

# **Mark Scheme for the Components**

**January 2008**

**H124/H524/MS/R/08**

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Any enquiries about publications should be addressed to:

OCR Publications  
PO Box 5050  
Annersley  
NOTTINGHAM  
NG15 0DL

Telephone: 0870 870 6622  
Facsimile: 01223 552610  
E-mail: [publications@ocr.org.uk](mailto:publications@ocr.org.uk)

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# G141: English Legal System

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

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers, which contain no relevant material at all, will receive no marks.

## 1(a) Describe the various roles lay magistrates play in both criminal and civil cases. [18]

### Mark Levels

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

Potential answers **MAY**:

### Assessment Objective 1

Demonstrate knowledge of role of lay magistrates in criminal cases

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

Demonstrate knowledge of role of lay magistrates in civil cases.

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

### Assessment Objective 3

*Marks are awarded holistically at the end of the question.*

- 1(b) Discuss the disadvantages of using lay magistrates to make decisions in criminal matters. [9]

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

Potential answers **MAY**:

### Assessment Objective 2

Discuss some of the disadvantages of using lay magistrates

- Perceived as being middle aged and middle class mostly retired and from professional backgrounds and tend to have a traditional/ conservative outlook – but better cross section than judges.
- Rely on the legal advisor too heavily due to their lack of legal knowledge – but this is only for clarity of the law not in making their decision on guilt.
- Inconsistency in sentencing in different areas of the country eg in 2001 statistics 20% of persons convicted of burglary of a dwelling in Teeside were sentenced to immediate custody compared to 41% of similar offenders in Birmingham – but improved training has improved consistency.
- Lay Magistrates are seen as having a prosecution bias as the conviction rate in the Magistrates' Court is much higher than the Crown Court and the magistrates will see the same prosecutors frequently and get to know them which might affect their judgment.

Credit will be given for any other relevant comment.

### Assessment Objective 3

*Marks are awarded holistically for the whole question*

### Assessment Objective 3

Mark Levels	AO3	[3]
Level 3	3	
Level 2	2	
Level 1	1	

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

**Total Marks [30]**

**2(a) Describe the civil appeals system from both the County Court and the High Court.****[18]**

<b>Mark levels</b>	<b>AO1</b>
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:**Assessment Objective 1**

## Appeals from the County Court

- Small claims appeals dealt with in a similar fashion with the appeal being heard by the next judge up in the hierarchy from the judge who initially heard the case, but this is only allowed on a point of law.
- Fast track cases dealt with by a District Judge the appeal will be heard by a Circuit Judge.
- Fast track cases dealt with by a Circuit Judge the appeal is heard by a High Court Judge.
- Final decisions in multi track cases heard in the County Court the appeal is to the Court of Appeal.
- Second appeals to the Court of Appeal for fast track cases only in exceptional cases where the Court of Appeal considers there is an important point of principle or practice or there is some other compelling reason.

## Appeals from the High Court

- From the High Court the appeal usually goes to the Court of Appeal (Civil Division).
- Possible leapfrog appeal directly to the House of Lords if "statutory interpretation or precedent" is involved or the Court of Appeal is bound by one of its own previous decisions.

## Further appeals

- From a decision in the Court of Appeal there is further appeal to the House of Lords on a point of law with permission either from the Court of Appeal or the House of Lords.
- A point of European law may be referred to the European court of Justice for clarification for any court under Article 234 of the Treaty of Rome.

**Assessment Objective 3***Marks are awarded holistically at the end of the question.*

**2(b) Discuss the problems of using the court system to solve civil disputes. [9]**

<b>Mark Levels</b>	<b>AO2</b>
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

**Assessment Objective 2**

Discuss the problems of using the courts to solve civil disputes

- It is heavily front loaded in terms of both cost and work.
- The new procedures such as pre-action protocols, allocation questionnaires, and case management conferences are very complex, but these are intended to speed up the court process.
- Rules on time are very strictly enforced, but this stops delaying tactics.
- There is an adversarial approach which may get in the way of future business.
- It is very formal and can be intimidating to some individuals, but it does result in a legally binding solution.
- There is a lack of legal funding for small claims and limitations for other cases to prevent frivolous cases.
- Delay can be a problem in comparison with alternative dispute resolution methods.

**Assessment Objective 3**

*Marks are awarded holistically at the end of the question.*

**Assessment Objective 3 [3]**

<b>Mark Levels</b>	<b>AO3</b>
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

**Total Marks [30]**

**3(a) Describe the selection and tenure of the different types of judge.****[18]**

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

Potential answers **MAY**:**Assessment Objective 1**

Demonstrate knowledge of the selection of judges

- Law Lords and LJA selected by the Prime Minister.
- Heads of Division, selected by senior judges and JAC. LC has limited powers to object.
- All other Judges selection is organized by the Judicial Appointments Commission.
- Selection by a mixed panel of judges lay people and lawyers.
- All other judges selection is advertised/ organised by the Judicial Appointments Commission.
- Mainly by application with references.
- Interviews assess attitude and aptitude.
- Lord Chancellor has limited power to object to selection.
- Applicants for higher appointments are expected to show competence at a lower level (appointment at assistant recorder level is usually used to try out potential judges for more permanent positions).

