

A-level
LAW
7162/2

Paper 2

Mark scheme

June 2020

Version: 1.0 Final Mark Scheme

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from aqa.org.uk

Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

01 In a case involving private nuisance, for which of the following can the claimant **not** seek a remedy?

[1 mark]

Marks for this question: AO1 = 1

C Personal injury.

02 If an action in negligence is brought against a child, which of the following does the claimant normally have to prove is **true** at the time of the incident?

[1 mark]

Marks for this question: AO1 = 1

D The standard of behaviour of the child was lower than that of the reasonable child of the same age.

03 A pressure group may try to influence Parliament and persuade it to pass certain laws. Which of the following statements about pressure groups is **false**?

[1 mark]

Marks for this question: AO1 = 1

B Pressure groups always put forward candidates for election to Parliament in order to promote their ideas.

04 Which of the following best describes a decision made by a tribunal?

The decision is

[1 mark]

Marks for this question: AO1 = 1

A binding on the parties and can be appealed.

05 Which of the following courts does **not** hear appeals in tort cases?

[1 mark]

Marks for this question: AO1 = 1

A The Chancery Division of the High Court.

06	Explain two aspects of the work of the Law Commission in reforming the law. Give an example of an area of law that the Law Commission has looked at.
	[5 marks]

Marks for this question: AO1 = 5

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
4–5 Band 3	Knowledge is good and demonstrates a good understanding of the English legal system.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the English legal system.
0	Nothing worthy of credit.

Indicative content

AO1

- Keeping the law under review: by section 3(1) of the Law Commission Act 1965, the LC has a duty to propose reform, development and simplification of the law.
- Proposals for consolidation: combining several statutes dealing with a particular area of law into a single Act of Parliament.
- Proposals for codification: reviewing/reforming the law to produce a single code governing all aspects of a particular area of law.
- Proposals for the repeal of obsolete statutes.
- Selection of a topic for consideration: the LC may select an area of law to examine and should then ask for approval from the Lord Chancellor. (Alternatively, the Lord Chancellor may refer a particular area of law to the LC).
- The function of research whereby the LC researches the chosen area of law, considering existing rules of law in the area of both statutory and common law.
- Publication by the LC of a consultation paper (description of the current law, description of issues with the current law, comparison of English law with the law of countries with similar legal systems, outline of possible reforms).
- Publication by the LC of a final report (explanation of research, final proposal for reform, proposal for a draft bill). The report is sent to the Lord Chancellor.
- Examples of the work of the LC, for instance the Corporate Manslaughter and Corporate Homicide Act 2007, the Coroners and Justice Act 2009, the Criminal Justice and Courts Act 2015 and the Consumer Rights Act 2015.

Note: the answer requires:

- aspect 1
- aspect 2
- example

all 3 = max 5

any 2 = max 4

aspect 1 = max 3

example only = max 2

Credit any other relevant point(s).

- 07** Suggest why the people using the field as a shortcut could be considered as trespassers for the purposes of any claim in occupiers' liability.

[5 marks]

Marks for this question: AO1 = 2 and AO2 = 3

	Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)
Mark range	Description
4–5 Band 3	Good outline explanation of relevant legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the relevant legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1

- Identification of the meaning of the term 'trespasser': the lack of permission, express or implied, to enter the land.
- Possible comparison between a trespasser and a lawful visitor; possible reference to the relevant legislation.

AO2

- Application to argue that the people did not have express or implied permission to enter the land for instance as invitees, as licensees or under a statutory power to enter.
- Application to argue that, although people were entering the land regularly, there was no ground on which to imply permission as their presence was objected to in the form of the fence, the locked gate and the notices forbidding entry.
- Reference to and analysis of relevant case law illustrating trespass, for example **Addie v Dumbreck**, **Herrington v BRB**, **Tomlinson v Congleton BC**, **Keown v Coventry NHS Trust**, **Donoghue v Folkestone Properties** and **Lowery v Walker**.

Credit any other relevant point(s).

08	Advise Leroy as to his rights and remedies against Kev under the Rule in <i>Rylands v Fletcher</i> .	[10 marks]
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Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3

	Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)
Mark range	Description
7–10 Band 3	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
3–6 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
1–2 Band 1	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Indicative content

AO1

- Identification and outline explanation of the tort contained in the rule in **Rylands v Fletcher**: an action for reasonably foreseeable damage caused by the escape from the defendant's land of a dangerous thing accumulated during the course of a non-natural use of that land.
- Brief explanation of appropriate supporting case authority for instance **Rylands v Fletcher**, **Transco v Stockport MBC** and **Cambridge Water v Eastern Counties Leather**.

AO2

- Application of the requirement that Leroy must demonstrate an appropriate legal interest in the land affected.
- Application to argue that Leroy may be able to show the elements required to establish liability in terms of an accumulation, on Kev's land, of a dangerous substance during the course of a non-natural user, an escape of that substance and the escape causing reasonably foreseeable damage.
- Application to argue a possible defence of act of God (an unforeseeable event that cannot be guarded against) given the nature of the storm.
- Application to suggest that Leroy may be entitled to a remedy of compensatory damages.

AO3

- Analysis and evaluation of the requirements for liability (accumulation, dangerous substance, non-natural user of the land, escape causing reasonably foreseeable damage).
- Analysis and application of the relevant fault element (strict liability).
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Rickards v Lothian**, **Read v Lyons** and **Nichols v Marsland**.

Credit any other relevant point(s).

- 09** Examine what is meant by fault as a basis for liability in English law. Discuss to what extent liability to lawful visitors, under the Occupiers' Liability Act 1957, is based on fault. **[15 marks]**

Marks for this question: AO1 = 5 and AO3 = 10

Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)	
Mark range	Description
13–15 Band 5	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
10–12 Band 4	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
7–9 Band 3	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
4–6 Band 2	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
1–3 Band 1	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
5	10	15

Indicative content**AO1**

- Identification of possible bases of fault in civil and possibly criminal law: voluntariness of conduct and causation as fundamental bases; intention, recklessness, negligence and strict liability; defences.
- Outline of the duty imposed by the 1957 Act on occupiers to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited by the occupiers to be there.

AO3

- Analysis of fault elements: meaning of terms such as intention (purpose), recklessness (foresight of risk), negligence (failure to reach the standard of the reasonable person) and strict liability (imposition of liability even in the absence of fault).
- Analysis of the significance of fault for instance: a marker of blame; allocates responsibility; justifies the imposition of penalties or damages, indicates that behaviour should be modified in the future.
- Analysis of fault in the context of OLA 1957 (1): standard of behaviour is the negligence standard of the reasonable person. The standard is objective and can impose fault even where the defendant is doing their best (eg an inexperienced person or occupier of premises). However, the standard does not require that the occupier offer a guarantee of safety; the occupier only need act as the reasonable person would have done in terms of risk factors such as likelihood of risk, ease of precautions and seriousness of possible damage. Fault is varied under s2(3) in respect of children and visitors where the risk is within the visitor's specialism. Possible case law illustration for instance **Phipps v Rochester Corporation** and **Roles v Nathan**.
- Analysis of fault in the context of OLA 1957 (1): defences offer a way to eliminate or reduce liability in circumstances where fault is reduced or absent. Defences where the claimant is partly to blame, for instance contributory negligence. Defences where a third party is partly to blame, for instance s2(4)(b). Possible case law illustration for instance **Haseldine v Daw**, **Woodward v Mayor of Hastings** and **Geary v JD Wetherspoons**.
- Conclusion as to the extent to which liability under the OLA 1957 is based on fault, based on the analysis and evaluation presented: the defendant is judged objectively, but the standard to be shown can vary, and liability partly depends on the fault of others.

Credit any other relevant point(s).

