended sentence – sentence may be suspended for up to 2 years.

Community sentences:

- Available in both the Magistrates' court and the Crown Court;
- A community order which can include a number of requirements;
- An unpaid work requirement – unpaid work in the community (40-300 hours);
- Supervision requirement – under the supervision of a probation officer for two to three years;
- Curfew requirement – have to be in a certain place for 2-12 hours every day for up to six months can be enforced by electronic tagging;
- Prohibited activity requirement;
- Exclusion requirement;
- Drug treatment and testing requirement.

Mention of other custodial sentences or possible requirements on community orders will be credited. Credit will also be given for details of sentences.

- 7 (b)\* Dimitri, who has two previous convictions for minor assaults, broke a shop window whilst drunk and has been convicted of criminal damage in the Magistrates' Court.

Explain which aims of sentencing are likely to be considered when deciding the sentence for Dimitri and suggest possible sentences. [12]

Mark Levels	AO2	AO3
Level 4	8-9	-
Level 3	6-7	3
Level 2	4-5	2
Level 1	1-3	1

Potential answers **MAY**:

#### Assessment Objective 2

Explain the criteria that would be most important in deciding the sentence for Dimitri:

- Punishment is likely to be a factor as Dimitri is a repeat offender;
- Protection of the public may not be considered important as the offences are all minor;
- As Dimitri is a repeat offender deterrence and rehabilitation will not be regarded as likely to work unless his problem is due to alcohol or drug abuse and he is willing to undertake rehabilitation;
- Reparation could be considered as an aim. He may have to pay for the replacement of the window;
- It is likely that Dimitri would receive a community order possibly including an unpaid work requirement. If he has a drink problem he may have an alcohol treatment requirement, or he may be fined, compensation order.

#### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.

[Total marks 30]

### Advanced Subsidiary GCE Law Levels of Assessment

There are **four** levels of assessment of AOs 1 and 2 in the AS units. Level 4 is the highest level that can reasonably be expected from a candidate at the end of the first year of study of an Advanced GCE course. Similarly, there are **three** levels of assessment of AO3 in the AS units.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation of relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation, but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

## G152 Sources of Law

This mark scheme must be used in conjunction with the Advanced Subsidiary GCE Law Assessment Grid.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

**Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all will receive no marks.**

This mark scheme contains indicative content but it is not exhaustive or prescriptive. It should be used alongside the matrix of levels of assessment and live exemplar standardisation scripts (which cover a range of responses identifying where within a level of assessment a particular response lies). Examiners are required to use the indicative content of the mark schemes only in conjunction with the matrix of levels of assessment as informed by actual responses in the standardisation scripts. Examiners should not be drawn prescriptively and quantitatively to the content of the mark scheme when marking candidates' responses and should follow the specific guidance provided by the Principal Examiner in terms of breadth and depth of responses. Appropriate credit will be given for non-standard answers.

# G152 Sources of Law

## Exercise on European Union Law

- 1 (a)\* With reference to Source A and Source B and using your knowledge of European Union Law.

Describe the Article 234 reference procedure using the Source and other cases to illustrate your answer. [15]

Mark Levels	AO1	AO3
Level 4	10-12	-
Level 3	7-9	3
Level 2	4-6	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 1

- Describe the nature of 234 — it is part of the supervisory role of the ECJ;
- Describe how it is used — any court or tribunal in a member state may refer a question on EU law;
- Describe the guidance given by Lord Denning in *Bulmer v Bollinger* (1974);
- Describe how a referral must be made if it is a final appeal court and the issue has not been decided before;
- Describe the mechanics of the referral — proceedings are suspended in the national court until the ECJ has given its ruling;
- The ECJ's ruling is guidance which must be taken into account by the national court when reaching its verdict;
- Use any relevant cases to illustrate eg *Marshall v Southampton and South West Hampshire AHA* (1986) and *Torfaen Borough Council v B & Q* (1990) and *Van Duyn v Home Office* (1974);
- Make relevant reference to the source.

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- (b) Using the Source, consider whether any of the following would have a claim against their employers for a failure to comply with a Directive:
- (i) Millie, an employee of a recently privatised (former state owned) company. [5]
  - (ii) Carla, an employee of a local authority. [5]
  - (iii) Amanda, an employee of a circus. [5]

Mark Levels	AO2
(for each of i, ii, iii)	
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

#### Assessment Objective 2

In the case of **(i)** recognise that the privatised company may be regarded as an arm of the state. Recognise that the state controlled the business recently and therefore it is still connected to the state. Use any relevant case and/or the source to illustrate.

In the case of **(ii)** recognise that a local authority is to be regarded as an arm of the state and it would be possible to use the concept of vertical direct effect to enforce rights conferred for an unimplemented directive. Carla therefore can take action. Use any case and/or the Source to illustrate.

In the case of **(iii)** recognise that the circus is not connected to the state and that directives do not have horizontal direct effect therefore Amanda cannot take action against her employer. Recognise the possibility of suing the member state for compensation. Use the source and/or any relevant case to illustrate.

(c) With reference to Source A and using your knowledge of European Union Law.

(i) Describe how Directives become law in Member States. [15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

**Assessment Objective 1**

- Explain that Article 249 of the Treaty of Rome gives the EU the power to issue directives;
- Explain that directives are binding on Member States but it is left to the Member State to use their own laws to implement the directives and that such laws have to be implemented within a time limit set by the European Commission;
- Explain that the usual method for implementing directives in the UK is through delegated legislation;
- Explain direct effect;
- Give examples of implementation of directives;
- Credit reference to the source.

(ii)\* Discuss the injustices associated with Directives.

[15]

Mark Levels	AO2	AO3
Level 4	10-12	-
Level 3	7-9	3
Level 2	4-6	2
Level 1	1-3	1

Potential answers **MAY**:

#### Assessment Objective 2

- Discuss the unfairness of the concepts of horizontal and vertical direct effect in that they give rights to individuals in some cases but not others;
- Discuss how a remedy may depend on the issue of who is the employer – state or private;
- Discuss the problems of identifying what is an ‘arm of the state’;
- Discuss how the ECJ has liberally interpreted ‘arm of the state’;
- Discuss the limitations of the *Francovich v Italian Republic* principles.

#### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

[Total marks 60]

## Exercise on Statutory Interpretation

- 2 (a)\* The Source at lines 14 – 15 refers to the literal rule. Describe the literal rule using the Source and other cases to illustrate your answer. [15]

Mark Levels	AO1	AO3
Level 4	10-12	-
Level 3	7-9	3
Level 2	4-6	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 1

- Explain that the literal rule involves giving words their plain, ordinary literal meaning.
- Identify that the literal rule involves the judge applying the literal rule even if it results in absurdity – *Lord Esher in R v Judge of the City of London* (1892).
- Describe the historical dominance of the literal rule.
- Describe how this rule respects parliamentary supremacy.
- Use cases to illustrate its use – *Fisher v Bell* (1961), *Whiteley v Chappel* (1868), *LNER v Berriman* (1946), *Cutter v Eagle Star Insurance* (1998).

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- (b) Using the Source, identify and explain the most suitable intrinsic or extrinsic aids that could be used in the following situations:
- (i) The House of Lords is considering an ambiguous word. The meaning of this word was discussed by Parliament during the passage of the Bill. [5]
- (ii) The House of Lords is trying to cover a gap in the law left by an Act. This Act was based on the Law Commission's recommendations. [5]
- (iii) The House of Lords is considering an ambiguous word inside an Act. There are notes inserted into the Act by a draftsman. [5]

Mark Levels	AO2
(for each of i, ii, iii)	
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

#### Assessment Objective 2

In the case of **(i)** recognise that the appropriate extrinsic aid is *Hansard*. Explain that it is a record of Parliamentary debates. Explain that it can only be used if it satisfies the conditions laid down in *Pepper v Hart* (1993). Explain that if it does not satisfy these conditions it cannot be used.

In the case of **(ii)** recognise that the most appropriate extrinsic aid would be law reform reports as the Law Commission is a law reform agency. Refer to the *Black Clawson* case which relaxed the rules regarding the use of law reform reports or any other relevant case.

In the case of **(iii)** recognise that the most appropriate intrinsic aid would be marginal notes. Explain they are not part of the Act and are inserted by the draftsman. Explain that traditionally marginal notes were not regarded as legitimate to use. Refer to any relevant case *Pride of Derbyshire Angling Association Ltd v British Celanese Ltd* (1953).

(c) With reference to the Source and other cases.

(i) Describe the mischief rule.

[15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

**Assessment Objective 1**

- Identify that the mischief rule was developed in *Heydon's case* (1584). Outline the four conditions discussed in that case.
- Explain that the judge should look at the gap or mischief that the Act was intended to cover and interpret the Act to cover that gap.
- Explain that the mischief rule is similar to the purposive approach.
- Use cases to illustrate the use of the mischief rule eg *Smith v Hughes* (1960), *RCN v DHSS* (1981), *DPP v Bull* (1994), *Elliott v Grey* (1960) and *Corkery v Carpenter* (1950), *Gorris v Scott* (1873).
- Credit reference to the source.

(ii)\* Discuss the advantages and disadvantages of the mischief rule. [15]

Mark Levels	AO2	AO3
Level 4	10-12	-
Level 3	7-9	3
Level 2	4-6	2
Level 1	1-3	1

Potential answers **MAY**:

### Assessment Objective 2

A discussion of the following **advantages**:

- the fact that the judge has greater flexibility with this rule;
- the Law Commission's views on the mischief rule;
- the fact that this rule helps achieve Parliamentary intent;
- it helps remove absurdity and injustice.

A discussion of the following **disadvantages**:

- the reliance on extrinsic aids and their associated problems;
- that the use of this rule is limited due to the purposive approach;
- the fact that this rule can be seen as unconstitutional;
- the rule relies on a preamble which most modern Acts no longer use.

### Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

[Total marks 60]

## AS GCE Law Levels of Assessment

There are **four** levels of assessment of AOs 1 and 2 in the AS units. Level 4 is the highest level that can reasonably be expected from a candidate at the end of the first year of study of an Advanced GCE course. Similarly, there are **three** levels of assessment of AO3 in the AS units.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

## G153 Criminal Law

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

# G153 Criminal Law

## Section A

- 1\* '*Mens rea* requires fault on the part of the defendant. The current law on both intention and recklessness is uncertain and unjust.'

Critically evaluate the accuracy of this statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Explain intention:

- Most serious level of *mens rea* and required for relatively few offences is indicative of a high level of blameworthiness
- Intention is to be distinguished from motive – *Steane, Chandler*
- Direct intent – the defendant's purpose and they set out to bring it about – *Mohan*
- Oblique intent – the consequence is not the defendant's clear aim but occurs as a result of their actions and is linked to their capacity to foresee the consequence
- Section 8 Criminal Justice Act 1967 created a subjective test which makes it clear foresight of consequences is only part of the evidence from which intention can be inferred
- Oblique intent has been developed by the courts – *Hyam, Moloney, Hancock and Shankland, Nedrick, Woollin, Matthews and Alleyne*
- Law Commission proposals try to refine the law – *Offences Against the Person Bill* (1998), *A New Homicide Act for England and Wales* (2005), *Murder, Manslaughter and Infanticide* (2006)
- Use any other relevant cases.

Explain recklessness:

- Level of *mens rea* lower than intention
- Human state of mind in that it is unjustified risk-taking
- Originally a subjective test – *Cunningham*
- Revised into an objective test – *Caldwell*
- Reversion to a subjective test – *G and R*
- Implications of that decision, especially in the context of criminal damage
- Development of subjective reckless manslaughter – *Lidar*
- Developments in gross negligence manslaughter – *Adomako*
- Proposals of the Law Commission in relation to involuntary manslaughter
- Use any other relevant cases.

**Assessment Objective 2****(20)**

Discuss any or all of the following areas with regard to intention:

- Crucial in differentiating offences on the basis of fault
- Problems of proving what was in a defendant's mind and the meaning of probability and foresight
- In murder intention leads to a mandatory life sentence and significant stigma for the defendant – juries may be reticent to deliver such a verdict
- Intention is often a common sense test – is this a suitable way to decide fault?
- There can be uncertainty and injustice based on the facts as juries see some kinds of cases as worse than others
- Will reform make the concept of fault clearer?
- Should intention mean direct intent only?
- Potential blurring with recklessness
- Does the change from 'infer' to 'find' represent an alteration in the law?
- Should a foreseen consequence be intention rather than evidence of it?

Discuss any or all of the following areas with regard to recklessness:

- Focus on a subjective test makes a defendant take responsibility and so it is easier to say they are at fault
- Problems of public protection if risk-taking is assessed subjectively
- Lack of fault when recklessness was assessed objectively
- Potential problem of having the most common level of *mens rea* taking account of all characteristics of the defendant when other areas, notably the defence of provocation, are becoming rather more objective in assessment
- The ease with which a defendant may now avoid liability and fault
- The problem of fairness, especially for victims and their families
- Is there deterrence if a defendant need only say they did not see a risk?
- In some areas, such as the defence of intoxication, fault is attributed on the basis of public policy rather than subjective recklessness.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both elements of *mens rea* and their problems. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role of the judges, the role of Parliament, the Law Commission, potential avenues for reform or the influence of policy in decision-making.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2\* 'The current definition of appropriation does not give effect to Parliament's original intention in the Theft Act 1968.'

Discuss the extent to which this statement is true.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1**

(25)

Define theft as stated in section 1 Theft Act 1968.

Define appropriation as found in section 3 Theft Act 1968:

- Evolution of the concept of conduct which constitutes an appropriation and what is meant by the rights of an owner – *Pitham, McPherson, Skipp, Eddy v Niman, Morris, Gomez*
- Importance, or otherwise, of consent in appropriation – *Lawrence, Morris, Fritschy, Dobson, Gomez, Gallasso, Atakpu*
- Breadth of appropriation which can cover a situation when a defendant comes by property innocently but later assumes the rights of an owner
- Difficulties seen in cases relating to gifts of property – *Hopkins and Kendrick, Hinks*
- Difficulties of knowing when an appropriation starts and ends and its implications in other offences such as robbery and burglary – *Hale, Lockley*
- Problems caused by associated difficulties in dishonesty
- Explain where the law stands now.