Demonstrate knowledge of the tenure of judges

- Senior judges have security of tenure under the Act of Settlement 1701 and the Supreme Court Act 1981 and cannot be removed except by the Monarch following a petition to both houses of Parliament.
- Superior judges can be asked to resign.
- Inferior judges can be removed by the Lord Chancellor and the Lord Chief Justice for incapacity or misbehaviour but must comply with set procedures (Constitutional Reform Act 2005).
- Recorders are only appointed for a period of five years but must be reappointed unless there is a good reason.
- Judges retire at 70.

**Assessment Objective 3***Marks are awarded holistically at the end of the question.*



- 3(b) Discuss whether or not the changes to the selection of judges should lead to a wider cross section of people becoming judges. [9]

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

Potential answers **MAY**:

### Assessment Objective 2

Discuss the usual background of judges before the changes in selection

- Were originally only selected from the ranks of barristers.
- Appointed on recommendation of Lord Chancellor with secret soundings
- Very few women or ethnic minorities
- Superior Judges over 80% went to public school and "Oxbridge"
- Came from wealthy backgrounds

Discuss the changes

- Appointments from applications and based on merit
- Most vacancies are advertised and require applications.
- Positive steps to diversify the judiciary – more women and ethnic minorities being encouraged to apply
- Promotions from current inferior judges to the more senior positions.

Credit any reasonable conclusion eg Judicial Appointments Commission should lead to greater diversity.

### Assessment Objective 3

*Marks are awarded holistically at the end of the question.*

### Assessment Objective 3 [3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

**Total Marks [30]**

**4(a) Describe the various sources of legal advice available for civil matters. [18]**

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

Potential answers **MAY**:

**Assessment Objective 1**

Describe some of the various advice agencies

- Solicitors
- Citizen's Advice Bureaux – available in most towns 1000+ - give general advice free to anyone on a variety of issues eg debt and social or welfare problems some legal matters. Some solicitors will do some advice work on a regular basis from these bureaux
- Law centres – free non means tested advice, now have some funding from the Community Legal Service and deal mainly with employment problems, housing, immigration and children's rights
- Some law centres have set up duty solicitor schemes in county courts for housing cases
- [www.cls.direct.org.uk](http://www.cls.direct.org.uk) offers round the clock legal information online
- Advice surgeries in isolated parts of the country
- Video conferencing to put people in touch with trained solicitors
- National telephone helpline
- One stop shops for abused women to receive advice and counselling
- RAC, AA give advice to members on motoring problems
- "Which" magazine and its online service give advice on consumer matters
- Trade unions
- Legal insurance available with other types of insurance give advice to policy holders.

Credit should be given for details of any of these points.

**Assessment Objective 3**

*Marks are awarded holistically at the end of the question.*

**4(b) Discuss the problems associated with the availability of legal advice in civil cases.**

[9]

<b>Mark Levels</b>	<b>AO2</b>
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

**Assessment Objective 2**

- Recent additions to the availability of legal advice have certainly improved the situation, but limited in numbers and only in cities.
- Although the advice is available it is not always used by those who need it due to a suspicion of lawyers or a lack of knowledge about what is available or the cost. This is improving with the use of advertising and public relations campaigns by the government about what is available.
- Law centres are limited in numbers, only in cities and deal with limited areas of law, but Citizens' Advice Bureaux are widely available, offer good quality advice as they are trained and use a centralized website.
- There is still a lack of local advice in remote locations but the advice available on the internet is addressing this problem as is the expanded use of advice surgeries in community centres in isolated areas but the Ministry of Justice intends to extend public funding to a greater number of advice providers.

**Assessment Objective 3**

*Marks are awarded holistically at the end of the question.*

**Assessment Objective 3**

[3]

<b>Mark Levels</b>	<b>AO3</b>
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

**5(a) Describe the training of both barristers and solicitors.****[18]**

<b>Mark levels</b>	<b>AO1</b>
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:**Assessment Objective 1**

Demonstrate knowledge of the training of barristers

- Academic: law degree or non law degree with Post Graduate Diploma in Law or CPE (7 core subjects required)
- Vocational: Bar Vocational Course 1 year includes training in practical aspects of the work eg advocacy. Join an Inn of Court and undertake required dining and courses.
- Called to the Bar
- Practical: Pupillage 2 x 6 months involves shadowing an experienced barrister, being supervised with cases and further training courses. Can take paid cases after the first 6 months.
- Continued professional training