Indicative Content Groups (ICGs)

ICG1: Fault and English law

ICG2: Fault and the OLA 1957

10 Consider the rights and remedies of Neal, Orella and Peggy against Mel.

[30 marks]

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
25–30 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
19–24 Band 4	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
13–18 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
7–12 Band 2	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
1–6 Band 1	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
30	0	30

Indicative content**AO1**

- Identification and outline explanation of the elements of the tort of negligence: duty, breach and damage, including identification of the test for duty, risk factors in breach and damage including personal injury and property damage.
- Brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Robinson v Chief Constable for West Yorkshire**, **Nettleship v Weston** and **the Wagon Mound (No 1)**.
- Identification and explanation of the defence of contributory negligence. Brief explanation that the defence will apply where the claimant partly contributed to the accident or to their loss because their own behaviour fell below that of the reasonable person. Possible identification of the defence of consent with a brief explanation that the defence may apply if the claimant consented to the risk of the defendant acting negligently.
- Identification and brief explanation of psychiatric injury, and of the possibility of an action in negligence to recover damages albeit on a restricted basis.
- Brief explanation of the difference between a primary victim and a secondary victim in the context of psychiatric injury.
- Brief explanation of appropriate supporting case authority for example **Reilly v Merseyside RHA**, **Page v Smith** and **Alcock v Chief Constable for South Yorkshire**.

AO2

- Application of the rules on duty of care to suggest that Mel owes a duty of care to Neal on the ground that it is reasonably foreseeable that a boat passenger would be affected by Mel's failure to drive the boat competently.
- Application of the rules on breach to suggest that Mel should be judged by the standard of the reasonable experienced boat driver (not a learner) and that Mel did not reach the standard of the reasonable person in terms of seriousness of risk, likelihood of risk and ease of prevention.
- Application of the rules on causation to suggest that Neal being thrown into the water was a reasonably foreseeable consequence of Mel losing control of the boat, and that Neal can recover damages both for his physical injuries and for the lung damage (thin skull rule).
- Application to argue that Mel may be able to use the defence of contributory negligence in terms of whether Neal's behaviour was below that of the reasonable person in sitting on the side of the boat and having drunk alcohol. Possible application to argue that Neal freely, and with knowledge, consented to the risk that Mel would act negligently.
- Application to suggest that Neal may be entitled to a remedy of compensatory damages against Mel, but that the existence of a defence may reduce or eliminate his claim.
- Application to suggest that Orella and Peggy will need to show that they have a psychiatric injury in the form of a recognised psychiatric condition.
- Application to suggest that Orella may qualify as a primary victim in that she was in the 'zone of danger' as it was reasonably foreseeable that she could have been physically injured.
- Application of the rules to Peggy to demonstrate that, as a bystander, she is a secondary victim.
- Application of the rules on recovery for psychiatric injury by a secondary victim to suggest that Peggy may be able to satisfy the Alcock rules relating to a close tie of love and affection, but that she will need to rely on the idea of 'immediate aftermath' to qualify under the Alcock rules relating to proximity to the accident.

- Application to explain that, in the event of a successful claim, Orella and Peggy would be entitled to a remedy of compensatory damages.

AO3

- Analysis and evaluation of the concept of duty in relation to a speedboat accident in terms of a comparison to established duties, foreseeability and proximity.
- Analysis and evaluation of the standard of care in breach of duty in determining the appropriate standard to be shown by the reasonable person given the seriousness of risk, likelihood of risk and ease of prevention.
- Analysis and evaluation of the rules on causation in terms of reasonable foreseeability and the thin skull rule.
- Analysis and evaluation of the existence of liability with reference to contributory negligence (whether Neal acted as the reasonable person would have done in terms of factors such as likelihood of injury, seriousness of injury risked and precautions he could have taken). Possible analysis and evaluation of the defence of consent (whether Neal consented to the risk of Mel acting negligently).
- Negligence: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Bolton v Stone**, **Paris v Stepney BC**, **Latimer v AEC**, **Smith v Leech Brain**, **Froom v Butcher**, **Brannon v Airtours**, **Morris v Murray**.
- Analysis and application of the requirements for a claim in negligence for psychiatric injury: a duty of care normally only exists to someone who is a primary or a secondary victim.
- Analysis and evaluation of the requirements for a claimant to qualify as a primary victim on the ground that they were in the “zone of danger”.
- Analysis and evaluation of the requirements for a claimant to qualify as a secondary victim in terms of the Alcock rules (including “immediate aftermath”) and the rules relating to sudden shock.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **McLoughlin v O’Brian**, **Galli-Atkinson v Seghal**, **Sion v Hampstead HA** and **Walters v North Glamorgan NHS Trust**.

Credit any other relevant point(s).

Indicative Content Groups (ICGs)

ICG1: Negligence leading to physical loss

ICG2: Negligence leading to psychiatric injury

- 11** Consider the rights and remedies of Sam against Tina **and** against UserArt Ltd in relation to the vase.

Law plays a role in society in both allowing and restricting civil claims. There are rules which restrict when a claimant can recover for pure economic loss in tort. Assess the reasons why these restrictions on recovery for pure economic loss exist.

[30 marks]

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
25–30 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
19–24 Band 4	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
13–18 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p>7–12</p> <p>Band 2</p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology. There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p>1–6</p> <p>Band 1</p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
23	7	30

Indicative content

AO1

- Identification and outline explanation of economic loss and of the possibility of an action in negligence to recover damages for a negligent misstatement albeit on a restricted basis.
- Brief explanation of appropriate supporting case authority for instance **Spartan Steel v Martin**, **Hedley Byrne v Heller** and **Caparo v Dickman**.
- Identification and outline explanation of an action in vicarious liability against an employer for the negligence of an employee committed during the course of employment.
- Brief explanation of appropriate supporting case authority for instance **Ready Mix Concrete v Minister of Pensions**, **Century Insurance v NI Road Transport Board** and **Lister v Hesley Hall**.
- The role law plays in society: brief explanation of the rules governing recovery for pure economic loss - pure economic loss cannot normally be recovered if caused by a negligent act; pure economic loss can be recovered if caused by a negligent misstatement as long as there is a special relationship between the claimant and the defendant.

AO2

- Negligent misstatement: application of the rules governing the difference between a consequential economic loss and a pure economic loss to suggest that Sam has sustained a pure economic loss.
- Negligent misstatement: application of the rules governing the differing ways in which the courts treat a claim for pure economic loss caused by negligent acts and negligent statements to suggest that Sam has sustained a pure economic loss caused by a statement.
- Negligent misstatement: application of the elements necessary to establish a special relationship between the claimant and defendant such as an expertise on the part of the defendant, a voluntary assumption of responsibility towards a known user and reasonable reliance on the part of the claimant to consider whether Sam and Tina have such a special relationship in the context of an event at a golf club.
- Vicarious liability: application of the rules determining whether a worker is an independent contractor or an employee to consider the status of Tina, for instance the control test, the integration test and the multiple test.
- Vicarious liability: application of the rules determining whether a tort was committed in the course of employment to consider the status of Tina's statement with reference to, for instance, authorised acts and the 'so closely connected' test.
- Application to suggest that Sam may be entitled to a range of compensatory damages against Tina and UserArt.

AO3

- Negligent misstatement: analysis and evaluation of the requirements for a claim in negligence for pure economic loss with reference to the restricted nature of the duty of care.
- Negligent misstatement: analysis and evaluation of the elements required to establish the special relationship in the context of a social event.
- Negligent misstatement: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Chaudhry v Prabhakar**, **Patchett v SPATA** and **Smith v Bush**.
- Vicarious liability: analysis and evaluation of the requirements for a worker to be considered an employee (for example level of control, connection to the employer's business, mutuality of obligation).
- Vicarious liability: analysis and evaluation of the requirements to establish that an employee was acting in the course of employment (for instance the difference between an unauthorised act and an authorised act carried out in an unauthorised manner, disobeying a direct instruction, whether an act was so closely connected to the employment that it is fair and just to hold the employer liable).
- Vicarious liability: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Various Claimants v Catholic CWS**, **Limpus v London General Omnibus** and **Rose v Plenty**.
- The role law plays in society: evaluation of the rules governing the recovery of pure economic loss and the role that these rules play in society; for instance, one or more of the following: the 'floodgates' argument in relation to both negligent acts and negligent misstatements, the desire not to allow claimants to circumvent contract law, the difficulty of insuring against such losses, the 'unfairness' of allowing a claimant who has lost through no fault of their own to go uncompensated, a contrast with rules governing physical losses. Illustrative case law for example **Spartan Steel v Martin**, **White v Jones**, **Hedley Byrne v Heller**, and **Caparo v Dickman**.

Credit any other relevant point(s).