**Assessment Objective 2****(20)**

Discuss any or all of the following areas:

- The problems that Parliament was trying to solve with the passing of the Theft Act 1968, especially the need for a clear and workable law
- The range of ways in which an appropriation can occur
- Difficulties of proof for juries
- Links to dishonesty, a concept which is notoriously hard to prove
- Problems in relation to consent and judicial concerns, for example those expressed in *Morris and Gomez*
- Issues relating to the continuation of an appropriation
- Problems of conflicts between the civil and criminal law in relation to gifts as a result of the way in which appropriation is defined
- Moral and legal issues which are particularly relevant in theft
- Need for certainty and clarity, especially given the stigma which attaches to theft convictions
- Views of notable academics such as Professors Sir John Smith and Griew
- Lack of Parliamentary activity to reform the law – does this mean that it works well enough?
- Appropriation now so wide that it overlaps with offence which was covered by section 15 Theft Act 1968 and now fraud.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both appropriation and its problems. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role of the judges, the role of Parliament, the Law Commission, potential avenues for reform or the influence of policy in decision-making.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 3\* 'The defence of intoxication reflects the difficult balance between legal principle and public policy.'

Critically evaluate the accuracy of this statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1**

(25)

Explain the defence:

- Intoxication must prevent the *mens rea* for the offence being formed
- Need for evidence of intoxication – *Groark*
- A drunken intent is still an intent – *Sheehan and Moore, Heard*
- Defence divides into two basic categories – voluntary and involuntary
- Need to distinguish between crimes of specific and basic intent in relation to voluntary intoxication
- Application of voluntary intoxication with regard to crimes of specific intent – *Beard, Lipman*
- Application of voluntary intoxication with regard to crimes of basic intent – *Majewski, Bailey, Richardson and Irwin*
- Position relating to 'fall back' offences and unusual situation relating to theft
- Application of involuntary intoxication – *Kingston, Bailey, Hardie*
- Role of intoxication in conjunction with other defences such as insanity, automatism, diminished responsibility, mistake and self defence – *Daviault, Hatton, O'Grady, Fotheringham, Jaggard v Dickinson, Gannon, O'Connor, Tandy, Egan, Wood, Stewart. Dietschmann*
- 'Dutch Courage' – *Gallagher*
- Proposals for reform – Butler Committee 1975, Law Commission Criminal Code Bill 1989, Law Commission Report 2009.

**Assessment Objective 2****(20)**

Evaluate any or all of the following issues:

- Legal principle which is clear that liability is based on fault voluntarily assumed and the taking of risks
- Public policy principles counter to this are based on public protection and the encouragement of good behaviour
- Dilemma raised between personal responsibility and the greater public good
- Problems caused by the fact that when intoxication occurs no particular crime, or any offence at all, may be in the mind of the defendant
- Conflict caused by the premise that intoxication is equivalent to recklessness in offences of voluntary intoxication which runs counter to section 8 Criminal Justice Act 1967
- Inconsistencies when there is no 'fall back' offence
- Difficulties raised by the decision in Kingston where the defendant was disinhibited
- Inconsistencies in other defences, especially criminal damage
- Implicit difficulties in raising involuntary intoxication in terms of proof
- Mixed messages from a government which raises income from alcohol sales and sets levels of safe drinking which run counter to policies of neighbourhood control and condoning anti-social behaviour
- The extent to which either principle or policy has prevailed
- Lack of clear definition of specific intent crimes
- Proposals for reform including Law Commission proposals to redefine terms in voluntary intoxication, creation of a presumption against involuntary intoxication and a clarification of definitions in involuntary intoxication.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both intoxication and its problems. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role of the judges, the role of Parliament, the Law Commission, potential avenues for reform or the influence of policy in decision-making.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

## Section B

- 4\* Sarah is walking home when Colin runs towards her waving a knife. Sarah screams. Colin grabs Sarah's coat and then punches her in the face which breaks her nose and causes her to fall to the ground. Gregory, a passer-by, runs to help Sarah. Colin lunges wildly at Gregory with the knife and slashes Gregory's hand, causing severe bleeding. Colin takes aim and kicks Sarah in the stomach, causing serious internal injuries.

Colin runs off. Sarah and Gregory are taken to hospital. Nicola, who is wearing a white coat, tells Gregory he needs stitches. Gregory agrees and Nicola is stitching his hand when Doctor Crowley comes into the room and says to Nicola, "Stop, you're only a student!"

Discuss the potential criminal liability of both Colin and Nicola, including any relevant defences.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1****(25)**

Define and explain non fatal assaults against the person:

- Common law assault and battery – charged under section 39 Criminal Justice Act 1988 – *R v St George, Stephens v Myers, Cole v Turner, Collins v Wilcock, Thomas, Venna*
- Assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861 – *Miller, Roberts, Savage*
- Unlawful and malicious wounding or inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861 – *Smith, Grimshaw, Parmenter*
- Unlawful and malicious wounding or causing grievous bodily harm with intent – section 18 Offences Against the Person Act 1861
- Credit reference to relevant CPS Charging Standards.

Explain the defence of consent in the context of a medical procedure:

- Can be given for physical benefit
- Needs to be genuine based on the identity of the person concerned and the act consented to – *Richardson, Tabassum*.

Explain mistaken need for self defence:

- Mistake need only be honest as to need for self-defence – *Williams*
- Needs to be an imminent threat
- Force used to be proportionate.

**Assessment Objective 2****(20)**

Identify common law assault and battery – charged under section 39 Criminal Justice Act 1988.

Identify assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861.

Identify unlawful and malicious wounding or inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861.

Identify unlawful and malicious wounding or causing grievous bodily harm with intent – section 18 Offences Against the Person Act 1861.

Identify the defence of consent.

Identify mistaken need for self-defence.

In the case of the waving of the knife:

- Putting Sarah in fear so as to make her scream constitutes the actus reus of common assault
- Colin is at least, subjectively reckless, if not intentional, in his action.

In the case of grabbing Sarah's coat:

- Touching clothes is enough to constitute the actus reus of battery
- Colin appears to do this intentionally.

In the case of punching Sarah so as to break her nose and causing her to fall to the floor:

- Likely to satisfy section 47 as Colin has put Sarah in fear and this has led to harm which appears to 'interfere with health or comfort'
- Colin's act is probably intentional.

In the case of slashing Gregory's hand:

- Likely to satisfy section 20 as it constitutes a wound
- Colin has acted recklessly in that he foresees the risk of some harm
- Note that CPS charging standards could reduce the charge to section 47.

In the case of kicking Sarah in the stomach:

- Likely to satisfy section 18 as the injuries are serious and
- Colin appears to act intentionally
- Possible question as to whether he intends serious harm.

In the case of Nicola stitching Gregory's hand:

- Likely to be section 18 or section 20 in terms of the actus reus
- Nicola would appear to act intentionally but section 18 requires an intention to do GBH and so Nicola's liability is restricted to section 20
- Credit argument that Nicola applies force but does not harm and so conviction could only be for battery
- Credit argument that Nicola does not apply unlawful force on the basis that Gregory consented
- Gregory's consent may not be valid as there is nothing to suggest he would have consented had he known Nicola was only a student and it could be argued that her wearing a white coat led Gregory, not unreasonably, to believe she was a doctor
- Credit a valid defence of consent if a candidate argues that Gregory did consent to the act by Nicola.

Candidates are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.

**Assessment Objective 3**

**(5)**

Present logical and coherent arguments and communicate material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 5\* Anya, 20, lives with her boyfriend Samir, 45. Samir makes Anya have sex with his friends and is violent when drunk. Anya has tried to commit suicide several times and her doctor has prescribed anti-depressants. Samir comes home drunk, hits Anya and tells her she must have sex with three of his friends later. Anya takes an overdose of anti-depressants but is violently sick immediately. Samir laughs at Anya and tells her to be ready to meet his friends in two hours. Anya thinks for an hour and decides she has had enough. Samir has fallen asleep watching television. Anya grabs a heavy lamp and smashes it over Samir's head repeatedly, killing him.

Discuss the criminal liability, if any, of Anya.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

#### Assessment Objective 1

(25)

Define and explain the offence of murder – causing the death of a human being with direct or oblique intent.

Define and explain the offence of voluntary manslaughter – as murder reduced by the use of a specific and partial defence.

Define and explain the defence of provocation – section 3 Homicide Act 1957:

- Need for evidence of provocation – *Acott, Rossiter*
- Need for something said or done or both together – *Baille, Doughty*
- Need for a sudden and temporary loss of control subject to the possibility of slow-burn – *Duffy, Ibrams and Gregory, Thornton, Ahluwalia, Humphreys*
- Courts will accept all evidence of things said or done as relevant to cumulative provocation – *Humphreys*
- Application of the 'reasonable man' test and relevant characteristics – *Camplin, Holley, Mohammed, Karimi and James, Moses, Weller, Miao*.

Define and explain the defence of diminished responsibility – section 2 Homicide Act 1957:

- Need for an abnormality of mind – *Byrne*
- Need for substantial impairment – *Sanderson, Lloyd*
- Need for the cause to be internal – *Dietschmann*
- Need for the cause to be specified – *Gittens, Seers, Ahluwalia, Hobson*
- Requirement of medical evidence.

**Assessment Objective 2****(20)**

Identify murder.

Identify voluntary manslaughter.

Identify defence of provocation – section 3 Homicide Act 1957.

Identify defence of diminished responsibility – section 2 Homicide Act 1957.

In the case of Samir's death:

- Anya's hitting him over the head will satisfy the actus reus of unlawful killing and the fact that she did so repeatedly when feeling like she could not take anymore suggests the specific intent necessary for a murder charge.

In the case of provocation – successfully raising this specific and partial defence has the effect of reducing liability to voluntary manslaughter:

- Evidence of provocation is to be found in Samir hitting Anya and telling her that she must have sex with his friends
- Samir laughing at Anya when she is sick is also evidence of provocation given her age, her mental state and her medical history
- The time lapse of an hour may appear to be a 'cooling off' period which could invalidate the defence but arguably, Anya's loss of temper may still be sudden, if not immediate, but the longer she has waited the less likely it is to succeed
- The fact that Anya appears to be suffering from 'battered woman syndrome' and/or depression will be taken into account as a relevant characteristic if it affects the gravity of the provocation to a reasonable woman of the same age and with the same permanent characteristics.

Conclude that although provocation may succeed Anya may also need to consider the alternative defence of diminished responsibility:

- 'Battered woman syndrome' and/or depression can be classed as an abnormality of mind
- The impairment it causes Anya is likely to be classed as substantial
- The cause of the impairment is mental in that it lies in the way Anya has been treated by Samir and how she has reacted to that
- Anya already has the evidence of one doctor and another is needed.

Conclude that if provocation is unavailable Anya is likely to succeed using the defence of diminished responsibility and so be convicted of voluntary manslaughter.

Candidates are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 6\* Jin is in a supermarket queue. Jin watches Amy squeeze into the queue ahead of him. Jin is angry and tries to push Amy out of the queue. Amy loses her balance and falls into an elderly couple, Fred and Wanda. Fred has a heart condition and the shock causes him to have a heart attack. Wanda falls; she suffers from brittle bone disease and breaks her hip.

In hospital Fred is put on a life-support machine but dies three hours later. Wanda recovers but before she goes home Doctor Sugar gives her an antibiotic injection. He is busy and does not check whether Wanda has any allergies. Wanda has a massive allergic reaction and dies.

Discuss the criminal liability, if any, of both Jin and Doctor Sugar for the manslaughter of Fred and Wanda.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

#### Assessment Objective 1

(25)

Define involuntary manslaughter:

- unlawful killing of a human being without the high level of *mens rea* necessary for murder.

Define and explain unlawful and dangerous act/constructive manslaughter:

- Need for a positive and unlawful act – *Mitchell, Larkin, Church*
- Unlawful act should be dangerous – *Dawson, Watson*
- Requirement that the positive act be done intentionally – *Goodfellow, Newbury and Jones*
- Requirement that the chain of causation be intact and death ensue
- Reasonable man needs to foresee the risk of some harm to some other person but not necessarily the harm which results.

Define and explain gross negligence manslaughter:

- Was there a duty of care?
- Was the duty of care breached?
- Was there a risk of death and did death result?
- Was the negligence such as to make the defendant criminally liable in the eyes of the jury? – *Adomako*.

Define and explain chain of causation:

- Causation in fact – defendant to be a ‘but for’ cause and make more than a minimal contribution to the death of the victim – *White, Kimsey*
- Causation in law – was the defendant’s act the operative and substantial cause of harm? – *Pagett, Church*
- Need to ‘take your victim as you find them’ – *Blaue*
- Consideration whether the chain of causation is broken by medical treatment – *Smith, Cheshire, Jordan*.

Define and explain the principle of transferred malice – *Latimer*.

Credit reference to subjective reckless manslaughter:

- Was there a risk of death or serious harm to the victim?
- Did the defendant see the risk and decide to run it? – *Lidar*.

### Assessment Objective 2

(20)

Identify involuntary manslaughter.

Identify unlawful act/constructive manslaughter.

Identify gross negligence manslaughter.

Credit reference to subjective reckless manslaughter.

In the case of Jin:

Fred - Unlawful act/constructive manslaughter appears to be the most likely charge:

- There has been a positive, unlawful and dangerous act as Jin pushes Amy
- This act is done intentionally
- It may be argued that a reasonable man would see a risk of some harm from Jin's action although an argument in the alternative is viable on the facts
- Death is caused and the chain of causation would seem to be unbroken as Jin is the factual and legal cause of Fred's death, especially since there is a relatively short time lapse between the unlawful act and death
- Application of the principle of transferred malice
- Although Fred's death may have been exacerbated by his heart condition it is likely that the 'thin skull' principle means the chain of causation will be unbroken although an argument in the alternative is also viable.

Wanda:

- Although Jin's act is the origin of Wanda's death it would appear that, since she has made a good recovery and is about to be discharged, the chain of causation may be broken by the act of Doctor Sugar. **Note** – it would be possible for a candidate to argue that merely being busy would not be sufficiently significant to break the chain, leaving Jin liable for a second charge of unlawful act/constructive manslaughter if he had relevant *mens rea* when he pushed Amy
- However, given that Doctor Sugar fails to check a very basic point, Wanda's tolerance to antibiotics, it is more likely the chain of causation will be broken.

In the case of Doctor Sugar:

Fred - No liability.

Wanda - Gross negligence manslaughter appears to be the most likely charge:

- Doctor Sugar does owe Wanda a duty of care
- That duty is breached when Doctor Sugar fails to check for allergies and/or when Wanda is given the injection
- There is a risk of death and death is caused
- Although prosecutions of doctors are relatively rare the failure of Doctor Sugar to check such a basic piece of information may, on the basis of decided cases, be enough for the jury to see his act as criminal.