Demonstrate knowledge of the training of solicitors

- Academic: law degree or non law degree with Post Graduate Diploma in Law or CPE (7 core subjects required) or qualified as a Fellow of the Institute of Legal Executives
- Vocational: Legal Practice Course – 1 year training in practical aspects
- Can then do optional Certificate of Advocacy
- Practical: Training Contract supervised work and shadowing in the workplace. 2 years including a 20 day professional skills course.
- Admitted to the Roll of Solicitors
- Continued professional training

**Assessment Objective 3***Marks are awarded holistically at the end of the question*

**5(b) Discuss the problems associated with training for both barristers and solicitors. [9]**

<b>Mark Levels</b>	<b>AO2</b>
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

**Assessment Objective 2**

Discuss the problems associated with training for barristers

- Cost – training is very expensive including the BVC and dining and the clothing required. Pupillage paid but at a low rate, but business loans are available and BVC can be taken part-time.
- Competition greater at each level of training – limited places on BVC and even fewer pupillages but this ensures quality of the candidates.
- May not get to specialise in area of law of choice as dependent on pupillage vacancies
- CPE/PgDL not seen as preparing a would be barrister or solicitor as well academically as a degree in law. Too many subjects in too short a time, but gives breadth of knowledge, wider experience and is favoured by many.

Discuss the problems associated with training for solicitors.

Similar to barristers

- Cost – training very expensive but LPC can be done over 2 years part time whilst working which enables a greater cross section of people to become solicitors. Trainees are paid during their training contract.
- Difficult to get places on LPC. And even more difficult to get a training contract, but this should ensure the quality of the candidates.
- May not get to specialise in areas of law of interest as it is dependent on training contract vacancies.

**Assessment Objective 3**

*Marks are awarded holistically at the end of the question.*

**Assessment Objective 3****[3]**

<b>Mark levels</b>	<b>AO3</b>
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

- 6(a) Describe the rights, during detention at the police station, of a person suspected of a serious offence. [18]

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

Potential answers **MAY**:

### Assessment Objective 1

Demonstrate knowledge of rights set out under the Police and Criminal Evidence Act 1984 as amended by the Serious Organised Crime and Police Act 2005 and the Criminal Justice Act 2003 and the Codes of Practice

- The right to have someone informed of the detention, but this may be delayed.
- To see the codes of practice and have a custody officer monitor detention and keep a custody record to ensure they are adhered to.
- To be detained no longer than 24 hours normally but that can be extended to 36 hours with permission of a police officer of the rank of superintendent or above and up to 96 hours if authorised by magistrates for a serious offence.
- When interviewed the interview must be recorded and a caution given.
- The interview room must be adequately lit, heated and ventilated with adequate breaks given
- The right to consult a solicitor (which is free) to ensure access to legal advice regardless of means, but this may be delayed in some circumstances
- To have access to an appropriate adult during interview if under 17 or suffering any mental illness or a vulnerable adult.
- To have access to medical treatment or an interpreter if necessary.
- Show knowledge that searches can only be done in certain circumstances – there is no automatic right to search – there must be reasonable suspicion that something will be found.
- Strip search in private with same sex officer and only half clothing removed at any one time
- Intimate search only if authorised by a high ranking officer in order to search for drugs or weapons and must be carried out by a doctor or nurse
- Intimate samples may only be taken with permission.

Credit any other relevant points.

### Assessment Objective 3

*Marks are awarded holistically at the end of the question.*

- 6(b) Jack is arrested on suspicion of a robbery. He is taken to the police station and given an intimate search by a police officer to search for stolen property. Fingerprints, samples of hair and blood are taken from Jack by force.

Explain to Jack whether his treatment at the police station was lawful. [9]

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

Potential answers **MAY**:

### Assessment Objective 2

Demonstrate knowledge of suspect's rights set out under the Police and Criminal Evidence Act 1984 and the Codes of Practice most recently amended in 2003 and how these enable the police to investigate crime during a suspect's detention.

- Intimate search may only be done if there are reasonable grounds to suspect they will find drugs or weapons and must be authorised by a high ranking officer. It is not lawful to carry out such a search in order to find stolen property.
- An intimate search must be carried out by a doctor or nurse unless there are extenuating circumstances. In this case it would not appear to be appropriate.
- The police should only be able to do a strip search in this case.
- Fingerprints and samples of hair from the head can be taken by the police using reasonable force but blood is classed as an intimate sample and should not be taken without Jack's consent.
- Point out that police powers are limited by the codes of practice and breach of the codes may lead to evidence being excluded from court.

Credit a reasoned conclusion.

### Assessment Objective 3

*Marks are awarded holistically at the end of the question.*

Assessment Objective 3 [3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

**Total Marks [30]**

**7(a) Describe the custodial, community and other types of sentence available for young offenders.**

**[18]**

<b>Mark levels</b>	<b>AO1</b>
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

**Assessment Objective 1**

Demonstrate knowledge of the sentences available to the courts under the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003.