Indicative Content Groups (ICGs)

ICG1: Negligent misstatement

ICG2: Vicarious liability

ICG3: Law and society/pure economic loss

Assessment Objectives Grid

	AO1	AO2	AO3	Total
1	1			1
2	1			1
3	1			1
4	1			1
5	1			1
6	5			5
7	2	3		5
8	3	4	3	10
9	5		10	15
10	10	10	10	30
11	10	10	10	30
Paper Total	40	27	33	100

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
Total	75	25	100
Total %	75	25	100

A-level
LAW
7162/2

Paper 2

Mark scheme

June 2021

Version: 1.0 Final Mark Scheme



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

01 Which of the following is **not** a requirement for a successful claim under the rule in Rylands v Fletcher?

[1 mark]

Marks for this question: AO1 = 1

C The defendant's standard of behaviour fell below that of the reasonable person.

02 In a claim for psychiatric injury brought by a primary victim, which of the following does **not** need to be proved?

[1 mark]

Marks for this question: AO1 = 1

D The injury would only have been suffered by a person of reasonable fortitude (reasonable courage).

03 Which type of judge normally hears appeals in the Civil Division of the Court of Appeal?

[1 mark]

Marks for this question: AO1 = 1

D Lord Justice of Appeal

04 In the House of Commons, a bill will have a second reading. Which statement best describes a second reading?

[1 mark]

Marks for this question: AO1 = 1

A A debate on the main principles of the bill, followed by a vote

05 Select the **false** statement. The concept of parliamentary supremacy (parliamentary sovereignty) states that Parliament has the power to:

[1 mark]

Marks for this question: AO1 = 1

C enact a statute which cannot be repealed.

06 Explain **three** aspects of the role of a mediator.

[5 marks]

Marks for this question: AO1 = 5

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
4–5 Band 3	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
0	Nothing worthy of credit.

Indicative content

AO1

- The role of a mediator (mediation) is a form of alternative dispute resolution where the dispute can be settled 'out of court'.
- A mediator is neutral between the two parties to a dispute.
- The mediator moves between the parties to find a compromise to their dispute.
- A mediator will seek to understand the parties' positions in order to find common ground.
- A mediator can convey offers between the parties.

Credit any other relevant point(s).

Answers which explain two aspects: maximum 4 marks

Answers which explain one aspect: maximum 2 marks

Use of examples, for instance mediation in family cases and mediation in major commercial disputes, will enhance an answer within the relevant band.

07	In these circumstances, suggest why any claim made by Leah in respect of her psychiatric injury would be unlikely to succeed in court.	[5 marks]
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Marks for this question: AO1 = 2 and AO2 = 3

	Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)
Mark range	Description
4–5 Band 3	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1

- Brief explanation of the difference between a primary victim and a secondary victim in the context of psychiatric injury.
- Brief explanation of the restrictions on a claim made by a secondary victim.

AO2

- Application to suggest that Leah was a secondary victim as she was told of the accident rather than being a participant in the accident.
- Application to argue that Leah does not meet the criteria required for a successful claim by a secondary victim in terms of a sufficient tie of love and affection and in terms of witnessing the accident itself or the immediate aftermath.
- Possible brief reference to illustrative case law, for example **Alcock v Chief Constable for South Yorkshire** and **Page v Smith**.

Maximum marks can be awarded where an answer deals only with the issue of a sufficient tie of love and affection or deals only with the failure to witness the accident or its immediate aftermath. If an answer deals with both, this broader approach can be awarded full marks even though the level of detail is less.

Credit any other relevant point(s).

08	Taking into account the rules on negligent misstatement, advise Nick of his rights against Ona.	[10 marks]
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Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3

	Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)
Mark range	Description
7–10 Band 3	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
3–6 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
1–2 Band 1	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
0	Nothing worthy of credit.

Indicative content

AO1

- Identification and outline explanation of economic loss and of the possibility of an action in negligence to recover damages for a negligent misstatement albeit on a restricted basis.
- Brief explanation of appropriate supporting case authority for instance **Spartan Steel v Martin**, **Hedley Byrne v Heller** and **Caparo v Dickman**.

AO2

- Possible application of the rules governing the difference between a consequential economic loss and a pure economic loss to suggest that Nick has sustained a pure economic loss.
- Application of the rules governing the differing ways in which the courts treat a claim for pure economic loss caused by negligent acts and negligent statements to suggest that Nick has sustained a pure economic loss caused by a statement.
- Negligent misstatement: application of the elements necessary to establish a special relationship between the claimant and defendant such as an expertise on the part of the defendant, a voluntary assumption of responsibility towards a known user and reasonable reliance on the part of the claimant to consider whether Nick and Ona have such a special relationship in the context of the former reading a newsletter written by the latter.

AO3

- Possible analysis and evaluation of the requirements for a claim in negligence for pure economic loss with reference to the restricted nature of the duty of care.
- Analysis and evaluation of the elements required to establish the special relationship in the context of a newsletter.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Chaudhry v Prabhakar**, **Patchett v SPATA** and **Smith v Bush**.

Credit any other relevant point(s).

09	Examine the role which fault plays in deciding liability in law. Discuss the extent to which liability for private nuisance depends on fault.	[15 marks]
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Marks for this question: AO1 = 5 and AO3 = 10

	Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)
Mark range	Description
13–15 Band 5	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
10–12 Band 4	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
7–9 Band 3	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
4–6 Band 2	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
1–3 Band 1	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
5	10	15

Indicative content**AO1**

- Identification of the significance of fault and the role it plays in deciding liability in civil law and possibly criminal law. Identification of the meaning and nature of fault in terms of intention, recklessness, negligence and strict liability.
- Possible identification of aspects of fault such as whether the defendant was acting voluntarily and whether the defendant is able to raise a defence against the claimant.
- Outline of the basic requirements of the tort of private nuisance: an unlawful indirect interference with a person's use or enjoyment of their land resulting in loss of amenity and/or physical damage and the notion of reasonable use based on factors such as locality, duration, intensity, malice and sensitivity of the claimant.

AO3 candidates may discuss a range of factors, with appropriate supporting case authority. Examples include the following:

- analysis of fault to establish its meaning and nature in deciding liability in terms of intention (purpose), recklessness (foresight of risk), negligence (failure to reach the standard of the reasonable person) and strict liability (imposition of liability even in the absence of fault)
- possible analysis of the role of fault in the court process, for instance its contribution to the assessment of the severity of any criminal punishment or the extent of any civil remedy and its function in allocating responsibility between the parties in terms of defences
- possible analysis of the role of fault in society, for instance in justifying the imposition of penalties or damages and in indicating how behaviour should be modified in the future
- analysis of fault in the context of nuisance (1): absence of any requirement for negligence and the standard of the reasonable person in assessing the defendant's actions (the assessment being based on "give and take" between neighbours and the idea of unlawful interference); possible reference to general fault on the part of the defendant in not having regard for neighbours; possible reference to defences available to a claim in private nuisance and to remoteness of damage. Possible case law illustration, for instance **Miller v Jackson** and **Sturges v Bridgeman**
- analysis of fault in the context of nuisance (2): requirement of fault (intentional or deliberate annoyance) in the context of the malice factor. Possible case law illustration, for instance **Hollywood Silver Fox Farm v Emmett** and **Christie v Davey**
- conclusion as to the extent to which liability in private nuisance is based on fault, based on the analysis and evaluation presented: the defendant is principally judged by the standard of unlawful interference, which is not fault based, but there are elements of fault such as the malice factor.

Credit any other relevant point(s).

ICG1: fault and law

ICG2: fault and the tort of private nuisance

10	<p>Taking into account the law of occupiers' liability, consider the rights and remedies of Ravi against Paul and of Saffi against Paul.</p> <p style="text-align: right;">[30 marks]</p>
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
<p style="text-align: center;">25–30</p> <p style="text-align: center;">Band 5</p>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<p style="text-align: center;">19–24</p> <p style="text-align: center;">Band 4</p>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<p style="text-align: center;">13–18</p> <p style="text-align: center;">Band 3</p>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<p style="text-align: center;">7–12</p> <p style="text-align: center;">Band 2</p>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<p style="text-align: center;">1–6</p> <p style="text-align: center;">Band 1</p>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
30	0	30

Indicative content**AO1**

- Explanation of the provisions of the Occupiers' Liability Act 1957: premises, occupier, visitor and dangers due to the state of the premises or to things done or omitted to be done on them. Remedy of damages.
- Explanation of the duty imposed by the 1957 Act on occupiers to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupiers to be there.
- Identification and explanation of the provision contained in s 2(3)(b) OLA 1957: the degree of care to be shown towards a person in the exercise of his calling.
- Identification and explanation of the defence of contributory negligence: s2(3) OLA 1957.
- Identification of the basic elements relevant to the existence of a duty under the Occupiers' Liability Act 1984: occupier, premises, conditions necessary for a duty to arise under s1(3) of the Act. Remedy of damages.
- Explanation of the duty imposed by the 1984 Act on occupiers to take such care as is reasonable in all the circumstances of the case to see that the unlawful visitor does not suffer injury on the premises by reason of the danger concerned.
- Identification and explanation of the defence of consent: s1(6) OLA 1984.