Candidates are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

## Section C

- 7 Elsa decides to steal vodka from a shop. She has a gun in her pocket. Outside the shop she pulls out the gun but changes her mind and returns it to her pocket. Elsa still wants to steal some vodka so she enters the shop but discovers that the shop has no vodka. Angry, Elsa kicks a customer, Reynard, bruising his leg. Elsa runs out of the shop slamming the glass door so hard it shatters.

Evaluate the accuracy of each of the four statements A, B, C, and D individually, as they apply to the facts in the above scenario.

**Statement A:** Elsa commits attempted robbery when she gets the gun out of her pocket.

**Statement B:** Elsa does not commit section 9(1)(a) burglary when she enters the shop.

**Statement C:** Elsa commits robbery when she kicks Reynard.

**Statement D:** Elsa commits section 9(1)(b) burglary when she breaks the shop door. [20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

**Assessment Objective 2** (20)

**Statement A:** Elsa commits attempted robbery when she gets the gun out of her pocket.

- Reason that an attempt requires an act which is more than merely preparatory to a substantive offence
- Reason that pulling the gun out of her pocket is getting ready to commit the crime
- Reason that the fact Elsa does this whilst outside and then puts the gun back in her pocket probably means she has not embarked on the crime proper
- Reason that Elsa does not commit the offence of attempted robbery
- Conclude that the statement is inaccurate.

**Statement B:** Elsa does not commit section 9(1)(a) burglary when she enters the shop.

- Reason that this offence requires Elsa to enter a building or part of a building as a trespasser with an intention to steal, commit GBH or commit damage
- Reason that completion of the offence does not require the substantive offence to be committed

- Reason that the fact that the shop has no vodka is irrelevant
- Reason that the offence is complete at the moment of Elsa's entry because she is a trespasser and the owner of the shop would not have allowed her to enter if her intention had been known
- Conclude that the statement is inaccurate.

**Statement C: Elsa commits robbery when she kicks Reynard.**

- Reason that robbery requires the use or threat of force before or at the time of stealing and in order to steal
- Reason that kicking Reynard would be enough for force
- Reason that Elsa has not committed theft since the shop had no vodka
- Reason that the two elements are not complete and therefore there is no robbery
- Conclude that the statement is inaccurate.

**Statement D: Elsa commits section 9(1)(b) burglary when she breaks the shop door.**

- Reason that this offence requires Elsa, having entered a building or part of a building as a trespasser, goes on to steal, attempt to steal, commit grievous bodily harm or attempt to commit grievous bodily harm
- Reason that Elsa has entered as a trespasser as the owner of the shop is unlikely to have allowed her to enter if her intention had been known
- Reason that the smashing of the door is criminal damage
- Reason that this is not a substantive offence included in section 9(1)(b)
- Conclude that the statement is inaccurate.

- 8 Jerome owns a riverside hotel. Simon, the barman, is told not to serve intoxicated customers. Simon sells lager to Tony who is clearly very drunk. Part of Simon's job is to clean the drains weekly but he often fails to do this. As a result, toxic chemicals build up in the drains and leak into the river, killing fish. Jerome buys meat which a vet has checked. The meat makes the hotel customers ill. Jerome lets a house a mile away to students. The police raid the house and find that the students are growing cannabis plants.

Evaluate the accuracy of each of the four statements A, B, C, and D individually, as they apply to the facts in the above scenario.

**Statement A:** Jerome commits a strict liability offence when Simon sells lager to Tony.

**Statement B:** Jerome does not commit a strict liability offence when the fish die.

**Statement C:** Jerome commits a strict liability offence as the house where the students are growing cannabis plants belongs to him.

**Statement D:** Jerome does not commit a strict liability offence when customers are ill after eating meat in his hotel. [20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

**Assessment Objective 2** (20)

**Statement A:** Jerome commits a strict liability offence when Simon sells lager to Tony.

- Reason that the actus reus is selling lager to someone who is already drunk
- Reason that as the owner it is Jerome's responsibility to make sure his staff check on the sobriety of customers
- Reason that the actus reus occurs when Simon serves the customer
- Reason that this does not change the fact that Jerome is liable
- Conclude that the statement is accurate.

**Statement B:** Jerome does not commit a strict liability offence when the fish die.

- Reason that the actus reus occurs when toxic chemicals enter the river
- Reason that as owner it is Jerome's responsibility to prevent this happening
- Reason that the actus reus occurs when the fish die
- Reason that Jerome is liable even though Simon failed to do his job
- Conclude that the statement is inaccurate.

**Statement C: Jerome commits a strict liability offence as the house where the students are growing cannabis plants belongs to him.**

- Reason that the actus reus is being concerned in growing cannabis
- Reason that because of the social stigma involved proof of mens rea will be needed
- Reason that the house being a mile away means Jerome does not have mens rea
- Reason that therefore Jerome is not liable
- Conclude that the statement is inaccurate.

**Statement D: Jerome does not commit a strict liability offence when customers are ill after eating meat in his hotel.**

- Reason that the actus reus involves serving unfit food
- Reason that Jerome's responsibility is to serve safe food
- Reason that the vet's failure to check properly is no defence he has done this by having the meat checked
- Reason that Jerome does commit an offence
- Conclude that the statement is inaccurate.

Credit references to intention/knowledge in relation to any of the statements above.

### Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

## **G154 Criminal Law Special Study**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

# G154 Criminal Law Special Study

- 1\* Discuss the extent to which the decision in the case of *Wilson* [Source 6 page 6 Special Study Material] represents a fair development of the defence of consent to offences against the person. [16]

Mark Levels	AO2	AO3
Level 5	11-12	-
Level 4	9-10	4
Level 3	7-8	3
Level 2	4-6	2
Level 1	1-3	1

Potential answers **MAY**:

## Assessment Objective 2 (12)

Identify the major issue in the case – the defendant had branded his wife’s buttocks with a hot knife and claimed that she had consented and indeed encouraged it – and recognise the fact that Wilson was charged with assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861;

Discuss the fact that the Court of Appeal considered it misdirection for the judge to follow/be bound by *Brown* and hold that consent was unavailable;

- CP** Discuss the decision of the Court of Appeal – it was an activity which, if carried out with the consent of an adult, did not involve an offence under section 47 – and discuss the reasoning given by the court in reaching its decision:

- Consensual activity between a husband and wife in the privacy of the matrimonial home was not a proper matter for a criminal prosecution – (and it was not in the public interest)

or

- Other activities carried on with consent are accepted as lawful even though they involve bodily or even serious harm eg surgery, ritual circumcision, tattooing, ear-piercing and violent sports including boxing – (and the activity was in principle no more dangerous than professional tattooing).

Discuss the fairness of the decision eg in terms of protection of women;

Link to any relevant case for development eg consent in a marital context *Clarence*, to sexual activity *Brown*, *Donovan*, *AG’s Reference*, *Emmett*, tattooing *Burrell v Harmer* Make any other relevant comment.

Candidates will not satisfy the level 5 descriptor without discussing the critical point and without making at least some reference to fairness (identified in the command) – and will not reach maximum marks without using a linked case for the purpose of showing development (as required by the overarching theme).

## Assessment Objective 3 (4)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2\* In Source 5 [page 5 lines 47 – 49 Special Study Materials] Michael Jefferson quotes Clarkson & Keating who suggest that “*Each of the non-fatal offences against the person is, to varying degrees, confused and uncertain ... in relation to each other, they are incoherent and fail to represent a hierarchy of seriousness*”.

Discuss how accurately the above statement reflects the judicial development of the law on the offences in sections 18, 20 and 47 of the Offences Against the Person Act 1861. [34]

Mark Levels	AO1	AO2	AO3
Level 5	14-16	13-14	-
Level 4	11-13	10-12	4
Level 3	8-10	7-9	3
Level 2	5-7	4-6	2
Level 1	1-4	1-3	1

Potential answers **MAY**:

### Assessment Objective 1

(16)

Explain section 47, assault occasioning actual bodily harm;  
 Explain that actual bodily harm means any hurt or injury calculated to interfere with health or comfort *Miller* and also as ‘not so trivial as to be wholly insignificant’ *Chan-Fook* – and that the *actus reus* includes direct and indirect means;  
 Explain that it can also include psychiatric injury *Ireland* and has included four or five bruises caused by a belt, *Smith* minor abrasions and a bruise *Jones* (1981) a painful kick to the stomach leaving some tenderness though no visible injury *Reigate JJ ex p Counsell* and even a momentary loss of consciousness *R(T) v DPP*;  
 Explain that the *mens rea* is either intention or recklessness;  
 Explain that recklessness is subjective recklessness *Spratt, Parmenter, Savage*;  
 Explain section 20 ‘Whoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty’ – so includes wounding *JCC v Eisenhower* (a piercing of both layers of skin) and GBH (identified in *DPP v Smith* as serious harm); [and this applies to section 18 also], and inflict has been held to include indirect means;  
 Explain the *mens rea* – uses the word ‘maliciously’ meaning intention or recklessness;  
 Explain section 18 – ‘Whoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person with intent to do some grievous bodily harm to some person or with intent to resist or prevent the lawful apprehension or detainer of any person shall be guilty’;  
 Explain that for the *actus reus* ‘cause’ clearly includes direct and indirect means;  
 Explain that the *mens rea* is: intending to cause GBH or to resist or prevent lawful apprehension; or intentionally or recklessly wounding with an intent to cause GBH or to resist or prevent lawful apprehension;  
 Explain that in section 18 there is a requirement of ulterior intent, so there are actually two aspects to the *mens rea*: malice (meaning intent or recklessness); and the intent either to cause grievous bodily harm, or to resist or prevent arrest;  
 Explain that intent has the same meaning as in murder, so it is specific intent measured by desire of consequences or foresight of consequences according to the established test.

Candidates will not satisfy the level 5 descriptor without clear, full definitions of all offences and cases illustrating all three offences.

**NB** No AO1 credit can be given for common law assault which is not covered in the command, although AO2 marks may be available if used as information as part of a wider comment.

**Assessment Objective 2****(14)**

Discuss the fact that there is no definition of 'actual bodily harm' in the Act for section 47 but it clearly involves something less than serious harm;

Discuss the fact that the offence in section 47 carries the same maximum sentence as for section 20 even though the two are supposed to represent different levels of seriousness;

Discuss the fact that in theory a 'hierarchy' of offences exists but there are a number of complications to this particularly with section 18 and section 20:

- the language used makes it difficult to distinguish the *actus reus* of the different wounding offences – unlawful and malicious occurs in both
- it is hard to say what an effective hierarchy of offences should be based on, the seriousness of the harm caused or the seriousness of the harm intended
- there are two ways of committing both offences, wounding and GBH
- section 18 differs from section 20 in requiring an ulterior intent
- the word malice is applied to both offences but with a different meaning than that given to murder and has a different application in either offence
- the word used for the active part of each offence of GBH differs between the two offences, cause in section 18, inflict in section 20 and there has been debate over whether they mean different things or apply in different ways
- the *mens rea* has proved equally problematic. 'Malicious' generally accepted as meaning reckless in section 20 but in *Mowatt* it was held that the defendant must foresee some harm eg some battery, but not necessarily the harm inflicted
- the requirement of the ulterior intent and the fact that section 18 can occur in a combination of ways also throws up a number of apparent inconsistencies
- where the defendant causes GBH with intent to cause GBH the word malicious has been held to be superfluous and it is impossible to recklessly intend *Mowatt [1968]*
- but if the defendant is charged with malicious wounding with intent to cause GBH then it is possible for the defendant to be reckless as to the wounding while having intent to commit the GBH
- if the defendant is charged with causing GBH with intent to resist arrest then malicious is clearly not superfluous since otherwise the defendant would be guilty without any foresight of harm resulting
- Credit any reference to Law Commission proposals.

Reach any sensible conclusion.

Candidates will not satisfy the level 5 descriptor without engaging in a **discussion** with some clear focus on the quote, i.e. covering 'confused and uncertain', 'incoherent', and 'fails to represent a clear hierarchy of seriousness'.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion does this and identifies the role played by judges in developing the law.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion identifies the role played by judges in defining the area, and the justice of their decision making.

**Assessment Objective 3****(4)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

3 Nick and Patti are boyfriend and girlfriend. They are both aged nineteen.

Discuss whether a conviction for a non-fatal offence against the person is possible in each of the following situations:

- (a) Nick often slaps Patti hard. Nick tells their friends that Patti likes him to slap her, but Patti tells their friends that she does not really like it she just lets Nick do it because she wants to keep him happy. (10)
- (b) Nick and Patti fall out. Patti tells Nick that she is dumping him. When Nick tries to get back with Patti, she waves her fists at Nick and threatens that if he ever comes near her again that she will kill him. (10)
- (c) Nick sends Patti nasty threatening text messages over several weeks. Patti becomes so alarmed and depressed by the texts that she suffers a psychiatric illness. (10)

[30]

Mark Levels	AO1	AO2	(a), (b) or (c)
Level 5	9-10	17-20	9-10
Level 4	7-8	13-16	7-8
Level 3	5-6	9-12	5-6
Level 2	3-4	5-8	3-4
Level 1	1-2	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1** (10)

Use any relevant cases and explanations of offences under the OAPA 1861.

**Assessment Objective 2****(20)**In the case of **(a)**:

- CP** • Identify the most appropriate offence here as battery under common assault;  
or
- CP** • Identify that Nick has not particularly caused Patti actual harm – although section 47 may still be a possibility;
- Identify that at the least Nick has been reckless – he will have appreciated that the slapping could cause some harm – and the necessary *mens rea* is only recklessness;
  - Consider whether a defence of consent is appropriate;
  - Credit any reference to sexual activity/horseplay.

**NB** For maximum marks must consider whether a conviction is possible.In the case of **(b)**:

- Identify that the most likely offence is common assault;
- Identify that Patti must cause Nick to apprehend an imminent battery;
- Identify that while the threat is a very serious one the words used may negate an assault;
- Consider that otherwise there are both threatening actions and threatening words which may make a conviction possible.

In the case of **(c)**:

- CP** • Identify that the most appropriate offence is section 47 – assault occasioning actual bodily harm also that on this basis the threat is one that is likely to produce psychiatric harm;
- or
- CP** • Credit explanation of section 20 OAPA with appropriate reasoning;
- Identify that *Ireland; Burstow* has accepted that psychiatric harm is sufficient for actual bodily harm- and that Patti has suffered such an injury;
  - Identify also that silent phone calls led to a conviction in *Ireland; Burstow* – and the texts may also do so here.

Candidates will not achieve level 5 for each of **(a)**, **(b)** and **(c)** without discussing the critical point/one of the critical points – and without an appropriate offence and supporting case (for AO1).

## Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism, showing good understanding of current debate and proposals for reform, <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

## **G155 Law of Contract**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

# G155 Law of Contract

## Section A

- 1\* 'The level of fault behind a misrepresentation is closely linked to the remedies for the innocent party'.

Discuss the reasons for having four different categories of misrepresentation in light of the statement above. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers MAY:

**Assessment Objective 1 (25)**

Explain fraudulent misrepresentation, citing relevant cases such as *Derry v Peek*, *Thomas Witter v TBP*;

Explain statutory misrepresentation under section 2(1) of the Misrepresentation Act 1967, also citing relevant cases such as *Howard Marine v Ogden*;

Explain negligent misstatement citing relevant cases such as *Hedley Byrne v Heller*,  
Explain innocent misrepresentation;

Explain the general remedy of rescission that applies to all kinds of misrepresentation;

Explain the measure of damages for fraudulent misrepresentation, citing cases such as *Smith New Court v Scrimgeour Vickers*;

Explain the measure of damages for statutory misrepresentation, citing cases such as *Royscot Trust v Rogerson*;

Explain the measure of damages for negligent misstatement, citing cases such as *The Wagon Mound*;

Explain that damages cannot be claimed for innocent misrepresentation unless a judge awards them in lieu of rescission under section 2(2) of the Misrepresentation Act;

Explain that for all kinds of misrepresentation an indemnity can be awarded alongside rescission, citing cases such as *Whittington v Seale Hayne*.

**Assessment Objective 2****(20)**

Discuss the level of fault in fraudulent misrepresentation and that the actual dishonesty justifies the damages that are unlimited and do not have to be foreseeable;  
Discuss whether the ruling in *Smith New Court* is justified, that a party was liable for losses that they were not directly to blame for and that they could not possibly have foreseen;  
Discuss whether recklessness, the lowest level of fault that can be attributed to fraudulent misrepresentation, justifies unlimited damages;  
Discuss whether the ruling in *Royscot Trust v Rogerson*, that the damages of statutory misrepresentation should be measured in the same way as for fraudulent misrepresentation, was justified;  
Discuss the distinction made between foreseeability of loss and 'closely linked losses' in *Smith New Court*;  
Discuss whether the high standards of care required of the representor, as illustrated in the case *Howard Marine*, justify the generous measure of damages awarded for statutory misrepresentation;  
Discuss whether the lack of damages available for innocent misrepresentation can lead to injustice, particularly where there is a bar to rescission.

There are many AO2 themes that can be discussed in answering this question, candidates would not be expected to make all these points in order to achieve a level 5 mark.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without a discussion that focuses specifically on the detailed remedies for each kind of misrepresentation. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also includes the apparent difficulties in applying the judgement in the *Smith New Court* case as identified above.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2\* 'The rule of privity can cause injustice but reforms in both statute and common law have helped to avoid this injustice'.

Discuss the extent to which this statement is true.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers MAY:

### Assessment Objective 1

(25)

Explain the rules of privity:

- That a contract can only be enforced by and against the parties to the contract, *Tweddle v Atkinson*, *Dunlop v Selfridge*;
- Candidates may explain that the rule comes from the need for the parties to have given consideration to the agreement in order to enforce it.

Explain the exceptions developed by the courts:

- The trust device; where an implied trust was used to avoid the rules of privity, *Les Affreteurs Reunis v Walford*;
- Restrictive covenants; where restrictions on the use of land can be passed to subsequent purchasers, *Tulk v Moxhay*;
- Collateral contracts; where a new contract was imposed by the court between a person making a representation and the person who acted on that representation, *Shanklin Pier v Detel Products*;
- Special cases, where the courts have decided that one person may sue to recover losses suffered by another party, *Jackson v Horizon Holidays*, *Woodar v Wimpey*, *Linden Gardens Trust v Lenesta Sludge*;
- Credit can also be given for mentioning other ways that the rule of agency may be avoided at common law: assignment, agency, suing under the law of negligence.

Explain statutory exceptions:

- Married Women's Property Act and Road Traffic Act; where someone not a party to the original contract may enforce an insurance policy;
- Contract (Rights of Third Parties) Act (C(RTP)Act); allowing a party who was intended to benefit from a contract, which they were not a party to, to enforce the contract in their own right.

**Assessment Objective 2****(20)**

Discuss reasons why the rule of privity can cause injustice, these can include (but are not limited to):

- Preventing a party from benefiting in the way intended by the original parties;
- Preventing a sub contractor from being liable to the original contracting party;
- Preventing a consumer from benefiting from consumer protection legislation if they did not purchase goods themselves;
- Preventing a manufacturer of goods enforcing contract terms against an eventual retail seller of goods.

Discuss how well the courts have succeeded in avoiding the rule of privity:

- Most of the common law exceptions have been narrow in scope (such as collateral contracts);
- Most can be said to have been unpredictable to the parties concerned.

Discuss whether the statutory exceptions to the rule have been more satisfactory:

- They have been prospective in effect;
- They have tended to be quite narrow, mostly involving insurance up until 1999;
- The C(RTP)Act being the first statute to give a general exception to the rule;
- The C(RTP)Act ignoring the general requirement that a party who wishes to enforce a contract must give consideration;
- The C(RTP)Act being vague about who is intended to benefit from a contract and thus enforce contractual rights.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without a discussion that focuses on the detailed changes brought about by the Contract (Rights of Third Parties) Act 1999. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion includes the merits of parliamentary reform of privity as against the piecemeal judicial reform that preceded the 1999 act.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 3\* 'The law on undue influence remains complex and outdated despite attempts to clarify it in recent cases.'

Discuss whether the law on undue influence is clear and relevant in today's society in light of the statement above. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers MAY:

#### Assessment Objective 1

(25)

Explain the rules on actual undue influence, citing cases such as *BCCI v Aboody*, *Williams v Bailey*

Explain the situations where a presumption of undue influence will arise, citing cases such as *Allcard v Skinner* for the traditional relations where it is recognised, and *Lloyds Bank v Bundy* where a presumption can arise on the facts of the relationship

Explain the requirement of 'a transaction that requires explanation', formerly known as a manifest disadvantage, citing cases such as *CIBC v Pitt*, *BCCI v Aboody*, *Nat West Bank v Morgan*, *Cheese v Thomas*

Explain the cases involving undue influence and third parties, citing cases such as *Royal Bank Scotland v Etridge*, *Barclays Bank v O'Brien*.

#### Assessment Objective 2

(20)

Consider whether it is satisfactory that there is no definition of actual undue influence and that it is up to the court to examine each case on its merits

Consider whether the traditional list of relationships that can lead to a presumption of undue influence, including that between spiritual advisor and disciple, and doctor and patient, is relevant in a modern society where such people may no longer enjoy a privileged position

Consider whether any claim of presumed undue influence should be required to be based upon a proven relationship of trust existing between the parties

Consider whether Lord Denning's view, that there should be a general right to avoid a contract that has been based on an inequality of bargaining power, as expressed in *Lloyds Bank v Bundy*, should be adopted by the courts

Consider whether a co-owner of property, such as a spouse, is now adequately protected after the judgement in *Etridge*. Consider whether the requirement of advice is sufficient to protect someone from the reality of an overbearing relationship

Consider whether banks should allow someone to enter a contract that is so obviously disadvantageous that no sensible person would do so.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without a discussion that focuses on the judgement in the *Etridge* case. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion is broadened into the broadness of the general principle of undue influence and the difficulties in a solicitor giving adequate advice in a constructive notice situation.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

## Section B

- 4\* Sanjit bought goods for his flat on the internet. He ordered a sofa for £150 and a green table, both from Lux Home Products website.

After placing the order, he immediately received an email thanking him for the order and confirming that the goods would be dispatched the following day. However, the next day he received another email from Lux informing him that the sofa was wrongly priced and should have been £1500.

The table arrives two days later but Sanjit does not like the colour and wishes to return it.

Sanjit also visited an online auction site and placed a bid for £20 for a colourful rug. At the end of the auction Sanjit's bid was the highest but the seller emailed him to say that the price was too low and the rug has been withdrawn.

Advise whether Sanjit is able to buy the sofa for £150 and the rug for £20 and whether he is able to return the green table.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers MAY:

**Assessment Objective 1**

(25)

Explain the rules of offer and acceptance in relationship to contracts made on the internet, that the goods on the webpage are likely to be seen as an invitation to treat, that the customer makes a bilateral offer which is open to acceptance or rejection by the company. Cite relevant authorities such as *Partridge v Crittenden*, *Harvey v Facey*, *Brinkibon v Stahag Stahl*;

Explain the right to cancel a contract made by distance selling within 7 working days as given by the *Consumer Protection (Distance Selling) Regulations 2000*;

Explain cases that have dealt with contracts made on the internet such as the *Kodak Case*;

Explain the rules for contracts made by auction, that the bids are generally bilateral offers which are accepted by the auctioneer, citing cases such as *Harris v Nickerson*;

Explain that auctions can be unilateral offers if there is a promise to sell to the highest bidder, citing cases such as *Warlow v Harrison* and *Barry v Davies*;

Explain the rules on revocation of a unilateral offer, that the revocation must be made before the conduct amounting to acceptance, citing cases such as *Errington v Errington and Woods*;

Explain that consideration in a contract only needs to be sufficient and need not be adequate, cite cases such as *Thomas v Thomas* and *Chappel v Nestle*.

**Assessment Objective 2****(20)****The sofa**

Identify that this is an internet contract and that the goods on the webpage are likely to be an invitation to treat and the order was a bilateral offer;

Discuss whether the email response from the company was an acceptance or merely an acknowledgement of receipt of the offer;

Conclude that either the email was an acceptance and the contract has now become binding, or that the email was an acknowledgement and that the company was still entitled to reject his offer.

**The table**

Identify that there has probably been an offer and acceptance in this case;

Identify that the Distance Selling Regulations give him a right to cancel the contract within 7 working days;

Conclude that he does not have to keep the table but that he must return it undamaged within the 7 day time limit.

**The rug**

Discuss whether this is an auction without reserve, identify that if it is then he has accepted the unilateral offer by making the highest bid. Explain that in this case it will be too late to withdraw the goods as this would amount to a revocation that comes too late, being after the acceptance;

Explain that there is no requirement that the £20 is a fair price for the rug, as long as it is considered to be sufficient consideration;

Conclude that he is entitled to the rug.

Alternatively discuss whether there might have been a reserve price for the rug, explaining that if there is he has made a bilateral offer to buy the rug which can be accepted or rejected by the seller;

Conclude that he is not entitled to the rug.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without an answer that includes detailed AO1 content on each of the three aspects of this question, including the Distance Selling Regulations. Stretch and challenge can be demonstrated by candidates whose discussion includes the two different kinds of auction in the third scenario, both with and without a reserve price.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 5\* Bob and his friend, Alun, both entered a golf tournament for which the advertised prize was £10,000. They agreed to split equally any money that either of them won. The tournament organisers include a term that they do not accept any legal liability to pay winnings.

Bob won the tournament; however the organisers said that too few people had entered the tournament and that they could only pay £5,000. Bob was upset at this and said he would not pay anything to Alun.

Bob had arranged with Laine, another friend, to get a lift home from the tournament. Bob said he would pay £5 towards petrol. When it was time to go home he found that Laine had gone without him and he ended up taking a taxi at great expense.

Discuss whether or not Bob has formed legally binding contracts with Alun, Laine, and the golf tournament organisers. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers MAY:

Assessment Objective 1

(25)

Explain that contracts made between friends have a presumption that there is no intention to create legal relations, cite cases such as *Jones v Padavatton* and *Parker v Clarke*;  
Explain that the presumption can be rebutted in certain circumstances, such as where there is a commercial basis to the contract or in certain gambling agreements where the parties agree to split winnings equally, cite cases such as *Simpkins v Pays*, *Peck v Lateu*, *Albert v Motor Insurer's Bureau*;

Explain that in commercial cases there is a presumption that the parties intend to be legally bound, cite cases such as *Esso v Commissioners for Customs & Excise*;

Explain that the commercial presumption can be rebutted if clear words are used to show no legal intent, cite cases such as *Rose and Frank v Crompton* and *Jones v Vernon Pools*;

Explain that an exclusion clause that seeks to exclude liability for non-performance is subject to the requirement of reasonableness when one party acts as a consumer, cite *Unfair Contract Terms Act Section 3(1)*;

Explain that any term of a consumer contract, other than the price and the core contractual term, is subject to the requirement of reasonableness, cite *Unfair Terms in Consumer Contracts Regulations 1999*.

**Assessment Objective 2****(20)****Alun**

Identify that this is a domestic contract between friends and thus at first glance there is no intention to create a binding contract;

Identify that in gambling contracts where people agree to share winnings the courts have been willing to rebut the presumption and find that the parties did have an intention to be bound;

Conclude that Bob is liable to pay half the prize money to Alun.

**Laine**

Identify that this also appears to be a domestic contract and thus not one with legal consequences;

Discuss the view of the courts, that the unlikelihood of one party ever suing does not prevent the presumption from being rebutted;

Discuss the circumstances here, that a service was being offered and that Bob had promised consideration as a share of the petrol costs;

Conclude that Laine is liable to Bob in breach of contract.

**The golf tournament organisers**

Identify that this is a commercial contract and that the presumption for legal intent applies but also that it can be rebutted by clear words;

Identify that clear words appear to have been used to show that the contract is binding in honour only;

Consider whether this is an unfair or unreasonable contract term within the legislation;

Conclude that there will not be any liability to pay the full £10,000 unless the words amount to an unfair term or unreasonable exclusion clause.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without an answer that includes detailed AO1 content on each of the three aspects of this question, including a discussion of both presumptions and rebuttal. Stretch and challenge can be demonstrated by candidates whose discussion includes the possibility of dealing with the organiser's clause as an unfair term.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 6\* Sara, who owns a restaurant, has placed a number of orders with local traders. She ordered ten salmon from Tom but was annoyed when ten trout were delivered. Tom said that it was a usual term in the fish trade that if salmon were not available trout could be delivered instead. This was correct but Sara had never heard of that term.

When Sara took delivery of a case of wine from Henri she signed a delivery note. The note included a statement that any complaints about the wine had to be made within five working days. The wine turned out to be undrinkable but Sara did not discover this until two weeks after delivery.

Sara also placed an order with Bella, a baker, for 50 bread rolls to be delivered every day. She was surprised to find that the deliveries were made at 1.30 in the afternoon, too late to be used for lunch, which was when she did most of her business.