- Custodial sentences  
 Detention for serious crimes up to the maximum adult sentence for the offence if maximum sentence is 14 years or over or offence is specified in statute.  
 Detention at Her Majesty's pleasure – for murder 10-17 yrs  
 Young Offenders' Institutions – 18-21 yrs, 21 days - maximum for the offence  
 Detention and training orders – 12-21 yrs usually (younger offenders if no other sentence will protect the public). Specified periods 4 months – 24 months.
- Community sentences  
 New generic "community order" under Criminal Justice Act 2003 which can include a range of requirements for offenders over the age of 16.  
 Unpaid work requirement - unpaid work in the community (40-300 hours)  
 Supervision requirement - the offender is put under the supervision of a probation officer.  
 Drug treatment and testing requirement.  
 Curfew requirement - for a certain number of hours a day the offender has to be in a specific place. (May include electronic tagging)  
 Special community orders for young offenders include:  
 Attendance centre orders – 10-24 yr olds  
 Action Plan orders – 10-17 yr olds  
 Supervision order 10-17 yrs (supervision of local social services, a probation officer or a member of the youth offending team).
- Fines – will depend upon the defendant's age 10-13 max £250, 14-17 max £1000 over 18 same as adult.
- Reparation order up to age 18 yrs – max 24 hours work in reparation to victim or the community.
- Discharges, reprimands and warnings
- Anti-Social Behaviour orders.  
 Mention of parental responsibility and youth offending teams will also be credited.

**Assessment Objective 3**

*Marks are awarded holistically at the end of the question.*



- 7(b) Hannah, aged 16, has pleaded guilty to a charge of burglary. She has two previous convictions, one for theft and one for burglary, both when she was 15 years old. She has previously been given a supervision order and an attendance centre order.

Discuss the likely sentences which would be considered for Hannah in the light of the above factors. [9]

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

Potential answers **MAY**:

### Assessment Objective 2

- Hannah's plea of guilty would result in a discount in her sentence.
  - Hannah's previous convictions would be taken into account and would probably increase her likely sentence
  - The fact that the previous sentences had not deterred her from re-offending would persuade the court to issue a harsher sentence this time.
  - She could be given a community order with an unpaid work requirement and/or any of the other requirements such as a curfew with an electronic tag or another supervision order. This is unlikely on its own but another requirement may be added.
  - Hannah may be required to make reparation to her victim.
  - If the facts of the offence were very serious a custodial sentence may be considered.
- Credit will be given mention of any other relevant factors or possible sentences.

### Assessment Objective 3

*Marks are awarded holistically at the end of the question.*

### Assessment Objective 3

[3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

## AS GCE Law Levels of Assessment

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



# G142: Sources of Law

The mark scheme must be read in conjunction with the Advanced Subsidiary GCE Law assessment grid.

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

Candidates can score in the top bands without citing all the points suggested in the scheme.

Answers which contain no relevant material at all will receive no marks.

## 1 Exercise on Judicial Precedent

(a) The Source (at line 8) refers to 'persuasive precedent'.

Using the Source and other cases, describe how persuasive precedent works.

[12]

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

Possible answers **MAY**:

### Assessment Objective 1

- Describe persuasive precedent eg not binding, but courts can decide to follow it.
- Describe the different types of persuasive precedent:
  - 1) Obiter dicta eg *Central London Property Trust Ltd v High Trees House Ltd* (1947); *Howe* (1987)
  - 2) Decision of the Privy Council eg *R v Holley* (2005) and *R v James and Karimi* (2006); *Wagon Mound (No. 1)* (1962)
  - 3) Dissenting judgments eg *Candler v Crane Christmas & Co* (1951) followed in *Hedley Byrne v Heller & Partners* (1964);
  - 4) Decisions of courts in other countries eg *Re A* (2000); *Re S* (1992)
  - 5) Judgments made by courts lower in the hierarchy eg *R v R* (1991).

Any other relevant case can be used to illustrate the above points.

### Assessment Objective 3

Marks will be awarded holistically at the end of this question.

- (b) Consider each of the following situations and explain how the doctrine of precedent will apply.
- (i) A case comes before the House of Lords in 2008. There is a previous precedent decided by the House of Lords in 1951. [5]
  - (ii) A case comes before the Court of Appeal (Civil Division) in 2008. There is a previous precedent decided by the House of Lords in 1980. [5]
  - (iii) A case comes before the Court of Appeal (Civil Division). There are two past conflicting precedents, one from the House of Lords decided in 1995 and the second from the Privy Council decided in 1999. [5]

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

Possible answers **MAY**:

### Assessment Objective 2

In (i) recognise that the House of Lords can depart from their previous decision in 1951 if they believe it is 'right to do so' because the second case comes after the Practice Statement 1966. Discuss the fact that the House of Lords are reluctant to overrule their own past decisions.

In (ii) recognise that the Court of Appeal (Civil Division) is bound by the House of Lords as it is a higher court. Recognise there are limited circumstances in which the Court of Appeal can avoid following a decision of the House of Lords – the House of Lords decision conflicts with an Act of Parliament or a decision of the ECJ. Discuss the possibility of distinguishing. Credit any appropriate use of the Source materials.