AO2

- Application to argue that the window ledge was premises for the purposes of the 1957 Act, that Ravi was a visitor, that Paul was the occupier and that there was a danger due to the state of the premises (a rotten window ledge that might collapse and injure someone).
- Application to suggest that in those circumstances Paul owed a duty of care to Ravi.
- Application to assess whether Paul broke his duty of care by failing to ensure that a visitor would be reasonably safe given s 2(3)(b) OLA 1957 and given that Ravi was in the exercise of his calling. (Paul gave a warning but it was not specific, Ravi was acting in the exercise of his calling but a rotten ledge may be outside his specialism if he is not used to outdoor work).
- Application to argue that Paul may be able to use the defence of contributory negligence in terms of whether Ravi's behaviour was below that of the reasonable person in attempting to climb onto a ledge that he could see was damaged (possible reference to Ravi not wearing any sort of safety harness).
- Application to conclude that if Paul does not have a defence, then he is liable to pay compensatory damages to Ravi for his injuries, but that the existence of a defence may reduce or eliminate his liability. Reference to the "thin" skull rule in relation to the footballing injury.
- Application to argue that the trampoline was premises for the purposes of the 1984 Act, that Saffi was an unlawful visitor (given the warnings and the existence of a fence), that Paul was the occupier and that there was a danger due to the state of the premises (broken springs) rather than Saffi's own actions (climbing onto the trampoline).
- Application to consider whether the requirements of s1(3) were satisfied and whether therefore a duty under the 1984 Act existed: (1) whether Paul was aware of the danger (the broken springs) or had reasonable grounds to believe that it existed (Paul knew of the damage); (2) whether Paul knew or had reasonable grounds to believe that another would or might come into the vicinity of the danger (Paul knew that the children played on the trampoline); (3) whether the danger is one against which, in

all the circumstances of the case, Paul may reasonably be expected to offer another some protection (a broken trampoline which could inflict serious injury on a young child).

- Application to consider whether Paul broke the duty of care (if it existed) in terms of factors such as whether Paul took appropriate precautions (he gave a warning that perhaps did not mention the trampoline; he built a fence but did not notice the hole and the trampoline was clearly dangerous) and whether Paul should be expected to protect a person determined to be irresponsible.
- Application to argue that Paul may have a defence of consent if Saffi voluntarily assumed the risk of crawling through the fence and climbing onto the trampoline. Possible argument that Saffi did not know specifically that the trampoline was damaged.
- Application to conclude that if Paul does not have a defence, then he is liable to pay compensatory damages to Saffi for her injuries (but not for her smashed watch), but that the existence of a defence may eliminate his liability.

AO3

- Analysis and evaluation of the existence of liability with reference to s 2(3)(b) and breach of duty.
- Analysis and evaluation of the existence of liability with reference to contributory negligence and the standard of behaviour of the claimant in terms of factors such as likelihood of injury, seriousness of injury risked and precautions he could have taken.
- Reference to and analysis of relevant case law, for example **Wheat v Lacon**, **Roles v Nathan**, **Froom v Butcher**, **Brannon v Airtours**, **Bolton v Stone**, **Paris v Stepney BC**.
- Analysis and evaluation as to the existence of a duty of care under the 1984 Act with reference to matters such as the frequency of trespassers, common humanity and whether the danger was obvious.
- Analysis and evaluation of the breach of any duty of care under the 1984 Act with reference to matters such as, for instance, the obviousness of the danger, the likely age of any trespasser, likelihood of trespass, seriousness of the injury risked, cost and practicality of precautions and warnings.
- Reference to and analysis of relevant case law, for example **Tomlinson v Congleton BC**, **Keown v Coventry NHS Trust**, **Donoghue v Folkestone Properties**, **Platt v Liverpool City Council**, **Ratcliff v McConnell**.

Note: Credit any other relevant point(s).

Note: Fully credit an application/analysis which arrives at either conclusion (that either Ravi or Saffi's claim may succeed or otherwise).

ICG1: Occupiers' Liability Act 1957

ICG2: Occupiers' Liability Act 1984

- 11** Consider the rights and remedies of Wes against Vic **and** against Tania in relation to his injuries.

The theory underlying the rules of negligence plays a role in society as it helps courts decide which claims should succeed and which should fail. In the context of a claim in negligence, assess the factors used by the courts when deciding whether a duty of care has been **breached** and whether therefore a claim can succeed.

[30 marks]

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
25–30 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
19–24 Band 4	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
13–18 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p>7–12</p> <p>Band 2</p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p>1–6</p> <p>Band 1</p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
23	7	30

Indicative content

AO1

- Negligence: identification and outline explanation of the elements of the tort of negligence: duty, breach and damage, including identification of the test for duty, risk factors in breach and damage including personal injury and property damage.
- Negligence: brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Caparo v Dickman**, **Robinson v Chief Constable for West Yorkshire**, **Nettleship v Weston** and **the Wagon Mound (No 1)**.
- Vicarious liability: identification and outline explanation of an action in vicarious liability against an employer for the negligence of an employee committed during the course of employment.
- Vicarious liability: brief explanation of appropriate supporting case authority for instance **Ready Mix Concrete v Minister of Pensions**, **Century Insurance v NI Road Transport Board** and **Lister v Hesley Hall**.
- The role law plays in society: brief explanation of the factors governing the standard of care in a negligence action. The standard is objective but the reasonable person weighs the level of risk against the cost of precautions.

AO2

- Negligence: application of the rules on duty of care to suggest that Vic owes a duty of care to Wes on the ground that it is reasonably foreseeable that a trailer passenger would be affected by Vic's failure to drive the tractor competently.

- Negligence: application of the rules on breach to suggest that Vic should be judged by the standard of the reasonable experienced tractor driver (not a learner) and that Vic did not reach the standard of the reasonable person in terms of seriousness of risk, likelihood of risk and ease of prevention.
- Negligence: application of the rules on causation to suggest that Wes being thrown from the trailer was a reasonably foreseeable consequence of Vic losing control of the tractor, albeit that the sequence of events was not wholly foreseeable.
- Negligence: application to suggest that Wes may be entitled to a remedy of compensatory damages against Vic.
- Vicarious liability: application of the rules determining whether a worker is an independent contractor or an employee to consider the status of Vic, for instance the control test, the integration test and the multiple test.
- Vicarious liability: application of the rules determining whether a tort was committed in the course of employment to consider whether Vic's driving and changing the radio channel were in the course of his employment, with reference to, for instance, authorised acts and the 'so closely connected' test.
- Vicarious liability: Application to suggest that Wes may be entitled to a remedy of compensatory damages against Tania.

AO3

- Negligence: analysis and evaluation of the concept of duty in relation to a tractor and trailer accident in terms of a comparison to established duties, foreseeability and proximity.
- Negligence: analysis and evaluation of the standard of care in breach of duty in determining the appropriate standard to be shown by the reasonable person given the seriousness of risk, likelihood of risk and ease of prevention.
- Negligence: analysis and evaluation of the rules on causation in terms of reasonable foreseeability and the unusual sequence of events.
- Negligence: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Bolton v Stone**, **Paris v Stepney BC**, **Latimer v AEC**, **Hughes v Lord Advocate** and **Bradford v Robinson Rentals**.
- Vicarious liability: analysis and evaluation of the requirements for a worker to be considered an employee (for example level of control, connection to the employer's business, mutuality of obligation). Possible discussion of relationships akin to a relationship of employment.
- Vicarious liability: analysis and evaluation of the requirements to establish that an employee was acting in the course of employment (for instance the difference between an unauthorised act and an authorised act carried out in an unauthorised manner, whether an act was so closely connected to the employment that it is fair and just to hold the employer liable).
- Vicarious liability: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Various Claimants v Catholic CWS**, **Barclays Bank v Various Claimants**, **WM Morrison Supermarkets v Various Claimants**, **Limpus v London General Omnibus** and **Rose v Plenty**.
- The role law plays in society: evaluation of the factors governing the objective standard of care in a negligence action and the role that these rules play in society; for instance, one or more of the following: the need to protect victims even if the defendant is inexperienced, the desirability of imposing a higher standard on professionals, the concession given to very young defendants in terms of the standard of care expected, the desirability of a defendant taking swift if risky action in the event of an emergency, the balance that the law strikes between nature of the risk and cost of precaution. Illustrative case law, for example **Nettleship v Weston**, **Bolam v Friern Hospital**, **Mullin v Richards**, **Bolton v Stone**, **Watt v Hertfordshire County Council**, **Paris v Stepney BC** and **Latimer v AEC**.