Advise whether Sara has a valid claim for breach of contract against Tom, Henri and Bella. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers MAY:

Assessment Objective 1

(25)

Explain the rules for incorporation of terms into a contract:

- That the terms must be available before the offer and acceptance are completed, citing cases such as *Thornton v Shoe Lane Parking*;
- That signing a contractual document incorporates terms contained within it even if they have not been read, citing cases such as *L'Estrange v Graucob*;
- That particularly harsh or unusual terms must be brought to the other sides attention or made prominent, citing cases such as *Interfoto v Stiletto Visual Productions*;
- That terms may be incorporated by course of dealings if they are regular and consistent, citing cases such as *Kendal v William Lillico*;
- That terms may be implied if they are required to make sense of a contract, citing cases such as *The Moorcock*;
- That terms may be implied if they were within the contemplation of both parties but had remained unstated, but not merely to improve a contract, citing cases such as *Liverpool City Council v Irwin* and *Shirlaw v Southern Foundries*;
- Terms may be implied by custom as long as both are aware and that there was a common understanding of the terms to be used, citing cases such as *British Crane Hire v Ipswich Plant Hire*.

Explain that the time at which a contract has to be performed is within a reasonable time unless a specific time has been specified within the contract, citing cases such as *Astea Ltd v Time Group Ltd*.

**Assessment Objective 2****(20)****Tom**

Identify that the term about the substitution of the fish was not an express term of the contract;

Discuss whether there might be an implied term through the officious bystander test, but that this would fail because Sara had never heard of that term;

That the term may have been implied by custom within the trade, but that this test may not be satisfied because it appears that the term is not so well established that everyone had heard of it, again because Sara had never heard of it;

Conclude that the delivery of trout was probably a breach of contract and that Sara should be able to claim damages.

**Henri**

Identify that the test for incorporation of terms does not appear to have been satisfied because the delivery note was not a contractual document;

Discuss whether the term may have been incorporated by course of dealings, if the delivery note was always the same and had been signed on many occasions beforehand it could be argued that Sara should have been aware of the term;

Discuss whether the term was harsh or unusual enough to have made it necessary for Henri to point out the term or make it particularly prominent;

Draw any reasonable conclusion based on the discussion of the law.

**Bella**

Identify that there does not seem to have been any discussion of the time at which the bread was to be delivered;

Identify that there might be a claim that the term was implied through business efficacy, but that this test would fail because it is probably not a term that is absolutely required in order to make sense of the contract;

Discuss whether delivery at 1.30 in the afternoon was delivery within a reasonable time;

Conclude that there is probably not a breach of an express or implied term.

Candidates are unlikely to satisfy the descriptor for level 5 AO2 without an answer that includes both implied terms and incorporation of the delivery note as an express term. Stretch and challenge can be demonstrated by candidates whose discussion includes different ways in which an implied term may be incorporated.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

## Section C

- 7\* Django has a garden containing, amongst other things, an old bench and greenhouse. He would like to clear out his garden because he is planning a garden party. Django lives next door to Miles, who likes to play the trumpet in his garden. Miles has promised not to play the trumpet during the party.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

**Statement A:** If Miles agrees to remove the bench from Django's garden, this will be good consideration for Miles to keep it.

**Statement B:** If Miles agrees to buy the greenhouse for £10, this will be good consideration even if it later turns out to be worth £10,000.

**Statement C:** If, after the party, Django promises to pay Miles £50 because he did not play the trumpet, Miles will be able to enforce this promise.

**Statement D:** Any agreements made between Miles and Django would be unenforceable because they would not have an intention to create legal relations. [20]

Marking Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers MAY:

Assessment Objective 2 (20)

**Statement A:** If Miles agrees to remove the bench from Django's garden, this will be good consideration for Miles to keep it.

- Reason that Miles has to give consideration to Django to form a binding contract.
- Reason that consideration only has to be sufficient and not adequate.
- Reason that a promise to perform a service can amount to good consideration.
- Reason that Miles has shown good consideration in removing the bench and should be able to keep it.
- Conclude that the statement is accurate.

**Statement B: If Miles agrees to buy the greenhouse for £10, this will be good consideration even if it later turns out to be worth £10,000.**

- Reason that consideration needs to have some value but does not need to be equal in value.
- Reason that it is for the parties to make their own agreement and the courts do not interfere in bad deals.
- Reason that £10 is good consideration and that Miles can keep the greenhouse.
- Conclude that the statement is accurate.

**Statement C: If, after the party, Django promises to pay Miles £50 because he did not play the trumpet, Miles will be able to enforce this promise.**

- Reason that past consideration is not normally good consideration.
- Reason that it can be good consideration if a reward was in the minds' of the parties and that the act was done at the other side's request.
- Reason that it was probably not in the minds of the parties at the time that Miles promised not to play, and that he did not refrain from playing at the request of Django.
- Reason that Miles cannot claim the money in this situation.
- Conclude that the statement is inaccurate.

**Statement D: Any agreements made between Miles and Django would be unenforceable because they would not have an intention to create legal relations.**

- Reason that contracts made in a domestic situation between family and friends are presumed to have no intention to create legal relations.
- Reason that the presumption can be rebutted if there is evidence that the parties were not acting domestically in a particular situation.
- Reason that the social agreements, such as not to play the trumpet, probably don't have legal intention but that the agreements to take the goods from Django's garden are probably binding as they are commercial in nature.
- Conclude that the statement is accurate in respect of some claims and inaccurate in respect of others.

8 Jan has contracted to supply Bill's farm with animal food over a 1-year period. The contract includes the following terms.

- 1 The animal food shall be delivered undamaged;
- 2 Payment must be made within three days of each delivery;
- 3 It shall be a condition that the farm will provide workers to unload the delivery.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

**Statement A:** Term 1 is likely to be seen as a condition of the contract.

**Statement B:** If one delivery is 50% damaged when it is delivered this would allow Bill to reject it.

**Statement C:** If Bill is a week late in paying for one delivery this will allow Jan to end the contract.

**Statement D:** On one particular week the delivery consists of only one small sack. If Jan has to unload the sack himself this will allow him to end the contract with Bill. [20]

Marking Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers MAY:

Assessment Objective 2

(20)

**Statement A:** Term 1 is likely to be seen as a condition of the contract.

- Reason that a term is a condition if it has been identified as such in the contract, it is commonly seen by the courts as a condition or it has been implied by the courts as a condition.
- Reason that none of those situations applies in this case.
- Reason that if a term is not a condition it is an innominate term by default.
- Reason that the term is not a condition.
- Conclude that the statement is inaccurate.

**Statement B:** If one delivery is 50% damaged when it is delivered this would allow Bill to reject it.

- Reason that this would be a breach of term 1.
- Reason that term 1 is innominate and thus to be repudiatory, a breach must deprive Bill of substantially the whole benefit of the contract.
- Reason that 50% is unlikely to be seen as substantially the whole benefit of the contract.
- Reason that such a breach would not be repudiatory and that Bill would not be able to reject the delivery.
- Conclude that the statement is inaccurate.

- Credit an answer that reasons that that if term 1 is a condition this will therefore be a repudiatory breach.

**Statement C: If Bill is a week late in paying for one delivery this will allow Jan to end the contract.**

- Reason that this would be a breach of term 2.
- Reason that term 2 is also likely to be innominate.
- Reason that late delivery is unlikely to deprive Jan of substantially the whole benefit of the contract.
- Reason that such a breach would not be repudiatory and that Jan would not be able to reject the delivery.
- Conclude that the statement is inaccurate.

**Statement D: On one particular week the delivery consists of only one small sack. If Jan has to unload the sack himself this will allow him to end the contract with Bill.**

- Reason that this is a breach of term 3.
- Reason that term 3 appears to have been identified as a condition of the contract, and thus any breach will be repudiatory.
- Reason that this breach would allow Jan to repudiate the contract.
- Conclude that the statement is accurate.
- Credit any discussion concerning whether the parties genuinely intended to make term 3 a condition, using condition in its technical sense, and thus the courts may still treat the condition as innominate.

In this case a breach is unlikely to be repudiatory.

## Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

## **G156 Law of Contract Special Study**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

# G156 Law of Contract Special Study

- 1 Discuss the extent to which the decision in the case of *Photo Productions Ltd v Securicor Transport Ltd* [Source 4 page 5 Special Study Material] represents a fair development of the law regarding the validity of exclusion clauses in contracts.

[16]

Mark Levels	AO2	AO3
Level 5	11-12	-
Level 4	9-10	4
Level 3	7-8	3
Level 2	4-6	2
Level 1	1-3	1

Potential answers **MAY**:

## Assessment Objective 2

(12)

Identify the major issue in the case – Securicor contracted to provide a security service for a small fee, their employee caused a fire which destroyed the premises but they sought to rely on an exclusion clause to evade liability for the damage;

Recognise the decision in the case – that Securicor were able to rely on the clause – and discuss the reasoning given by the court:

- That Securicor would have no knowledge of the factory's fire safety precautions
- That it had only contracted to make periodic visits for a small fee
- That the parties contracted on equal terms
- That it would not be unreasonable on that basis for Photo Productions to carry the substantial risk of damage or destruction
- CP • That the wording of the clause – 'Under no circumstances, any injurious act or default by any employee' – were clear and unambiguous and sufficient to cover the breach.

Discuss the fairness of the case eg party left without a remedy when Securicor were supposed to be guarding the premises not destroying them;

Link to any related case for development eg *Ailsa Craig Fishing v Malvern Fishing*.

Credit any sensible comment on fundamental breach.

Candidates will not satisfy the level 5 descriptor without discussing the critical point and without making at least some reference to fairness (identified in the command) – and will not reach maximum marks without using a linked case for the purpose of showing development (as required by the overarching theme).

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion does this and identifies the role played by judges in developing the law.

## Assessment Objective 3

(4)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2 In Source 6 [page 8 lines 1-2 Special Study Material] Ewan McKendrick suggests that 'The general approach which the courts have adopted to the interpretation of exclusion clauses is a restrictive one'.

Discuss how accurately the above statement reflects the development of judicial controls on the incorporation and interpretation of exclusion clauses in contracts.

[34]

Mark Levels	AO1	AO2	AO3
Level 5	14-16	13-14	-
Level 4	11-13	10-12	4
Level 3	8-10	7-9	3
Level 2	5-7	4-6	2
Level 1	1-4	1-3	1

Potential answers **MAY**:

### Assessment Objective 1

(16)

Explain that an exclusion clause (exemption clause) is a term in a contract aiming to exclude the liability of the party inserting it from liability for his/her contractual breaches or even for tort;

Explain that courts will only recognise exclusion clauses if they have been incorporated into the contract;

Explain that parties are generally bound by the terms of any agreement they have signed *L'Estrange v Graucob*;

But are only bound by an exclusion clause of which they had express knowledge at the time the contract was formed *Olley v Marlborough Court Hotel*;

Although where parties have previously contracted on the same terms they are deemed to have express knowledge so are bound by the clause *Spurling v Bradshaw*;

Except where past dealings were inconsistent then only actual knowledge of the clause is sufficient *McCutcheon v MacBrayne*;

Explain that the party wishing to rely on the clause must have effectively brought it to the attention of the other party *Parker v South Eastern Railway Co*;

So information on the back of tickets is generally unacceptable *Chappleton v Barry UDC* – as is contracting with machines *Thornton v Shoe Lane Parking*;

Explain the contra preferentum rule – applies where wording is ambiguous *Andrews Bros (Bournemouth) Ltd v Singer & Co* – and prevents the party inserting the clause from relying on it *Hollier v Rambler Motors*;

Explain how the courts moved away from the doctrine of 'fundamental breach' and accepted that an exclusion clause or a limitation clause could be enforced if it was freely and genuinely agreed when the contract was formed *Photo Productions Ltd v Securicor Transport Ltd*; and *Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd*;

Explain that since the Unfair Contract Terms Act 1977 courts might apply the test of reasonableness from the Act *George Mitchell Ltd v Finney Lock Seeds Ltd*;

Explain that oral misrepresentations about the scope of an exclusion clause in a written contract may invalidate the clause *Curtiss v Chemical Cleaning Co Ltd*.

Candidates will not satisfy the level 5 descriptor without a full clear definition of exclusion clauses, and full clear explanations of the mechanisms of incorporation and interpretation of exclusion clauses (and including references to some of eg the ticket cases, oral misrepresentations etc) and with cases illustrating each aspect.

**Assessment Objective 2****(14)**

Discuss the fact that both exclusion clauses and limitation clauses can be harsh on the party subject to them, particularly where that party is of weaker bargaining strength, which is why judges set controls in place in the first place;

Consider that there was previously no way of avoiding such clauses because of the maxim caveat emptor (let the buyer beware) – the other party had to try to negotiate a contract without the clause in, and even the Sale of Goods Act 1893 allowed for such clauses;

Discuss the fact also that the twentieth century, and particularly membership of the EU saw a mass move towards consumer protection, so judges were only reflecting this;

Consider the strictness of the controls in relation to the ticket cases – *Parker v South Eastern Railway Co*;

Consider also Lord Denning's comments in *Spurling v Bradshaw* and repeated in *Thornton v Shoe Lane Parking* – that the clause should be written in large red letters and with a large arrow pointing at it;

Consider also that this strict interpretation has also been applied to clauses that are merely onerous rather than excluding liability *Interfoto Picture Library v Stiletto Visual Programmes Ltd*;

Discuss the application of the contra preferentum rule – this operates very strictly against the party inserting the clause unless they spell out precisely what the clause will cover;

Consider though that the judges have taken a much less strict and liberal line in relation to clauses inserted in contracts where the parties are of equal bargaining strength and negotiate the contract freely *Photo Productions Ltd v Securicor Transport Ltd*; and *Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd*;

And in the latter case this involved a very serious and costly breach with a very restrictive limitation clause in the contract;

Reach any logical conclusion.

Candidates will not satisfy the level 5 descriptor without engaging in a **discussion** with some clear focus on the quote, particularly the word restrictive in the context of both incorporation and interpretation.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion identifies the role played by judges in defining the area, and the justice of their decision making.

**Assessment Objective 3****(4)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 3 Pal takes his wife Rupinder and their ten-year-old son Sukhy for a day out at the Tickle-u-pink amusement park. At the gate Pal buys an £80 family ticket which covers all rides and a hot meal. Before he pays over the money the assistant asks Pal to read the written terms which state: 'Tickle-u-pink accepts no liability for any injuries or damages to property while on its premises whether caused by the negligence of its employees or by any other means, nor will it accept liability for any breaches of any contractual terms'.