In the case of (iii) recognise that this situation is similar to the Source. The Court of Appeal should follow the decision of the House of Lords as it is binding precedent. The Privy Council decision is persuasive. Credit any appropriate use of the Source.

### Assessment Objective 3

*Marks will be awarded holistically at the end of this question.*

- (c) The Source (at lines 16 and 17) describes how lower courts can avoid past decisions of higher courts in exceptional circumstances.
- (i) Using the Source and other cases, explain how lower courts can avoid the doctrine of precedent. [15]

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

Possible answers **MAY**:

#### Assessment Objective 1

- Describe the fact that the opportunities for lower courts to depart from higher court decisions are limited;
- Describe how distinguishing could be used by arguing the material facts in the case are different from the original case. Use any relevant case in illustration eg *Balfour v Balfour* (1919) and *Merritt v Merritt* (1971), *Stilk v Myrick* (1809); *Williams v Roffey* (1990); *Brown* (1994); *Wilson* (1997)
- Describe how per incurium works. Use any relevant case in illustration eg *Williams v Fawcett* (1986);
- Explain that a decision can be avoided if it conflicts with:
  - obligations under the ECHR e.g. *Re Medicaments* (2001), or
  - it conflicts with obligations under EU law, or
  - it conflicts with later statute
- Credit any reference to the discussion in the Source.

#### Assessment Objective 3

*Marks will be awarded holistically at the end of this question.*

- (ii) Discuss the advantages and disadvantages of giving the lower courts more flexibility in avoiding the doctrine of precedent. [12]

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

Possible answers **MAY**:

### Assessment Objective 2

A discussion of the advantages may include:

- Cases could be decided on their own merits making judgments more equitable;
- The law would potentially move more with changing social conditions;
- It would be quicker to change incorrect decisions;
- Certain courts like the Court of Appeal (Criminal Division) have greater expertise;
- It would make the law less rigid;
- Avoids costly and lengthy appeals to update the law eg *Davis v Johnson* (1979).

A discussion of the disadvantages may include:

- It would make the law less certain;
- It would make advice given by lawyers less precise;
- It may cause an increase in litigation;
- Courts would be confused over which precedent to follow.

### Assessment Objective 3

*Marks will be awarded holistically at the end of this question.*

### Assessment Objective 3

[6]

Marks are awarded holistically for the whole question.

Mark Levels	AO3
Level 3	5-6
Level 2	3-4
Level 1	1-2

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

**Total marks [60]**

**2 Exercise on Statutory Interpretation**

- (a) The Source at lines 8 and 12 refers to the 'purpose of the Act'.

Using the Source and other cases, explain the purposive approach. [12]

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

Possible answers **MAY**:

**Assessment Objective 1**

- Identify that the purposive approach takes a broader approach than the mischief rule in that the court is not just looking to see what the gap was in the old law; the judges are deciding what they believe Parliament is trying to achieve – what is the purpose of the Act?;
- Explain that judges are required to consider the context in which the law was created – what were the concerns of government and Parliament at the time the Act was created?;
- Recognise the essential link with external aids;
- Use any relevant cases to illustrate its use – *Coltman v Bibby Tankers* (1987), *Fitzpatrick v Sterling Housing Association* (1999), *R v Registrar General ex p Smith* (1990), *Jones v Tower Boot Co.* (1997)

**Assessment Objective 3**

*Marks will be awarded holistically at the end of this question.*



- (b) In the following situations, use the Source and your knowledge of the rules of statutory interpretation, to explain whether or not the defendant would be guilty under the Serious and Organised Crime and Police Act 2005 as any person who organised, took part in or carried on a demonstration if, 'when the demonstration starts', authorisation had not been given under the Act.
- (i) Mark has organised an anti-war demonstration in January 2008 close to Parliament. He did not seek authorisation and was arrested during the demonstration. [5]
  - (ii) Sunny is going to a music concert in January 2008, at a hall close to Parliament. He notices a group of people walking in the direction of the concert and joins them. The group are in fact anti fur-trade campaigners involved in an unauthorised demonstration. [5]
  - (iii) Shirley has held regular demonstrations against animal cruelty for twenty years close to Parliament. She believes the Act does not apply to her as she started her demonstration before the Act came into force. [5]

#### Mark Levels AO2

(for each of i, ii, iii)

Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Possible answers **MAY**:

#### Assessment Objective 2

In the case of (i) recognise that Mark would be guilty under the literal rule as he had organised a demonstration without authorisation. There would be no need to consider any other rule as no absurdity arises from the application of the literal rule as this type of activity is exactly what the legislation seeks to prevent.

In the case of (ii) recognise that under the literal rule he would be guilty as he taken part in an unauthorised demonstration. This would clearly be an absurd result and it would be wrong to apply the legislation in this way. It would be not be the purpose of the Act to make people like Sunny guilty. Candidates may argue a lack of mens rea.