Credit any other relevant point(s).

ICG1: negligence causing physical loss

ICG2: vicarious liability

ICG3: factors governing when a duty of care has been breached

Assessment Objectives Grid

	AO1	AO2	AO3	Total
1	1			1
2	1			1
3	1			1
4	1			1
5	1			1
6	5			5
7	2	3		5
8	3	4	3	10
9	5		10	15
10	10	10	10	30
11	10	10	10	30
Paper Total	40	27	33	100

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
Total	75	25	100
Total %	75	25	100

A-level
LAW
7162/2

Paper 2

Mark scheme

June 2022

Version: 1.0 Final Mark Scheme



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

01 In a claim for negligence, the court must decide if there has been a breach of the duty of care. Which of the following will the court **not** take into account when reaching this decision?

[1 mark]

Marks for this question: AO1 = 1

C Whether the defendant was an inexperienced learner.

02 In a claim for psychiatric injury, which of the following **best** describes a secondary victim?

[1 mark]

Marks for this question: AO1 = 1

A A bystander who saw or heard the accident.

03 Which of the following is **not** part of the work of the Law Commission?

[1 mark]

Marks for this question: AO1 = 1

B Enacting new laws.

04 When new legislation is enacted in Parliament, which of the two Houses of Parliament is usually more powerful?

[1 mark]

Marks for this question: AO1 = 1

A The House of Commons.

05 Which statement **best** describes the availability of legal aid in a civil case? Legal aid is:

[1 mark]

Marks for this question: AO1 = 1

D rarely available, and is subject to means testing.

06	Explain any three aspects of the role of a High Court judge when hearing a negligence case.	[5 marks]
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Marks for this question: AO1 = 5

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
4–5 Band 3	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate suggested reasons.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate suggested reasons.
0	Nothing worthy of credit.

Indicative content

AO1

- The requirement for a HCJ to hear a case so as to be impartial and independent of the parties.
- To try a case brought before the court in order to reach a decision as to which party wins.
- An application of the balance of probabilities to decide the case as between C and D.
- To listen to witnesses and to evaluate their credibility.
- To consider and evaluate other forms of evidence such as reports and exhibits.
- Consideration of and rulings on aspects of applicable law for instance on questions relating to duty of care.
- Consideration of and rulings on aspects of applicable law for instance on questions relating to breach.
- Consideration of and rulings on aspects of applicable law for instance on questions relating to causation.
- Consideration of any defence put forward and any impact on the outcome.
- Decision as to remedies (in the event that the claimant wins): amount of damages.
- Decision as to which party pays the costs of the case.
- The appellate function of a HCJ in relation to cases originating in the County Court and, possibly, any work of a HCJ in the Court of Appeal.

Answers which do not explain three aspects cannot achieve marks higher than band 2.

Credit any other relevant point(s).

07	Suggest why Harun owes a duty of care to Izzy under the rules governing occupiers' liability.	[5 marks]
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Marks for this question: AO1 = 2 and AO2 = 3

	Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)
Mark range	Description
4–5 Band 3	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the relevant legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1

- Brief explanation of s.1 of the Occupiers' Liability Act 1957 in respect of the definition of 'premises' and dangers due to the state of the premises or to things done or omitted to be done on them.
- Brief explanation of s.1 and s.2 of the Occupiers' Liability Act 1957 in relation to an 'occupier' and a 'lawful visitor' and the notion that the former owes the latter a duty of care in respect of the premises. Possible brief explanation of appropriate supporting case law, eg **Wheat v Lacon**.

AO2

- Application to argue that Izzy, as a guest, had express permission to be in the hotel and therefore was a lawful visitor.
- Application to argue that the hotel was premises for the purposes of the 1957 Act and that Harun was the occupier.
- Application to suggest that Harun, as occupier, therefore owed a duty of care in respect of the premises to Izzy as a lawful visitor.

Reference to the 1957 Act, or its individual section numbers, may be credited but is not required.

Credit any other relevant point(s).

08	With regard to the rules on negligence and contributory negligence, advise Jake of his rights and remedies against Kandy.
	[10 marks]

Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3

	Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)
Mark range	Description
7–10 Band 3	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
3–6 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
1–2 Band 1	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Indicative content

AO1

- Identification and outline explanation of negligence: duty, breach and damage, including identification of the test for duty, risk factors in breach and damage including personal injury and property damage.
- Identification of a possible defence of contributory negligence: Law Reform (Contributory Negligence) Act 1945.
- Brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Caparo v Dickman**, **Robinson v Chief Constable for West Yorkshire**, **Nettleship v Weston** and **the Wagon Mound (No 1)**, **Froom v Butcher**.

AO2

- Application of the rules on duty of care to suggest that Kandy owes a duty of care to Jake on the grounds that it is reasonably foreseeable that one road user would be affected by the failure of another road user to drive with care.
- Application of the rules on breach to suggest that Kandy should be judged by the standard of the reasonable experienced motorist and that Kandy did not reach the standard of the reasonable person in terms of seriousness of risk, likelihood of risk and ease of prevention, given the weather, the light, her use of a phone and the serious risk posed by a moving car.
- Application of the rules on causation to suggest that the injury and loss caused to Jake were reasonably foreseeable consequences of Kandy's failure to take care.
- Application to suggest that Jake may be entitled to a remedy of compensatory damages against Kandy.
- Application to suggest that Kandy may ask the court to reduce the level of damages payable on the ground of Jake's contributory negligence (failure to display lights on a wet evening).

AO3

- Analysis and evaluation of the concept of duty in relation to a collision between a car and a bicycle on the road in terms of reasonable foreseeability, sufficient proximity and the established nature of the duty of care.
- Analysis and evaluation of the standard of care in breach of duty in determining the appropriate standard to be shown by the reasonable person given the seriousness of risk, likelihood of risk and ease of prevention.
- Analysis and evaluation of the rules on causation in terms of reasonable foreseeability.
- Analysis and evaluation of the rules governing contributory negligence.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Bolton v Stone**, **Paris v Stepney BC**, **Latimer v AEC** and **Bradford v Robinson Rentals**.

Credit any other relevant point(s).

- 09** Examine the relationship between legal rules and moral rules. Discuss the extent to which the Occupiers' Liability Act 1984 (liability towards trespassers) reflects rules of morality.
- [15 marks]**

Marks for this question: AO1 = 5 and AO3 = 10

	Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)
Mark range	Description
13–15 Band 5	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
10–12 Band 4	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
7–9 Band 3	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
4–6 Band 2	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
1–3 Band 1	Knowledge is minimal and demonstrates a minimal understanding of the Nature of Law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
5	10	15

Indicative content**AO1**

- Basic definitions of legal rules and moral rules: the contrast between rules created by authority within a given jurisdiction, and a set of expectations concerning behaviour which is right or wrong.
- Outline explanation of the connection between legal rules and moral rules for instance by identifying similarities and differences.
- Identification of appropriate examples drawn from civil and/or criminal law to illustrate the connection between legal rules and moral rules.
- Identification of material relating to the Occupiers' Liability Act 1984 (in the form, for instance, of appropriate principles, examples and decided cases) to illustrate the extent to which the liability of an occupier toward a trespasser can be related to moral rules.