Consider what impact the Unfair Contract Terms Act 1977 will have in each of the following situations:

- (a) Due to negligent maintenance Pal, Rupinder and Sukhy get stuck up in the air on the first ride, the 'Skysurfer', and when they eventually get down all of the other rides have closed down for the day. (10)
- (b) Pal, Rupinder and Sukhy go to the restaurant for their meal. The meal is cold and inedible as it is full of dead ants. (10)
- (c) A waitress carelessly pours hot coffee over Sukhy who is badly scalded as a result. (10)

[30]

Mark Levels	AO1	AO2	(a), (b) or (c)
Level 5	9-10	17-20	9-10
Level 4	7-8	13-16	7-8
Level 3	5-6	9-12	5-6
Level 2	3-4	5-8	3-4
Level 1	1-2	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1** (10)

Uses any relevant statutory provisions from the Unfair Contract Terms Act 1977.

**Assessment Objective 2****(20)**In the case of **(a)**:

- Identify that Pal and his family have lost substantially the benefit that they were to gain from the contract because of Tickle–u–pink’s negligence;
- Discuss the fact that as such they have lost in essence their £80;
- Consider whether the exclusion clause exempts Tickle–u–pink from liability for the loss;
- CP** • Consider that by section 2(2) this is only possible if it is reasonable – and that since there is unequal bargaining strength in a consumer contract Tickle–u–pink is unlikely to be able to rely on the clause.

In the case of **(b)**:

- Identify that the breach of contract here could be either a breach of the implied condition of satisfactory quality in section 14(2) Sale of Goods Act 1979  
**or**  
more likely a failure to provide a service incorporating provision of goods under section 13 Supply of Goods and Services Act 1982;
- CP** • Consider that:  
the first is invalidated by section 6(2) Unfair Contract Terms Act  
**or**  
the second is invalidated by section 7(2) Unfair Contract Terms Act;
- Conclude that in either case Tickle–u–pink will be unable to rely on its exclusion clause.

In the case of **(c)**:

- Identify that here Sukhy has suffered severe burns because of the carelessness of a Tickle–u–pink employee;
- Consider whether Tickle–u–pink’s exclusion clause is sufficient to exclude liability in the circumstances;
- CP** • Identify that section 2(1) Unfair Contract Terms Act specifically invalidates death and personal injury caused by negligence;
- Conclude that the exclusion clause cannot be relied upon to avoid liability.

Candidates will not achieve level 5 for each of **(a)**, **(b)** and **(c)** without discussing the critical point/one of the critical points – and without an appropriate offence and supporting case (for AO1).

### Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

## G157 Law of Torts

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

## Section A

- 1\* Discuss the extent to which the rules on causation and remoteness of damage are fair to both parties. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1 (25)**

Explain that there are two types of causation: causation in fact and causation in law (remoteness of damage);

Explain the 'but for' test – damage would not have occurred 'but for' the defendant's breach of duty *Cork v Kirby MacLean*;

Explain the means for establishing liability when there are multiple causes: pre-existing condition *Cutler v Vauxhall Motors*; several concurrent causes *Wilsher v Essex AHA*; material increasing risk of harm *McGhee v NCB*; materially contributing to the harm *Fairchild v Glenhaven Funeral Services*; consecutive causes *Performance Cars v Abraham*;

Explain also the reasoning on apportionment in *Barker v Corus* and its overruling by Parliament in the case of mesothelioma in the Compensation Act 2006;

Explain also the principles of apportioning damages between consecutive causes *Baker v Willoughby* and *Jobling v Associated Dairies*;

Credit any explanation of how *novus actus interveniens* breaks the chain of causation: and identify act of claimant *McKew v Holland & Hannon & Cubitts*; act of nature *Carslogie Steamship Co v Royal Norwegian Navy*; act of a third party *Knightley v Johns*;

Explain the 'eggshell skull' rule *Smith v Leech Brain*;

Explain the principle of remoteness: claimant only recovers for foreseeable harm *Wagon Mound (No 1)*;

Explain the broad application of the rule where there is personal injury *Bradford v Robinson Rentals*;

Explain narrow application where there is property damage *Wagon Mound (No 2)*.

NB candidates should be able to achieve level 5 without covering every aspect – breadth and/or depth will both be rewarded.

**Assessment Objective 2****(20)**

Discuss the fact that principles of causation are aimed at making the defendant responsible for all foreseeable loss that he has actually caused so this is generally fair to both sides;

Identify that where there is a single cause the 'but for' test operates perfectly and so is fair to the defendant;

Comment also that the claimant is left uncompensated despite the defendant's breach of duty;

Discuss the various difficulties associated with multiple causes e.g. defendant may escape liability even though in breach (so not fair to the defendant) and the claimant goes uncompensated even though there is a wrong;

Discuss whether the approach in *Fairchild* is fairer – certainly it is to the claimant – but possibly less so to a defendant;

Discuss the fairness of apportionment under *Barker v Corus* and the reasons behind the amendment to the Compensation Act 2006 on this point;

Discuss how the same may apply where there are consecutive causes – one defendant at least is not liable despite being at fault;

Credit any discussion on whether the rules on *novus actus* are fair – usually the claimant goes uncompensated unless there is a negligent third party;

Discuss the approach in *Baker v Willoughby* and *Jobling v Associated Dairies* – judges are trying to ensure that claimant is neither under-compensated nor over-compensated – which is possibly fair to the defendant but is arbitrary justice for the claimant on the facts of the two cases;

Discuss whether the rules on remoteness are merely means of limiting liability and therefore unfair to claimants;

Consider the different approaches taken by judges and the apparent unfairness at times *Doughty v Turner Manufacturing*; *Tremain v Pike* – and compare with the more liberal and fairer approach of *Jolley v London Borough of Sutton*;

Candidates could also be credited with e.g. the restrictive approach of the courts in relation to secondary victims in nervous shock, seemingly unfair to claimants.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.

- 2\* 'The Animals Act 1971 makes insufficient distinction between liability for dangerous species and for non-dangerous species and is therefore unfair to the majority of owners of pets.'

Discuss the accuracy of the above statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Explain that a keeper of an animal may be liable under section 6(3) – either the owner of the animal or the head of a household in which a person under 16 is the owner.

Define dangerous species under the Act:

- By section 6(2) – an animal not commonly domesticated in UK and with characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe
- Dangerous is a question of fact in each case *Behrens v Bertram Mills Circus*
- By section 2(1) the keeper is strictly liable for any animal defined as dangerous
- By section 5 the only defences are *volenti* or where the damage was caused by the claimant's own fault.

Define where liability exists for non-dangerous species under section 2(2) of the Act:

- The keeper is liable if:
  - (a) The damage is of a kind the animal is likely to cause unless restrained or if caused by the animal is likely to be severe; and
  - (b) The likelihood or severity of damage is due to abnormal characteristics of the individual animal or species or of species at specific times; and
  - (c) The keeper knows of the characteristics
- Identify that all three parts of section 2(2) must be shown for liability
- By section 2(2)(a) 'likely' means possible rather than probable *Smith v Ainger* and 'severe' is a question of fact *Curtis v Betts*
- By section 2(2)(b) characteristic is abnormal if not common in other animals *Cummings v Grainger* and circumstances can include e.g. bitch looking after litter of pups – but can include even unforeseeable circumstances where the keeper is not at fault *Mirhavedy v Henley*
- Explain that available defences include:
  - section 5(1) – Damage due entirely to fault of victim *Sylvester v Chapman*
  - section 5(2) – Victim voluntarily accepted risk *Cummings v Grainger*
  - section 5(3) – Animal was either not kept for protection or if so then it was reasonable to do so
  - section 10 – Contributory negligence *Cummings v Grainger*.

Use any other relevant cases.

**Assessment Objective 2****(20)**

Compare the different rules applicable to dangerous and non-dangerous species;  
Consider the fact that the definition of keeper is the same regardless of whether the animal is dangerous or non-dangerous which seems to be unfair to the keeper of pets;  
Discuss the fact that in the case of 'dangerous' animals liability is strict so that the keeper is liable for any damage – which appears fair to keepers of pets;  
Discuss the fact that the definition of dangerous may even include animals that are not actually dangerous *Tutin v Chipperfields*, *Behrens v Bertram Mills Circus* – so keepers of dangerous animals are treated harshly by comparison;  
Discuss how liability is imposed on non-dangerous species under the Act – must show that damage is likely to be severe, and that this depends on specific characteristics, and that the keeper knows of those characteristics – so liability is easier to avoid for pet owners;  
Discuss the fact that there is no need for a link between the characteristics and the damage *Curtis v Betts*, *Jandrill v Gillett*, *Dhesi v West Midlands Police* – which seems like strict liability and so is harsh on pet owners;  
Consider also the difficulty of distinguishing between permanent and temporary characteristics *Kite v Japp*, *Gloster v Greater Manchester Police*, *Curtis v Betts* – again could be harsh on pet owners;  
Discuss how the courts have dealt with the issue of characteristics in recent cases *Gloster v Chief Constable of Greater Manchester* and *Mirhavedy (FC) v Henley* – the latter is very much like strict liability so fails to distinguish – and it may be argued that it has eroded the fault principle for pets;  
Consider how the Act applies to animals used for guarding *Cummings v Grainger* – which seems only fair;  
Discuss the impact of defences on claims – less defences available in the case of dangerous species – so this does seem a fair distinction;  
Discuss the extent to which defences reduce the possibility of successful claims even where the animal has caused damage;  
Consider the more limited circumstances in which a claim can be avoided for animals classed as dangerous by contrast to those classed as non-dangerous (unlikely to be a claim against a pet until it has already done some damage) – so this seems to be a fair distinction;  
Reach any sensible conclusion.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.

- 3\* 'The law on negligent misstatement is clearly based more on policy considerations than on the principles of negligence developed in *Donoghue v Stevenson*.'

Discuss how the law on negligent misstatement has developed in light of the above statement. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Explain the basic criteria for a successful claim under *Donoghue v Stevenson* – breach of a duty of care owed by the defendant causing foreseeable harm to the claimant

Explain the basic criteria for liability for negligent misstatement arising under *Hedley Byrne*:

- existence of a special relationship *Yianni v Edwin Evans*
- possession of specialist skill by the person giving the advice *Hedley Byrne, Mutual Life and Citizens Assurance v Evatt*
- Reasonable reliance on the defendant's skill and judgment *Smith v Eric S Bush, Harris v Wyre Forest DC*.

Explain that originally there was only an action available for misrepresentations if they were made fraudulently *Derry v Peek* and that an action for negligence was originally specifically rejected in *Candler v Crane Christmas* – but Lord Denning's dissenting comments from that case were accepted in *Hedley Byrne*;

Identify situations in which liability could be found at its widest *Chaudhry v Prabhaker*

Identify situations where liability could not be found *JEB Fasteners v Marks Bloom*

Explain the general rejection of a test of foreseeability and the narrower test of knowledge of the purpose for which the advice is needed *Caparo v Dickman*

Explain the tests of knowledge in *James McNaughten Paper Group v Hicks Anderson*

- The purpose for which the statement was made and communicated
- The relationship between all relevant parties
- The degree of knowledge of the defendant.

Identify also the requirement of assumption of responsibility for the advice in *Henderson v Merritt Syndicates*

Use any other relevant cases to demonstrate the development of the tort

Explain that there are also cases that do not fit the principle neatly *White v Jones* and *Spring v Guardian Assurance, Cox v Sun Alliance*;

**Assessment Objective 2****(20)**

Credit reference to the original reluctance of the courts to accept an action for pure economic loss arising from a negligent act *Spartan Steels v Martin* as being more to do with policy than strict legal principle;

Discuss the original reluctance of judges to accept liability for economic loss arising from a negligently made statement *Candler v Crane Christmas*, in the same way appearing more to do with policy than straight application of *Donoghue v Stevenson*;

Credit any reference to Lord Denning's dissenting judgment in the case;

Consider that these early positions were both based on policy and particularly the floodgates argument;

Discuss the basis of the original acceptance of liability in *Hedley Byrne* – based on the dissenting judgment of Lord Denning in *Candler*, the test in *Hedley Byrne* of specialist knowledge and reasonable reliance and the difference as a result from a claim based on pure economic loss – which is much more restrained than liability under *Donoghue v Stevenson*;

Discuss the acceptance of reasonable foreseeability as the basis for early liability leading to expansion of the tort in cases such as *Yianni v Edwin Evans* – much more like basic negligence principles;

Comment on the shock that such expansion caused e.g. amongst valuers and estate agents;

Discuss the gradual rejection of the early test and the gradual narrowing of the basis for the test, particularly in *Caparo* but also in *McNaughten v Hicks Anderson* and *Henderson v Merritt* – going against basic negligence principles;

Consider that further expansion is unlikely *Morgan Crucible v Hill Samuel*;

Make any other relevant comment on policy restricting development of the tort.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.

## Section B

- 4\* Ruben, Sarah and their eight-year-old son, Thomas, go to the Uffal Restaurant to dine. While they are eating a rat bites Sarah's ankle and she screams. Uffal, the restaurant owner, is aware that the restaurant is infested with rats but has done nothing about it. Sarah later suffers an infection from the rat bite.

Ruben reaches down under the table to hit the rat. As he does so he touches some bare live wires that are coming out of the wall. VoltsRus, electrical contractors are currently rewiring the restaurant and have failed to disconnect the wires. Ruben's hand is badly burned.

Thomas is so frightened by the events that he runs from the restaurant into the kitchen. The door to the kitchen has a sign which reads: 'Staff only. No admittance to the public.' The kitchen floor is covered in grease and Thomas falls injuring his wrist and breaking his expensive mobile phone.

Advise Sarah, Ruben and Thomas of any claims that they may make against the Uffal Restaurant in Occupiers' Liability. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1** (25)

Identify the appropriate area as occupiers' liability which concerns damage arising from the state of the premises.