In the case of (iii) recognise that the facts are similar to those in *R (Haw) v Secretary of State for the Home Department and another*. Recognise that the application of precedent would mean that Shirley would be found guilty. Explain that the purposive rule should be applied as the purpose of the Act is to stop unauthorised demonstrations.

#### Assessment Objective 3

*Marks will be awarded holistically at the end of this question.*

- (c) (i) Using the Source and other examples, describe how the courts use the literal rule. [15]

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

Possible answers **MAY**:

**Assessment Objective 1**

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

**Assessment Objective 3**

*Marks will be awarded holistically at the end of this question.*

- (c) (ii) Using the Source and other examples, discuss the difficulties of judges trying to find Parliamentary intention when interpreting Acts. [12]

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

Possible answers **MAY**:

**Assessment Objective 2**

- Discuss the fact that it is difficult to pinpoint parliamentary intent;
- Discuss the fact that finding parliamentary intent relies on extrinsic aids and this can add to cost and delay;
- Discuss the fact that by seeking parliamentary intent judges are going beyond their role;
- Discuss Lord Denning's views on finding intent;
- Discuss how the rules in *Pepper v Hart* do not allow judges full freedom in finding intention.

**Assessment Objective 3**

*Marks will be awarded holistically at the end of this question.*

**Assessment Objective 3**

**[6]**

Marks are awarded holistically for the whole question.

Mark Levels	AO3
Level 3	5-6
Level 2	3-4
Level 1	1-2

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

**Total marks [60]**

## AS GCE Levels of Assessment

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



## G143: Criminal of Law

The mark scheme must be read in conjunction with the Advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all will receive no marks.

- 1 'Law should encourage citizens in their civic duty to do 'the right thing' in a moral sense and not to turn a blind eye or fail to act to help someone who is in need.'

Consider to what extent the criminal law relating to omissions (failures to act) reflects this view.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Explain that the vast majority of true crimes involve prohibited positive conduct or acts before liability occurs – eg an act in an unlawful killing, an appropriation in theft etc but identify that some offences may be brought about by omission eg gross negligence manslaughter; *Adamako*

Describe "duty" situations that may arise from:

Statute, Public Office, Common Law, close relationship, voluntary assumption of care, creation of a dangerous situation etc

Cite relevant examples to illustrate some of the above:

eg Children and Young Persons Act; *Gibbins & Proctor*; *Instan*; *Dytham*; *Pittwood*; *Stone & Dobinson*; *Miller*; *Khan & Khan*;

Refer to the issues arising in the *Bland* and *Pretty* cases

#### Assessment Objective 2 (20 marks)

Consider the difficulties in defining the extent of these duties

Consider the strict liability context of many omissions in the Road Traffic Acts eg failure to obtain insurance etc

Consider the relationship between legal and moral codes of behaviour in this context

Consider the uncertainty over prescribing or defining when a 'caring duty' ought to be imposed

Consider the desirability of imposing standards of 'good practice' on the holders of public office

Consider the difference between a mere breach of duty and a failure to intervene

Consider the issues in *Bland* eg can a 'carer' be released from their duty?

Consider the principles concerning coincidence and prior fault discussed in *Miller*; *Fagan* etc

Consider whether the criminal law strikes an appropriate balance in this regard or whether it may be desirable to adopt a more prescriptive approach *c.f. Netherlands/France*

#### Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 2 'The offence of burglary has been defined by Parliament. However, it has been left to decisions of the courts to clarify most of the key ingredients of the offence.'

Evaluate the above statement.

[50]

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

Potential answers **MAY**:

### Assessment Objective 1 (25 marks)

Define the offence of burglary – S.9 (1) (a) S.9 (1) (b) Theft Act 1968  
 Define the required ulterior ingredients for the s.9 (1) (a) offence – S.9 (2) Theft Act 1968  
 Define the meaning of a building contained in s.9 (4) Theft Act 1968  
 Refer to cases explaining the meaning of 'a building' *Stevens v Gourley*; *Norfolk Constabulary v Seekings & Gould*; *B & S v Leathley*; *Laing*  
 Refer to the clarification of 'a part of a building' – *Walkington*  
 Refer to the cases explaining the meaning of 'entry' – *Collins*; *Brown*; *Ryan*  
 Refer to cases explaining the meaning of 'a trespasser' – *Collins*; *Jones & Smith*  
 Refer to the concept of 'conditional intent' *A-G's Refs Nos. 1 & 2 1979*