AO3

- Analysis of the contrast between legal and moral rules, in terms of, for instance, the different origins of the two sets of rules, different methods of enforcement, different consequences of breaking the rules and different mechanisms for changing the rules.
- Analysis of the possible relationship between legal and moral rules, in terms of, for instance whether law does enforce morality, and whether law should enforce morality. Possible reference to theories of law and morality such as the "harm principle" and the Hart-Devlin debate.
- Analysis of appropriate examples to illustrate the differences and the possible relationship between moral rules and legal rules.
- Analysis of relevant legal rules drawn from the Occupiers' Liability Act 1984, for example the possible existence of a duty of care owed by the occupier to a trespasser and the standard of care to be shown by the occupier.
- Evaluation of the relationship between morality and the rules governing the liability of an occupier to a trespasser: for example the duty of 'common humanity' that underlies the Occupiers' Liability Act 1984; the limited nature of the duty so that many trespassers will not have a claim (the requirements of s.1(3) of the Act); the need to protect children who may be unaware of dangers; the factors a court may take into account when deciding if any duty has been breached and whether there should be liability (for instance the cost of precautions, the seriousness of any risk of injury and whether any danger was obvious).

Credit any other relevant point(s).

Indicative Content Groups (ICGs):

ICG1: Morality and law

ICG2: Morality and OLA 1984

10	Consider the rights and remedies of Sam against Ozzy in relation to the operation of the timber yard and of Paula against Ozzy in relation to the damage to her central heating vent.	[30 marks]
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
25–30 Band 5	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
19–24 Band 4	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
13–18 Band 3	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
7–12 Band 2	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
1–6 Band 1	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
30	0	30

Indicative content**AO1**

- Identification and outline explanation of the tort of private nuisance: an action for unreasonable interference with the use or enjoyment of land with a possible remedy of injunction and/or damages.
- Brief explanation of appropriate supporting case authority for instance **Hunter v Canary Wharf**, **Halsey v Esso** and **St Helens Smelting v Tipping**.
- Identification and outline explanation of the tort contained in the rule in **Rylands v Fletcher**: an action for reasonably foreseeable damage caused by the escape from the defendant's land of a dangerous thing accumulated during the course of a non-natural use of that land with a possible remedy of damages.
- Brief explanation of appropriate supporting case authority for instance **Rylands v Fletcher**, **Transco v Stockport MBC** and **Cambridge Water v Eastern Counties Leather**.

AO2

- Private nuisance: application of the requirement that Sam must demonstrate an appropriate legal interest in the land affected (presumably he can as he is the owner).
- Private nuisance: application to suggest that Sam may be able to show an unreasonable interference with his use or enjoyment of his land in view of locality, frequency of the activity, intensity of the activity, time of day and malice. Counter arguments may include social utility and the possible finite nature of evening work if the school project is limited.
- Private nuisance: application to consider whether an injunction, a partial injunction or no injunction is the appropriate remedy given the difficulty of assessing any financial loss and given the need for a timber yard and its products.
- The rule in **Rylands v Fletcher**: application of the requirement that Paula must demonstrate an appropriate legal interest in the land affected.
- The rule in **Rylands v Fletcher**: application to argue that Paula may be able to show the elements required to establish liability in terms of an accumulation, on Ozzy's land, of a dangerous substance during the course of a non-natural user, an escape of that substance and the escape causing reasonably foreseeable damage.
- The rule in **Rylands v Fletcher**: application to argue a possible defence of act of God in view of a very bad storm capable of carrying off the sacks.
- The rule in **Rylands v Fletcher**: application to suggest that Paula may be entitled to a remedy of compensatory damages.

AO3

- Private nuisance: analysis and evaluation of the factors that the courts use to decide whether there is an unreasonable interference with a right to use or enjoy land with reference to issues of locality, frequency of the activity, intensity of the activity, time of day, malice and social utility.
- Private nuisance: analysis and evaluation of the factors that govern the grant of a remedy in terms of an injunction, a partial injunction or damages instead of an injunction.
- Private nuisance: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Barr v Biffa**, **Coventry v Lawrence**, **Murdoch v Glacier Metals**, **Christie v Davey**, **Hollywood Silver Fox Farm v Emmett**, **Dennis v MoD**, **Miller v Jackson**.

- The rule in **Rylands v Fletcher**: analysis and evaluation of the requirements for liability (accumulation, dangerous substance, non-natural user of the land, escape causing reasonably foreseeable damage).
- The rule in **Rylands v Fletcher**: analysis and application of the relevant fault element (strict liability).
- The rule in **Rylands v Fletcher**: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Rickards v Lothian**, **Read v Lyons** and **Nichols v Marsland**.

Credit any other relevant point(s).

Note: in the case of Paula's claim, credit an answer that uses general negligence to the extent that it deals with the issues raised by the scenario.

Indicative Content Groups (ICGs):

ICG1: Nuisance

ICG2: The Rule in **Rylands v Fletcher**

11 Consider the rights and remedies of Leroy against Nickie **and** of Leroy against Movers in relation to his loss.

In relation to the disagreement between Leroy and Movers, assess the different methods of dispute resolution available, both in and out of court.

[30 marks]

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
25–30 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
19–24 Band 4	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
13–18 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p>7–12</p> <p>Band 2</p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p>1–6</p> <p>Band 1</p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
23	7	30

Indicative content

AO1

- Identification and outline explanation of economic loss and of the possibility of an action in negligence to recover damages for a negligent misstatement albeit on a restricted basis.
- Brief explanation of appropriate supporting case authority for instance **Spartan Steel v Martin**, **Hedley Byrne v Heller** and **Caparo v Dickman**.
- Identification and outline explanation of an action in vicarious liability against an employer for the negligence of an employee committed during the course of employment.
- Brief explanation of appropriate supporting case authority for instance **Ready Mix Concrete v Minister of Pensions**, **Century Insurance v NI Road Transport Board** and **Lister v Hesley Hall**.
- Identification and outline explanation of the different methods of dispute resolution: litigation in court, negotiation and mediation.

AO2

- Negligent misstatement: application of the rules governing the difference between a consequential economic loss and a pure economic loss to suggest that Leroy has sustained a pure economic loss.
- Negligent misstatement: application of the rules governing the differing ways in which the courts treat a claim for pure economic loss caused by negligent acts and negligent statements to suggest that Leroy has sustained a pure economic loss caused by a statement.
- Negligent misstatement: application of the elements necessary to establish a special relationship between the claimant and defendant such as an expertise on the part of the defendant, a voluntary assumption of responsibility towards a known user and reasonable reliance on the part of the claimant to consider whether Leroy and Nickie have such a special relationship in the context of a valuation of goods.
- Vicarious liability: application of the rules determining whether a worker is an independent contractor or an employee to consider the status of Nickie, for instance the control test, the integration test and the multiple test.
- Vicarious liability: application of the rules determining whether a tort was committed in the course of employment to consider the status of Nickie's statement with reference to, for instance, authorised acts and the 'so closely connected' test.
- Application to suggest that Leroy may be entitled to a remedy of compensatory damages against Nickie and Movers.

AO3

- Negligent misstatement: analysis and evaluation of the requirements for a claim in negligence for pure economic loss with reference to the restricted nature of the duty of care.
- Negligent misstatement: analysis and evaluation of the elements required to establish the special relationship in the context of a social event.
- Negligent misstatement: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Chaudhry v Prabhakar**, **Patchett v SPATA** and **Smith v Bush**.
- Vicarious liability: analysis and evaluation of the requirements for a worker to be considered an employee (for example level of control, connection to the employer's business, mutuality of obligation).
- Vicarious liability: analysis and evaluation of the requirements to establish that an employee was acting in the course of employment (for instance the difference between an unauthorised act and an authorised act carried out in an unauthorised manner, disobeying a direct instruction, whether an act was so closely connected to the employment that it is fair and just to hold the employer liable).
- Vicarious liability: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Various Claimants v Catholic CWS**, **Barclays v Various Claimants**, **Limpus v London General Omnibus**, **Rose v Plenty** and **Morrisons v Various Claimants**.
- Dispute resolution: analysis and evaluation of the alternative ways to resolve the dispute. Considerations of, for instance, informality, privacy, time, cost and whether any outcome is binding.

Credit any other relevant point(s).