State that liability comes from two Acts: Occupiers' Liability Act 1957, in the case of lawful visitors; Occupiers' Liability Act 1984, in the case of trespassers

Explain the term occupier – one who is in control of premises *Wheat v Lacon*

Explain that premises has a fairly broad definition *Wheeler v Copas*

For the 1957 Act explain that a lawful visitor can be an invitee, a licensee, or someone with a contractual or legal right to enter

Identify the common duty of care under OLA 57 section 2(1) to all lawful visitors

Identify the scope of the duty under OLA 57 section 2(2) – to keep the visitor safe for the purposes for which he is invited to enter

Identify also that the occupier can exclude or modify the duty but consider the effect of UCTA section 2(1)

Explain that an occupier can be relieved of liability under section 2(4) if an independent contractor is at fault for the damage – but it must be reasonable to hire one *Haseldine v Daw*; a competent contractor must be chosen *Ferguson v Welsh*; and the work inspected if it is possible *Haseldine v Daw*, *Woodward v Mayor of Hastings*

Identify that a visitor going beyond the terms of his entry may become a trespasser *The Calgarth* – so may then be subject to the 1984 Act

Explain that a lesser duty is owed under the 1984 Act – it covers injury but not property *Tomlinson v Congleton BC* (credit any reference to *B R Board v Herrington*)

Explain the basis of liability under section 1(3) – the occupier has reason to believe there may be a trespasser, is aware of the danger, and ought reasonably to offer some protection

Identify the effects of warnings as a defence under section 1(5) *Westwood v Post Office*

Identify the possibility of *volenti* under section 1(6) *Ratcliffe v McConnell*

Explain the higher standard of care owed to a child – it is accepted that children are less cautious than adults *Moloney v Lambeth LBC*

Explain that an occupier must protect children from any allurement *Glasgow Corporation v Taylor*

Explain that an occupier might expect a parent to take responsibility for young children *Phipps v Rochester Corporation*

Explain that an occupier is liable for foreseeable harm even if the precise damage or the precise circumstances in which the harm occurs is not foreseeable *Jolley v London Borough of Sutton*

### Assessment Objective 2

(20)

In the case of **Sarah**:

- Identify that Sarah enters the restaurant as a lawful visitor under a contractual license
- Identify that Uffal Restaurant has control of the premises and is therefore identifiable as an occupier
- Identify also that a restaurant is easily classifiable as premises – so Uffal Restaurant owes a duty to keep Sarah safe for the purpose of his visit
- Consider whether a rat infestation can be classed as the state of the premises – it is likely that it will be
- Consider that Uffal is in clear breach under section 2(2) by knowing of the risk of harm and doing nothing about it
- Reason that Uffal are likely to be liable for Sarah's injuries, including the infection which, in the circumstances, is foreseeable harm – the precise harm is not important as long as harm is foreseeable *Jolley*.

In the case of **Ruben**:

- Identify Ruben as a lawful visitor – he is a paying diner in the restaurant and so has a contractual right to enter
- Identify that Uffal Restaurant has control of the premises and is therefore identifiable as an occupier
- Identify also that a restaurant is easily classifiable as premises – so Uffal Restaurant owes a duty to keep Ruben safe for the purpose of his visit
- Consider whether Ruben is exceeding his purpose when he tries to get the rat off Sarah's ankle – this is extremely unlikely
- Discuss whether or not Uffal can avoid liability by arguing that Ruben's injury is the fault of VoltsRus – it is certainly reasonable to hire contractors for a skilled task – the question is whether competent contractors have been hired, this may be questionable in the light of their failure to disconnect the bare live wire – also whether it was reasonable to inspect their work, presumably Uffal could have checked that there were no bare wires – Uffal may be liable on that basis – if not VoltsRus will be liable in negligence.

In the case of **Thomas**:

- Identify that Thomas enters the restaurant as a lawful visitor but may have exceeded his legitimate purpose when he entered the kitchen
- Discuss the fact that Uffal owe a higher standard to Thomas because of his age
- Discuss whether it is fair to suggest that Ruben and Sarah should be supervising Thomas at the precise time
- Discuss the effect of the sign – it may indicate trespass but it certainly will not count as a warning as no danger is indicated
- Consider whether Thomas at eight years old will be expected to read the sign
- Discuss the fact that, if Thomas has exceeded his lawful purpose by going in the kitchen then there would be no liability for his broken mobile phone
- Apply the three aspects of section 1(3)
- Discuss whether Uffal can claim contributory negligence – it is unlikely that *volenti* could be claimed
- Discuss the effect of the Law Reform (Contributory Negligence) Act 1945 on any claim by Thomas.

**Assessment Objective 3**

**(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.

- 5\* In a cricket match between two teams, Wimville and Camburgh, a Wimville bowler, Perry, bowls a fast ball to a Camburgh batsman, Solomon. The ball bounces off the ground hitting Solomon in the face and causing a gash just under his eye.

Solomon storms towards Perry, waves his bat at Perry and shouts “You just wait!”

When Perry bowls the next ball, Solomon hits the ball with his bat and runs towards Perry. Although Solomon would naturally be running in the direction of Perry, Perry fears that Solomon is going to hit him with his bat. Because of this Perry punches Solomon in the face as Solomon runs near to him. Solomon is knocked unconscious by the punch.

The umpire instructs stewards to help Solomon off the field for treatment by a doctor. One of those stewards, Freddy, is worried that Solomon will be angry when he regains consciousness so he locks Solomon in the dressing room when he goes to fetch the doctor.

Advise Perry and Solomon of any claims that either of them may bring in the tort of trespass to the person. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Identify that there are three types of trespass to the person: assault, battery, false imprisonment

Define assault – intentionally and directly causing the other to apprehend imminent battery

Explain the essential elements of the tort:

- Intention concerns effect produced in claimant *Blake v Barnard*
- Traditionally required an active threat *Read v Coker*
- Words alone were insufficient *Tuberville v Savage* (but see *R v Ireland*, *R v Burstow* in criminal law may be persuasive in tort).

Identify that the fact that the claimant does not intend or cannot carry out the tort does not matter as long as it produces and is intended to produce the effect of apprehension in the victim *Stevens v Myers*;

Explain also that if it is not possible to place the claimant in apprehension of imminent battery then there is no assault *Thomas v NUM*;

Define battery – intentionally and directly inflicting unlawful force

Explain essential elements of battery:

- Must involve intention not carelessness *Letang v Cooper*
- And requires direct contact – but this is broadly defined *Scott v Shepherd* and *Nash v Sheen*;
- Requirement of hostility – compare *Wilson v Pringle* with *Re F*
- Possible defences – *volenti Simms v Leigh RFC* and *Condon v Basi*, inevitable accident *Stanley v Powell*, self-defence if reasonable force used *Lane v Holloway*.

Define false imprisonment – unlawful, intentional bodily restraint.

Explain elements of false imprisonment:

- Requires total restraint *Bird v Jones*
- Can be for short period *White v WP Brown*
- And it does not matter that the claimant is unaware *Meering v Graham White Aviation* or unconscious *Murray v MOD* at the time;

Possible defences – lawful arrest/detention *Tims v John Lewis, White v WP Brown*

Use any other relevant cases.

### Assessment Objective 2

(20)

In relation to a claim by Solomon against Perry for the ball that cuts his face:

- The obvious issue here is whether the contact is intentional and direct – since Perry has bowled a bouncer straight at Solomon intention is unlikely to be a problem and under *Scott v Shepherd* it may also be accepted as being direct for liability
- The gash under the eye may be technically a battery in this respect but it seems likely that it will fall within the context of the game of cricket
- And so Perry is likely to have the defence of *volenti* available

In relation to a claim by Perry against Solomon for waving his bat and shouting at him:

- This may be an assault – if it produces apprehension in Perry even if there is no intention to carry out a battery
- The issue is whether words alone count as an assault in tort – they do now in crime *Ireland/Burstow*
- However, Solomon waves his bat at Perry so this may be sufficient threat *Read v Coker*

In relation to Solomon racing down the pitch straight towards Perry:

- On the basis of Solomon's prior threat this may be argued as an assault
- However, it may also be seen as a legitimate part of the contest – batsmen are generally running in the same path as the opposing bowler

In relation to a claim by Solomon against Perry for punching him:

- This may be seen as battery – it is intentional and direct
- The issue is whether Perry has a defence of self-defence – unlikely as it appears to be unreasonable use of force in the circumstances *Lane v Holloway*

In relation to a claim by Solomon against Freddy for locking him in the dressing room:

- Again if there is no other way out of the dressing room the restraint is total and a claim for false imprisonment is possible
- A defence of lawful arrest is unlikely to be possible
- It will not matter that Solomon is unconscious and is unaware of the false imprisonment for liability to arise.

### Assessment Objective 3

(5)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.

- 6\* Aiden and Eddy own neighbouring detached houses. Aiden wishes to replace his fence between the two houses with a wall. Aiden tells Eddy who says that he is happy for Aiden to come onto his land to do so. Aiden takes the fence down and stacks it on Eddy's front garden.

Aiden then digs a trench 50 centimetres wide for foundations for the wall, filling it with concrete. Half of the trench is actually in Eddy's garden. Aiden never builds the wall but he leaves the fence panels on Eddy's garden.

One day Aiden decides to have a barbecue in his back garden with friends. Because there is no longer any fence in the back garden Aiden places his barbecue on Eddy's garden. Aiden's friends wander onto Eddy's garden, trampling Eddy's flowers and leaving food scraps and paper plates on Eddy's garden. As Aiden leaves the barbecue out, Eddy locks it in his garage in protest.

Aiden also erects new posts for a washing line near the boundary with Eddy's back garden. When the washing is on the line it regularly hangs over Eddy's garden when the wind blows.

Advise Eddy of any claims that he may have against Aiden and whether Eddy is entitled to keep the barbecue. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	-
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Define the tort of trespass to land – an intentional and direct entry onto land in another person's possession

Recognise that the tort is actionable *per se* (without proof of damage)

Explain the ways in which the tort can be committed:

- Entering land voluntarily and intentionally *League Against Cruel Sports v Scott*
- Remaining on the land after permission is withdrawn *Holmes v Wilson*
- Placing things on the land *Smith v Stone*
- Taking things away from the land *Basely v Clarkson*.

Explain that even the merest contact with the land can amount to a trespass *Westripp v Baldock*

Explain how land is defined for liability under the tort:

- Covers the land itself and anything on the land such as buildings
- Extends to the airspace above *Kelsen v Imperial Tobacco, Bernstein v Skyways*, Civil Aviation Act 1982
- And to the subsoil below *Hickman v Maisey, Harrison v The Duke of Rutland*.

Distinguish between lawful entry and unlawful entry e.g. express and implied consent, statutory right to enter under PACEA

Identify the defences of permission, and of necessity *Cope v Sharp*

Explain the concept of trespass *ab initio* where a lawful visitor abuses the proper limits on their right to enter *Cinnamond v British Airport Authority*

Identify the need to show an interest in land to claim *Hunter v Canary Wharf*

Explain that a claimant must show a superior right of possession to the defendant *Delaney v TP Smith, White v Bayley*

Outline the possible remedies:

- Damages – but only if some damage to the land – and mesne profits possible
- Injunctions – the usual remedy – but see *Anchor Brewhouse v Berkley House*
- Removal of trespasser by reasonable force *Hemmings v Stoke Pogis Golf*.

### Assessment Objective 2

(20)

Identify that the problem involves the tort of trespass to land

Identify that Eddy owns the land next to Aiden's so does have a proprietary interest and a right in law to claim for trespass

Discuss the fact that Eddy has given Aiden permission for the fence to be taken down and to go onto his land – so neither of these would amount to trespass – but only for the purpose of building the wall

In relation to Aiden leaving the fencing panels on Eddy's front garden:

- Identify that even something left on the land can be a trespass – and there was no permission for this

In relation to the foundations for the wall:

- Identify that Aiden had permission to enter Eddy's land to build the wall
- Identify that the foundations would be a trespass into Eddy's subsoil (there would not have been planning permission given for this – and the rights to subsoil extend to a reasonable limit as here)
- Possible remedy would have been injunction if Eddy had acted soon enough – but damages are possible

In relation to the barbecue:

- Identify that even something left on the land can be a trespass – and there was no permission for this
- Identify that mesne profits is an available remedy – so Eddy may be within his rights to take the barbecue until Aiden pays for the other damage

In relation to the friends trampling Eddy's flowers and leaving their waste on his garden:

- Identify that all Aiden's friends are in fact trespassers – as there was no permission for them to be there – and it is unlikely that they could say the trespass was accidental
- Identify that they have also caused damage to Eddy's flowers for which damages are recoverable

In relation to the washing line:

- Identify that Eddy's rights extend to the air space above up to a reasonable height
- Consider that there are clear precedents to make this a trespass
- Remedy includes an injunction and Aiden may have to move the washing line.

Candidates should also be given credit for any discussion of whether a legal claim is the best course of action or whether conciliation and a possible settlement might be better.

### Assessment Objective 3

(5)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.

## Section C

- 7 Arthur has been given planning permission by his local council to build a brick extension on the back of his house. The extension is adjacent to his neighbour Connie's conservatory. Arthur places a large generator in the building which is extremely noisy and leaves it running all day and all night despite his neighbour Connie's complaints. The noise of the generator eventually makes Connie go deaf.

Evaluate the accuracy of each of the four statements A, B, C and D individually as they apply to the facts in the above scenario.

**Statement A:** Connie cannot sue in private nuisance because there is no unreasonable use of land by Arthur.

**Statement B:** Connie can sue in private nuisance to claim for her personal injury, going deaf as the result of the noise.

**Statement C:** If Connie sues in private nuisance Arthur has a defence because of the planning permission.

**Statement D:** If Connie deliberately lit a bonfire every time Arthur put washing out, Connie would still be able to claim in private nuisance. [20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

**Assessment Objective 2** (20)

**Statement A:** Connie cannot sue in private nuisance because there is no unreasonable use of land by Arthur.

- Reason that locality may be important – the area is residential so noise loud enough to cause deafness is likely to be unreasonable
- Reason that the noise is also continuous so this again amounts to an unreasonable use of land
- Reason that there is an indirect interference with Connie's use or enjoyment of her land
- Conclude that the statement is inaccurate.

**Statement B:** Connie can sue in private nuisance to claim for her personal injury, going deaf as the result of the noise.

- Reason that nuisance is an interference with a person's use or enjoyment of their land or causing damage to their land
- Reason that the deafness is personal injury and not damage to her property or enjoyment of the property
- Reason that private nuisance does not cover personal injury so Connie could not claim
- Conclude that the statement is inaccurate.

**Statement C: If Connie sues in private nuisance Arthur has a defence because of the planning permission.**

- Reason that planning permission can be a defence to private nuisance in some circumstances – although local authorities have no actual power to authorise nuisance
- Reason that the defence is only possible where the nuisance results from an inevitable change in the character of the neighbourhood that Parliament has authorised
- Reason that Arthur has only been given permission to build the extension not for using the generator so he has no defence
- Conclude that the statement is inaccurate.