### Assessment Objective 2 (20 marks)

Evaluate the distinction between s.9 (1) (a) & s.9 (1) (b) and point out the significance of an ulterior intent at the time of entry contrasting it with the s.9 (1) (b) offence – S.9 (1) (a) are self-evidently intended burglaries whereas s.9 (1) (b) also catches the 'opportunistic' trespasser within a building  
 Evaluate the difficulties posed in *Collins* with reference to the meaning of 'entry' and 'as a trespasser'  
 Evaluate the refinements made by *Brown*; *Ryan* clarifying whether the entry need be 'substantial and or effective'  
 Evaluate the difficulties faced in defining 'a building' and the refinement in respect of 'a part of a building' as developed in *Walkington*  
 Evaluate the effect of *Jones & Smith* on the meaning of 'a trespasser' and consider its implications for eg 'shoplifters' who exceed the permission for the purposes for which they are entitled to be in a shop  
 Evaluate the significance and practical difficulties in establishing evidence of an accused's ulterior intention at the time of entry eg whether to prosecute for burglary or simple theft, or burglary or a simple offence against the person  
 Consider the situation when a person enters a building as a trespasser with purely 'conditional intent' to steal anything of value they may find inside even if they find nothing worthwhile to steal  
*A-G's Refs Nos. 1 & 2 1979*

### Assessment Objective 3 (5 marks)

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



- 3 'The law on consent as a defence to offences against the person recognises that the causing of deliberate harm may sometimes be justified.'

Consider the truth of this statement.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Refer to the defence of consent when applied to offences against the person;  
Recognise the limitations imposed upon the availability of consent eg not available to a charge of homicide – euthanasia is not recognised in the UK, aiding and abetting a suicide is an offence;

Mention that consent to minor assaults in the course of everyday life is generally implied;

Refer to policy decisions restricting the availability of consent as a defence eg not to prize-fighting with bare fists – *Coney*, nor to agreeing to settle differences by means of a fight or duel – *A-G's Reference No.6 of 1980*; nor to sado-masochistic activities deemed to be against the public interest – *Brown*

Indicate with appropriate citation that a true consent may excuse what would otherwise be an assault eg

- surgery, injections, tattooing, body piercing for cosmetic purposes *Corbett v Corbett; Wilson*
- physical contact sports – *Billinghurst; Barnes*
- sexual relations *Donovan; Brown; Slingsby*
- rough horseplay *Jones*
- lawful parental chastisement

Fraud only negatives consent to an assault if V was deceived as to the identity of the person concerned or the nature of the act performed – *Linekar; Richardson; Tabassum; Guerrier; Dica; Konzani; R v B*

Honest mistaken belief in consent is a defence *Morgan*

#### Assessment Objective 2 (20 marks)

Consider the policy that allows consent as an effective defence to a charge of injury sustained in the course of properly conducted sport or games but recognises that an assault may be prosecuted should a participant exceed what is allowable within the rules of that sport or game;

Consider the distinction between deliberate and accidental harm inflicted in physical contact sports, deliberate harm is the essence of boxing but unacceptable in a variety of ball sports such as football, rugby or hockey – *Billinghurst; Barnes*

Consider the social utility of surgical treatment as a justification for the defence whether or not the patient is conscious and capable of giving consent;

Consider the reasons for the decisions given in *Brown* and *Wilson*;

Consider when and why it is appropriate for the law to interfere with individual freedom of choice on the grounds of public interest;

Consider whether the judges are in the better position to proceed on a case by case basis rather than Parliament attempting to lay down general principles in this regard. Discuss whether euthanasia should be made lawful?

**Assessment Objective 3 (5 marks)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 4 Zandra, who is aged 16, has had an unhappy childhood. She has left home and has turned to drugs and prostitution. She is living with Shaun, aged 33, who is a weightlifter. Shaun regularly forces Zandra to give him her earnings. He is jealous and possessive and has beaten her on a number of occasions. She is immature and has often harmed herself to seek attention. One night, fearing that Shaun will beat her up and force her to have sex with him, Zandra cuts her wrists. When Shaun comes into the lounge and sees what she has done, he taunts her saying she has made a pathetic job of slashing her wrists. Zandra goes to her bedroom to get her knife, returns to the lounge and stabs Shaun in the chest killing him instantly.

Discuss Zandra's potential liability for the murder of Shaun.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define murder

Define Provocation – S.3 Homicide Act 1957

- evidence of provocation
- sudden and temporary loss of self-control; – *Duffy; Ibrams & Gregory; Thornton; Humphreys*
- objective 'reasonable man test' as developed by the courts including the characteristics which affect the gravity of the provocation to the accused and those which affect the power of self control to be expected; – *Camplin; Smith (Morgan James); Weller; Rowland; Holley; Mohammed; Karimi & James* etc

Define Diminished responsibility – S.2 Homicide Act 1957

- abnormality of mind – *Byrne*
- substantial impairment – *Sanderson*
- internal cause
- specified cause – *Seers; Ahluwalia; Hobson*
- medical evidence

#### Assessment Objective 2 (20 marks)

Discuss direct intent to do serious harm at least therefore murder charge is sustainable  
Discuss provocation/diminished responsibility as potential special and partial defences which, if successful, would reduce the conviction to voluntary manslaughter allowing discretion in sentencing