Indicative Content Groups (ICGs):

ICG1: Negligent misstatement

ICG2: Vicarious liability

ICG3: Dispute resolution

Assessment Objectives Grid

	AO1	AO2	AO3	Total
1	1			1
2	1			1
3	1			1
4	1			1
5	1			1
6	5			5
7	2	3		5
8	3	4	3	10
9	5		10	15
10	10	10	10	30
11	10	10	10	30
Paper Total	40	27	33	100

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
Total	75	25	100
Total %	75	25	100

A-level
LAW
7162/2

Paper 2

Mark scheme

June 2023

Version: 1.0 Final



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

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Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

01 Alek has won a claim in negligence against Bhavna in respect of a road accident. He has asked the court for damages. Which of the following would **not** affect the amount of damages he receives?

[1 mark]

Marks for this question: AO1 = 1

C Bhavna was insured for any losses caused by her negligence.

02 Carla was at her local bus station when she saw a sign which read: 'Be careful. Floor slippery when wet'. Which of the following statements **best** describes the legal effect of the sign?

[1 mark]

Marks for this question: AO1 = 1

D The sign is part of the bus company's efforts to fulfil the duty it owes to visitors.

03 Which of the following is **not** part of the role of a judge during a civil trial?

[1 mark]

Marks for this question: AO1 = 1

C To decide the sentence.

04 Which of the following is most likely to use 'lobbying' as a way of influencing Parliament?

[1 mark]

Marks for this question: AO1 = 1

B Pressure groups.

05 Which of the following is a source of law involving judges making a new law?

[1 mark]

Marks for this question: AO1 = 1

B Common law.

06	Explain two features of a conditional fee agreement (no win no fee) in terms of funding a civil case.	[5 marks]
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Marks for this question: AO1 = 5

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
4–5 Band 3	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
0	Nothing worthy of credit.

Indicative content

AO1

- With a conditional fee agreement there is no guarantee that a solicitor will take the case as the chances of success need to be assessed.
- With a conditional fee agreement if the case is won a success fee will be charged so that the client will not receive the full amount of their damages (unless the defendant is ordered by the court to pay the success fee).
- With a conditional fee agreement it is common to take out legal expenses insurance in the event of the claim not being successful.
- With a conditional fee agreement, no payment will be due if the case is unsuccessful.

Credit any other relevant point(s).

Note – only one feature explained – max 3 marks for a good answer.

07	Debra has admitted that she was negligent and that her actions caused Ewan's injury. Nevertheless, suggest why Debra will probably be able to use the defence of consent (volenti non fit injuria) to avoid liability to Ewan.
	[5 marks]

Marks for this question: AO1 = 2 and AO2 = 3

Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)	
Mark range	Description
4–5 Band 3	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the relevant legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1

- Brief explanation of the defence of consent (volenti non fit injuria): the claimant must have actual knowledge of the risk that the defendant may act in a negligent manner and the claimant freely consents to take that risk.
- Brief explanation of the effect of a successful defence of consent: any claim is extinguished.

AO2

- Application to suggest that Ewan had actual knowledge of the risk that Debra would not be able to manage the boat properly (he could see that she was incapable of walking in a straight line) and to suggest that he freely consented to the risk (he chose nevertheless to board the boat).
- Application to suggest that, in these circumstances, the defence of consent is made out and that the effect would be to extinguish any claim that Ewan might have arising from the accident.
- Possible brief reference to illustrative case law, for example **Morris v Murray** and **Smith v Baker**.

Credit any other relevant point(s).

08	Taking into account the rules governing negligent misstatement, advise Gita of her rights and remedies against Faruq.	[10 marks]
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Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3

	Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)
Mark range	Description
7–10 Band 3	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
3–6 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
1–2 Band 1	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Indicative content

AO1

- Identification and outline explanation of the possibility of an action in negligence to recover damages for economic loss caused by negligent misstatement albeit on a restricted basis.
- Brief explanation of appropriate supporting case authority for instance **Spartan Steel v Martin**, **Hedley Byrne v Heller** and **Caparo v Dickman**.

AO2

- Negligent misstatement: application of the rules governing the differing ways in which the courts treat a claim for pure economic loss caused by negligent acts and negligent statements to suggest that Gita has sustained a pure economic loss caused by a statement.
- Negligent misstatement: possible reference to and application of the rules governing the difference between a consequential economic loss and a pure economic loss.
- Negligent misstatement: application of the elements necessary to establish a special relationship between the claimant and defendant such as an expertise on the part of the defendant, a voluntary assumption of responsibility towards a known user and reasonable reliance on the part of the claimant to consider whether Gita and Faruq have such a special relationship in the context of financial advice given during a public lecture.
- Application to argue that it is likely that a special relationship between Gita and Faruq has not been established (for instance it is questionable whether Faruq assumed responsibility to a member of an audience whose identity and financial requirements he was unaware of; for instance whether it was reasonable for Gita to rely on advice given in a public setting and which was not constructed with her requirements in mind).
- Application to suggest that, if Gita is able to establish a special relationship, then she may be entitled to a remedy of compensatory damages against Faruq.

AO3

- Negligent misstatement: analysis and evaluation of the elements required to establish the special relationship in the context of a public lecture.
- Negligent misstatement: possible analysis and evaluation of the requirements for a claim in negligence for pure economic loss with reference to the restricted nature of the duty of care.
- Negligent misstatement: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Chaudhry v Prabhakar**, **Patchett v SPATA** and **Smith v Bush**.

Credit any other relevant point(s).

09 Examine the meaning and significance of fault. Discuss the extent to which the rules relating to vicarious liability are based on fault.

[15 marks]

Marks for this question: AO1 = 5 and AO3 = 10

	Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)
Mark range	Description
13–15 Band 5	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
10–12 Band 4	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
7–9 Band 3	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
4–6 Band 2	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
1–3 Band 1	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
5	10	15

Indicative content**AO1**

- Identification of possible bases of fault in civil and possibly criminal law: voluntariness of conduct and causation as fundamental bases; intention, recklessness, negligence and strict liability; defences.
- Outline of the nature of vicarious liability in respect of employers being potentially liable for torts committed by employees in the course of their employment and also, possibly, liability for criminal acts.

AO3

- Analysis of fault elements: meaning of terms such as intention (purpose), recklessness (foresight of risk), negligence (failure to reach the standard of the reasonable person) and strict liability (imposition of liability even in the absence of fault).
- Analysis of the significance of fault for instance: a marker of blame; allocates responsibility; justifies the imposition of penalties or damages, indicates that behaviour should be modified in the future.
- Analysis of fault in the context of vicarious liability (1): No requirement for the employer to have done anything wrong in order to be liable and could still be liable despite taking precautions and giving clear instructions to employees (strict liability nature). Possible case law illustration, for instance **Limpus v London General Omnibus, Rose v Plenty, Century Insurance v Northern Ireland Road Transport Board, Mohamud v Morrisons**.
- Analysis of fault in the context of vicarious liability (2): Employer will not be at fault and consequently not liable if can show that the act was unauthorised ie a 'frolic' or that the person committing the tort was an independent contractor. Possible case law illustration, for instance **Beard v London General Omnibus, Hilton v Thomas Burton (Rhodes) Ltd, AG British Virgin Islands v Hartwell, Barclays Bank v Various claimants**.
- Conclusion as to the extent to which liability in the context of vicarious liability is based on fault, based on the analysis and evaluation presented: the concept is largely strict liability based for policy reasons (compensation) but there is sufficient scope within the elements for an employer to potentially avoid liability through lack of fault.

Credit any other relevant point(s).

Indicative Content Groups (ICGs):

ICG1: Fault and law

ICG2: Fault and vicarious liability

10	Consider the rights and remedies of Irene against Jake in relation to the noise from the drones and the damage caused by the oil spill.	[30 marks]
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
25–30 Band 5	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
19–24 Band 4	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
13–18 Band 3	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
7–12 Band 2	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
1–6 Band 1	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
30	0	30

Indicative content**AO1**

- Identification and outline explanation of the tort of private nuisance: an action for unreasonable interference with the use or enjoyment of land with a possible remedy of an injunction and/or damages.
- Brief explanation of appropriate supporting case authority for instance **Hunter v Canary Wharf**, **Halsey v Esso** and **St Helens Smelting v Tipping**.
- Identification and outline explanation of the tort contained in the rule in **Rylands v Fletcher**: an action for reasonably foreseeable damage caused by the escape from the defendant's land of a dangerous thing accumulated during the course of a non-natural use of that land with a possible remedy of damages. Brief explanation of the strict liability nature of the rule.
- Brief explanation of appropriate supporting case authority for instance **Rylands v Fletcher**, **Transco v Stockport MBC** and **Cambridge Water v Eastern Counties Leather**.