**Statement D: If Connie deliberately lit a bonfire every time Arthur put washing out, Connie would still be able to claim in private nuisance.**

- Reason that if Connie had responded in that way she would be demonstrating malice
- Reason that her own actions may have amounted to nuisance
- Reason that malice defeats a claim in private nuisance and so this would have been an unwise course of action for Connie to take
- Conclude that the statement is inaccurate.

- 8 Jerry works as a machine operator for the Mockup Factory. Jerry's machine regularly gets blocked and it usually takes hours before the maintenance mechanic repairs the blockage and Jerry loses production bonuses as a result. There is a guard on the machine but Jerry is in the habit of removing the guard while the machine is still running and clearing the blockage by hand. Mockup Factory management knows of this. One day, while doing this, his hand gets caught and is ripped off by the machine.

Evaluate the accuracy of each of the four statements A, B, C and D individually as they apply to the facts in the above scenario.

**Statement A:** Mockup Factory will not have a defence of *volenti non fit injuria* in a personal injury claim by Jerry.

**Statement B:** Mockup Factory will have a defence of *volenti non fit injuria* and if Jerry's claim is successful the court will reduce the amount of damages awarded to Jerry.

**Statement C:** Mockup Factory will not have a defence of contributory negligence.

**Statement D:** Mockup Factory will have a defence of contributory negligence and Jerry's damages will be reduced by 100%. [20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

**Assessment Objective 1** (20)

**Statement A:** Mockup Factory will not have a defence of *volenti non fit injuria* in a personal injury claim by Jerry.

- Reason that a defence of *volenti* only succeeds where the claimant fully understands the risk of harm and voluntarily undertakes the risk
- Reason that Jerry is likely to understand the risk that his actions will cause him damage – if only because there is a guard on the machine
- Reason whether in the circumstances Jerry has voluntarily undertaken the risk – the loss of production bonus is probably insufficient to justify him removing the guard and placing his hand in the machine while it is still running
- Conclude that the statement may be inaccurate – but Mockup knew of Jerry's actions and failed to stop them so this may harm its defence.

**Statement B:** Mockup Factory will have a defence of *volenti non fit injuria* and if Jerry's claim is successful the court will reduce the amount of damages awarded to Jerry.

- Reason that the defence of *volenti* is a complete defence

- Reason that as such the effect of the defence is to remove liability completely
- Reason therefore that there could be no damages awarded to Jerry at all his claim would fail
- Conclude that the statement is inaccurate.

**Statement C: Mockup Factory will not have a defence of contributory negligence.**

- Reason that the defence of contributory negligence applies where the claimant is partly responsible for the harm suffered and has failed to properly take care of himself
- Reason that Jerry would not have lost his hand if he had not taken the guard off the machine and put his hand into it while it was running – so he is partly responsible for it – as is Mockup for knowing what he did and failing to stop him
- Reason also that a reasonable person would not have done what Jerry did so the defence is available
- Conclude that the statement is inaccurate.

**Statement D: Mockup Factory will have a defence of contributory negligence and Jerry's damages will be reduced by 100%.**

- Reason that in contributory negligence damages are reduced by the extent to which the claimant is responsible for his own harm
- Reason that it has been suggested that 100% reduction has the same effect as volenti and so is impossible
- Reason though that if the employer has a statutory duty to act then volenti is impossible and so a 100% reduction may still be possible
- Conclude that the statement is possibly accurate.

### Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

## **G158 Law of Torts Special Study**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

# G158 Law of Torts Special Study

- 1\* Discuss the extent to which the decision in the case of *Tomlinson v Congleton BC* [Source 5 pages 5-6 Special Study Material] represents a fair development of the law on occupiers' liability. [16]

Mark Levels	AO2	AO3
Level 5	11-12	-
Level 4	9-10	4
Level 3	7-8	3
Level 2	4-6	2
Level 1	1-3	1

Potential answers **MAY**:

## Assessment Objective 2

(12)

Recognise the major issue in the case – the claimant, trespassing, had dived into a pool which was too shallow and had suffered injury as a result and recognise the findings of the court – that there was ‘nothing about the mere at Brereton Heath which made it any more dangerous than any other stretch of open water in England’ and ‘there were no hidden dangers’;

Discuss the reasoning of the court for refusing liability – that Tomlinson suffered his injury because he chose to indulge in an activity which had inherent dangers, not because the premises were in a dangerous state;

Discuss the fact that the court did not think that the Council owed any duty to Tomlinson but, if it did:

- It may have known of the potential danger of the shallow water, although the risk was slight - and it may have anticipated a trespass
  - CP** • But the risk was not one against which the Council might reasonably be expected to offer the claimant some protection
- or
- CP** • Moreover Tomlinson was a person of full capacity who voluntarily and without any pressure or inducement engaged in an activity which had inherent risk.

Contrast with any other relevant case eg *Ratcliffe v McConnell*.

Make any relevant comment on the fairness of the decision

Make any other relevant comment.

Candidates will not satisfy the level 5 descriptor without discussing the critical point and without making at least some reference to fairness (identified in the command) – and will not reach maximum marks without using a linked case for the purpose of showing development (as required by the overarching theme).

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion does this and identifies the role played by judges in developing the law.

**Assessment Objective 3 (4)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2\* In Source 3 [page 4 lines 11-12 Special Study Material] Devlin J suggests that “... the [occupier] may in determining the extent of his duty have regard to the fact that it is the habit, and also the duty, of prudent people to look after themselves”.

Discuss how accurately the above statement reflects the development of the judicial and statutory law on an occupier’s duty to lawful visitors. [34]

Mark Levels	AO1	AO2	AO3
Level 5	14-16	13-14	-
Level 4	11-13	10-12	4
Level 3	8-10	7-9	3
Level 2	5-7	4-6	2
Level 1	1-4	1-3	1

Potential answers **MAY**:

### Assessment Objective 1

(16)

Explain the basic duty in section 2(1) – the common duty of care owed to all lawful visitors; Explain that by section 2(1) the occupier may extend, restrict, modify or exclude his duty; Explain the scope of the duty under section 2(2) – to take reasonable care to keep the visitor safe for the purposes for which the visitor is permitted entry onto the premises; Define occupier – not in Act but in common law is a person in control of the premises *Wheat v Lacon*;

Credit any explanation that premises is broadly defined in section 1(3) 1957 Act as any ‘fixed or movable structure’ and at common law has even included a ladder leaning against a wall *Wheeler v Copas*;

Explain the special duty and higher standard of care owed to children under section 2(3)(a) – and the basic acceptance that a child is more at risk *Moloney v Lambeth BC* – and the basic allurements principle in common law *Taylor v Glasgow Corporation* – and the broad view of foreseeable harm *Jolley v Sutton LBC*;

Explain also that case law identifies that the occupier may expect parents to supervise young children *Phipps v Rochester Corporation*;

Explain that under section 2(3)(b) the occupier is entitled to expect a person entering to carry out a trade to guard against risks associated with the trade *Roles v Nathan*;

Explain that under section 2(4)(b) the occupier can avoid liability where the damage is caused by work negligently done by an independent contractor if:

- it was reasonable to hire a contractor for the work
- a competent contractor was chosen
- the work was inspected if appropriate *Haseldine v Daw*.

Explain that a lawful visitor may become a trespasser by exceeding the proper limits of his visit *The Calgarth*;

Explain the available ways of avoiding liability under the Act:

- sufficient warnings under section 2(4)(a) but must be enough to protect *Rae v Mars*
- use of exclusion clauses in certain circumstances – but subject to UCTA
- *volenti non fit injuria* under section 2(5) – but not if the visitor had no choice but enter the premises *Burnett v British Waterways Board*.

Candidates will not satisfy the level 5 descriptor without clear, full definitions of the major provisions covering lawful visitors and with cases illustrating each aspect.

**NB** No AO1 credit can be given for reference to trespassers and the 1984 Act which is not covered in the command, although AO2 marks may be available if used as information as part of a wider comment.

**Assessment Objective 2****(14)**

Consider that the Act is a statutory form of negligence designed to create a single 'common duty of care to all lawful visitors' since before the Act different duties were owed to different types of lawful visitor;

Consider that liability is only for the state of the premises which may limit it but that an alternative action in negligence is still possible *Ogwo v Taylor* and *Salmon v Seafarers Restaurant*;

Consider the specific wording at the end of section 2(2), that the occupier may 'extend, restrict, modify or exclude his duty' – so that in this respect the occupier is entitled to determine the extent of his duty and to rely on prudent people to look after themselves;

Consider also the numerous means available to the occupier for avoiding liability – warnings, the two key defences and use of exclusion clauses – so in this respect the occupier is again able to an extent to determine his duty and to rely on prudent people to look after themselves;

Consider also that if the visitor exceeds the scope of the permission for the visit then he becomes a trespasser – so that under the Act the occupier can rely on prudent people to look after themselves;

Consider, however, the special duty owed to children under section 2(3)(a) of the Act which places a higher level of care on the occupier;

But consider the decision in *Phipps v Rochester Corporation* which means that the occupier is entitled to rely on parents to supervise young children;

Consider also the rules on those carrying out a trade under section 2(3)(b) which relieves the liability of the occupier quite justly and allows him to rely on the prudent tradesman relying on his own skill and judgment;

Consider the special rules on work of independent contractors under section 2(4)(b) – which relieves the occupier in some senses but may still be a heavy imposition in others; Reach any sensible conclusion.

Candidates will not satisfy the level 5 descriptor without engaging in a **discussion** with some clear focus on the quote, i.e. the extent of the occupier's duty and the duty, of prudent people to look after themselves.

Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion identifies the role played by judges in defining the area, and the justice of their decision making.

**Assessment Objective 3****(4)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 3 Liam, Matt and Neill are footballers who travel to an away game at Bromwich Town Football Club.

Consider the possibility of each of them succeeding in a claim in occupiers' liability against Bromwich Town Football Club in the following situations:

- (a) After the match Liam goes to the dressing room to wash and change. Liam uses a shower cubicle with a sign on the door which reads 'Use other cubicles'. While showering, Liam cuts his foot on some broken floor tiles. (10)
- (b) Matt goes into the toilet. The light is off and when Matt switches it on he is electrocuted and suffers burns to his hand. The wiring in the toilets has recently been replaced by Bright Sparks Electricians. (10)
- (c) Neill, who has travelled with the team but is not playing, decides to explore the Bromwich Town stadium. He enters a room marked: 'No admittance except to staff'. The room has been overfilled with equipment and a large tin of paint, carelessly stacked, falls on Neill's head injuring him. The lid comes off the tin, covering Neill in paint and ruining his expensive suit. (10)

[30]

Mark Levels	AO1	AO2	(a), (b) or (c)
Level 5	9-10	17-20	9-10
Level 4	7-8	13-16	7-8
Level 3	5-6	9-12	5-6
Level 2	3-4	5-8	3-4
Level 1	1-2	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1** (10)

Use any relevant cases and statutory provisions illustration when applying the law to the problems.

**Assessment Objective 2****(20)**

For all three identify the Bromwich Town FC as an occupier and the stadium as premises and that the incidents are due to the state of the premises;

In the case of **(a)**:

- CP** • Identify Liam as a lawful visitor;
  - CP** • Discuss whether the sign makes Liam a trespasser to the shower cubicle – which is unlikely in the circumstances;
- or
- CP** • Discuss whether the sign amounts to a warning sign – again unlikely as it does not identify the risk *Rae v Mars*;
  - Conclude that a claim is possible but damages may be reduced for contributory negligence.

In the case of **(b)**:

- Identify Matt as a lawful visitor;
- Consider whether Bromwich Town FC can avoid liability under section 2(4)(b);
- CP** • It is clearly reasonable to hire an electrical contractor to replace wiring, assuming that Bright Sparks is a competent contractor, the key issue is whether Bromwich Town should have inspected the work – contrast *Haseldine v Daw* with *Woodward v Mayor of Hastings*;
- Reach any logical conclusion eg that it would have been easy to switch the light on before a visitor came across it.

In the case of **(c)**:

- CP** • Identify that Neill enters as a lawful visitor but has become a trespasser when he entered a part of the premises that he was not authorised to *The Calgarth*;
- CP** • Discuss the criteria in section 1(3) – there was a clear danger because the room was too full and equipment carelessly stored unsafely, without the door being locked a trespass was always possible, and it would have been practical to take reasonable steps to avoid potential harm;
- Conclude that Neill may claim for his injury;
- CP** • Conclude that Neill will be unable to claim for his suit.

Candidates will not achieve level 5 for each of **(a)**, **(b)** and **(c)** without discussing the critical point/one of the critical points – and without an appropriate offence and supporting case (for AO1).

### Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

# Grade Thresholds

Advanced GCE Law H134 H534  
January 2010 Examination Series

## Unit Threshold Marks

Unit		Maximum Mark	A	B	C	D	E	U
G151	Raw	120	94	82	70	59	48	0
	UMS	120	96	84	72	60	48	0
G152	Raw	60	45	39	34	29	24	0
	UMS	80	64	56	48	40	32	0
G153	Raw	120	94	80	67	54	41	0
	UMS	120	96	84	72	60	48	0
G154	Raw	80	63	56	49	43	37	0
	UMS	80	64	56	48	40	32	0
G155	Raw	120	96	84	72	60	48	0
	UMS	120	96	84	72	60	48	0
G156	Raw	80	63	55	48	41	34	0
	UMS	80	64	56	48	40	32	0
G157	Raw	120	94	81	68	56	44	0
	UMS	120	96	84	72	60	48	0
G158	Raw	80	58	51	45	39	33	0
	UMS	80	64	56	48	40	32	0

## Specification Aggregation Results

Overall threshold marks in UMS (ie after conversion of raw marks to uniform marks)

	Maximum Mark	A	B	C	D	E	U
H134	200	160	140	120	100	80	0

The cumulative percentage of candidates awarded each grade was as follows:

	A	B	C	D	E	U	Total Number of Candidates
H134	8.2	25.0	50.3	78.8	95.8	100.0	839

For a description of how UMS marks are calculated see:

<http://www.ocr.org.uk/learners/ums/index.html>

Statistics are correct at the time of publication.

**OCR (Oxford Cambridge and RSA Examinations)**  
**1 Hills Road**  
**Cambridge**  
**CB1 2EU**

**OCR Customer Contact Centre**

**14 – 19 Qualifications (General)**

Telephone: 01223 553998

Facsimile: 01223 552627

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**Registered Office; 1 Hills Road, Cambridge, CB1 2EU**  
**Registered Company Number: 3484466**  
**OCR is an exempt Charity**

**OCR (Oxford Cambridge and RSA Examinations)**  
**Head office**  
**Telephone: 01223 552552**  
**Facsimile: 01223 552553**

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