AO2

- Private nuisance: application of the requirement that Irene must demonstrate an appropriate legal interest in the land affected (presumably she can as she is the owner). Application of the requirement that Jake must either be the creator of the nuisance or the person who authorised it (at the very least, Jake is allowing others to use his land for the purpose of drone racing).
- Private nuisance: application to suggest that Irene may be able to show an unreasonable interference with her use or enjoyment of her land in view of locality, frequency of the activity, intensity of the activity, time of day and malice. Counter arguments may include social utility (the activities are clearly popular, and pursuit of recreational activities is a legitimate public interest).
- Private nuisance: application to consider whether an injunction, a partial injunction or no injunction is the appropriate remedy. Factors might include whether it is possible to assess any financial loss and the interests of many racers against one cottage owner.
- The rule in **Rylands v Fletcher**: application of the requirement that Irene must demonstrate an appropriate legal interest in the land affected.
- The rule in **Rylands v Fletcher**: application to argue that Irene may be able to show the elements required to establish liability in terms of an accumulation, on Jake's land, of a dangerous substance during the course of a non-natural user, an escape of that substance and the escape causing reasonably foreseeable damage.
- The rule in **Rylands v Fletcher**: application to argue a possible defence of act of a stranger in the form of vandalism by an intruder. Credit the view either that the defence is unavailable if the damage was not caused by an intruder and/or the defence is unavailable as Jake may have been negligent in failing to remedy the damage. If Jake is unable to show the defence, he may be strictly liable for the damage caused.
- The rule in **Rylands v Fletcher**: application to suggest that Irene may be entitled to a remedy of compensatory damages.

AO3

- Private nuisance: analysis and evaluation of the factors that the courts use to decide whether there is an unreasonable interference with a right to use or enjoy land with reference to issues of locality, frequency of the activity, intensity of the activity, time of day, malice and social utility.

- Private nuisance: analysis and evaluation of the factors that govern the grant of a remedy in terms of an injunction, a partial injunction or damages instead of an injunction.
- Private nuisance: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Tetley v Chitty**, **Barr v Biffa**, **Coventry v Lawrence**, **Murdoch v Glacier Metals**, **Christie v Davey**, **Hollywood Silver Fox Farm v Emmett**, **Dennis v MoD**, **Miller v Jackson** and **Kennaway v Thompson**.
- The rule in **Rylands v Fletcher**: analysis and evaluation of the requirements for liability (accumulation, dangerous substance, non-natural user of the land, escape causing reasonably foreseeable damage).
- The rule in **Rylands v Fletcher**: analysis and application of the relevant fault element (strict liability).
- The rule in **Rylands v Fletcher**: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Rickards v Lothian**, **Read v Lyons** and **Perry v Kendricks**.

Note: Credit any other relevant point(s).

Note: in the case of Irene's claim relating to the oil spill (ICG2), credit an answer that uses general negligence to the extent that it deals with the issues raised by the scenario.

Indicative Content Groups (ICGs):

ICG1: Nuisance

ICG2: The Rule in **Rylands v Fletcher**

- 11** Consider the rights and remedies in negligence of Will against Xavier, **and** of Zen and Yasmin against Xavier for their psychiatric problems.
- Law plays a role in society in both allowing and restricting civil claims. There are rules which restrict when a claimant can recover for psychiatric injury in tort. Assess the reasons why these legal restrictions exist.
- [30 marks]**

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	Description
25–30 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
19–24 Band 4	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
13–18 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p>7–12</p> <p>Band 2</p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p>1–6</p> <p>Band 1</p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
23	7	30

Indicative content

AO1

- Identification and outline explanation of the elements of the tort of negligence: duty, breach and damage, including identification of the test for duty, risk factors in breach and damage including personal injury.
- Brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Caparo v Dickman**, **Robinson v Chief Constable for West Yorkshire**, **Watt v Hertfordshire CC** and **the Wagon Mound (No 1)**.
- Identification and explanation of the rules for calculating damages with possible reference to aim, method and distinctions between pecuniary/non-pecuniary and special/general damages.
- Identification and brief explanation of psychiatric injury, and of the possibility of an action in negligence to recover damages albeit on a restricted basis.
- Brief explanation of the difference between a primary victim and a secondary victim in the context of psychiatric injury.
- Brief explanation of appropriate supporting case authority for example **Reilly v Merseyside RHA**, **Page v Smith** and **Alcock v Chief Constable for South Yorkshire**.
- The role law plays in society: identification of one or more policy issues influencing the rules which restrict when a claimant can recover for psychiatric injury.

AO2

- Application of the rules on duty of care to suggest that Xavier owes a duty of care to Will on the basis that it is reasonably foreseeable that a pedestrian could be affected by a driver's lack of care and that there is physical proximity (same road, same time) and there are no policy reasons for not imposing a duty of care. Alternatively, the established duty situation of driver to pedestrian or the neighbour principle (someone closely affected by actions).
- Application of the rules on breach to suggest that Xavier should be judged by the standard of the reasonable ambulance driver but may have reached the required standard depending on possible social benefit (if the ambulance was responding to an emergency call) compared to other risk factors such as size of risk, potential magnitude of harm and ease of precautions.
- Application of the rules on causation to suggest that Will's injuries are a reasonably foreseeable consequence of being struck by an ambulance.
- Application to suggest that Will would attempt to claim a significant sum in compensatory damages for his pain and suffering, future loss of earnings due to the potential loss of a promising career as a footballer and possible loss of amenity from not being able to play football.
- Application to suggest that Zen and Yasmin will need to show that they have a psychiatric injury in the form of a recognised psychiatric condition.
- Application to suggest that both Zen and Yasmin will be classed as secondary victims as neither were in the zone of danger.
- Application of the rules on recovery for psychiatric injury by a secondary victim to suggest that Yasmin may be able to satisfy the Alcock rules relating to a close tie of love and affection, but that she will need to rely on the idea of 'immediate aftermath' to qualify under the Alcock rules relating to proximity to the accident.
- Application of the rules on recovery for psychiatric injury by a secondary victim to suggest that Zen will be unlikely to satisfy the Alcock rules relating to a close tie of love and affection.
- Application to explain that, in the event of a successful claim, Zen and Yasmin would be entitled to a remedy of compensatory damages.

AO3

- Analysis and evaluation of the concept of duty in relation to a road accident in terms of a comparison to established duties, foreseeability and proximity.
- Analysis and evaluation of the standard of care in breach of duty in determining the appropriate standard to be shown by the reasonable person given the seriousness of risk, likelihood of risk, ease of prevention and social benefit.
- Analysis and evaluation of the rules on causation in terms of reasonable foreseeability.
- Analysis and evaluation of the rules on compensatory damages in respect of claims for future losses.
- Negligence: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Bolton v Stone**, **Paris v Stepney BC**, **Latimer v AEC** and **Hughes v Lord Advocate**.
- Analysis and evaluation of the requirements for a claimant to qualify as a primary victim on the ground that they were in the 'zone of danger'.
- Analysis and evaluation of the requirements for a claimant to qualify as a secondary victim in terms of the Alcock rules (including 'immediate aftermath') and the rules relating to sudden shock.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **McLoughlin v O'Brian**, **Galli-Atkinson v Seghal**, **Sion v Hampstead HA** and **Walters v North Glamorgan NHS Trust**.
- The role law plays in society: assessment of the reasons for the rules which restrict when a claimant can recover for psychiatric injury; analysis or evaluation for instance of one or more of the following: floodgates, the difficulty of diagnosing such injuries, the difficulty of deciding compensation for such injuries. (Credit any arguments in which criticism of the rules emerge.)

Credit any other relevant point(s).

Indicative Content Groups (ICGs):

ICG1: Negligence leading to physical loss

ICG2: Negligence leading to psychiatric injury

ICG3: Assessing why claims for psychiatric injury are restricted

Assessment Objectives Grid

	AO1	AO2	AO3	Total
1	1			1
2	1			1
3	1			1
4	1			1
5	1			1
6	5			5
7	2	3		5
8	3	4	3	10
9	5		10	15
10	10	10	10	30
11	10	10	10	30
Paper Total	40	27	33	100

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
Total	75	25	100
Total %	75	25	100