- Shaun's conduct and words and past behaviour may be taken together to provide evidence of provocation even though the last is trivial – *Humphreys*
- it would appear that Zandra's immaturity may still be taken into account – *Camplin; Humphreys*
- there appears to be no sudden and temporary loss of self-control – Zandra goes to her bedroom to get her knife – *Duffy; Ibrams & Gregory*
- there appears to be a 'cooling off' period – *Thornton; Ahluwalia*

- the evidence of her suffering from 'battered woman syndrome' is more likely to be seen as a psychiatric condition post *Ahluwalia*; *Hobson*; *Holley* and this and her attention seeking is unlikely to be taken into account as a relevant characteristic unless it affects the gravity of the provocation to the reasonable 16 year old woman, not the level of self-control to be expected – *Holley*; *Mohammed*; *Karimi & James*  
Discuss the potential diminished responsibility defence and argue that the relevant evidence appears to exist for a successful use of the defence – *Ahluwalia*; *Hobson*; *Humphreys*  
It should, however be supported by expert psychiatric evidence – *Dix*; *Hobson*  
Argue to any logical conclusion

**Assessment Objective 3 (5 marks)**

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

- 5 Raul and Christiano are standing in a queue at a bus stop when they begin arguing with one another. Raul pushes Christiano who staggers backwards and collides with Margaret, an 83 year old lady. Margaret falls backwards onto the pavement. She is injured and in pain. Margaret is taken to hospital where x-rays reveal that she has broken her hip. Doctors agree that the injury is made worse partly because she suffers from osteoporosis (a disease which makes her bones unusually brittle).

Although Margaret is elderly, Doctor Smith decides to operate in order to allow Margaret any chance of being able to walk in future. A few days later, Margaret is recovering slowly from the operation when she develops a secondary infection. Doctor Smith prescribes Margaret penicillin but she is allergic to the drug and dies.

Discuss the potential criminal liability of both Raul and Doctor Smith for the death of Margaret. [50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define involuntary manslaughter

- Unlawful and dangerous act/constructive manslaughter – *Church; Newbury & Jones; Mitchell; Goodfellow; Dalby; Carey etc*
- Gross negligent manslaughter – *Adamako; Litchfield; Wacker; Misra & Srivastava*
- Reckless manslaughter – *Pike; Lidar etc*

Explain the principle of 'transferred malice' – *Latimer*

Explain the principles of causation:

- Factual causation – *White*
- Legal causation – *Pagett;*
- 'de minimis' principle – *Kimsey*
- 'Take your victim as you find them' – *Hayward; Blaue*
- 'novus actus interveniens' and medical treatment – *Jordan; Smith; Cheshire etc*

#### Assessment Objective 2 (20 marks)

##### For Raul

Discuss the potential offence of murder and dismiss it for lack of the relevant mens rea

Discuss the potential offence of unlawful act/constructive manslaughter, discuss and apply to the facts:

- The act must be criminal/a push, though trivial, is a battery – *Mitchell; Carey*
- Is it 'dangerous'? – the facts suggest it may be as even the primary victim Christiano may fall and suffer 'some harm' in the view of a jury
- Discuss whether this could therefore amount to foresight of inflicting grievous bodily harm recklessly and a potential s.20 AOPA offence
- Apply the principle of transferred malice - *Latimer* – and apply to Margaret's injury
- Has it made a factual and more than minimal contribution to Margaret's death? – Yes?

- Margaret's injuries are far more serious than could have reasonably been foreseen but you must take your victim (brittle bone disease) as you find them – *Hayward; Blaue; Carey*
- Has the medical negligence broken the chain of causation? Arguable – discuss and apply *Jordan; Smith; Cheshire* to a reasoned conclusion

Discuss the potential offence of gross negligence manslaughter, discuss and apply to the facts:

- Is a duty of care owed to Christiano (and Margaret)? *Adamako; Donoghue v Stevenson*
- Has the duty of care been broken? Yes, Christiano is the victim of a battery
- Is Raul's conduct so far below that to be expected of a reasonable person in those circumstances as to amount to a crime? Technically yes in one way as he has committed a crime
- Is there a risk of death? (This is debateable) There was clearly a very small risk of death and Margaret has eventually died but would a jury think it existed when Raul pushed Christiano?
- As above, argue to a reasoned conclusion

Discuss the potential offence of reckless manslaughter, discuss and apply to the facts:

- Did Raul foresee a risk of death or serious harm to Christiano? (unlikely, just a push)
- Probably dismiss a reckless manslaughter charge

Discuss and apply the principle of transferred malice which is relevant in each case and conclude that Raul is potentially liable for the harm caused to his unintended victim

Margaret – *Latimer*

Discuss whether the medical negligence has broken the chain of causation in all/any of the above alternatives? Arguable – discuss and apply – *Jordan; Smith; Cheshire* to a reasoned conclusion noting that, as a matter of policy, the courts are reluctant to allow even negligent medical treatment to 'break the chain of causation'

(Most credible would probably be unlawful act manslaughter)

**BUT** Credit all relevant identification, discussion and application.

**N.B.** Candidates who do not discuss every potential type of manslaughter offence may nevertheless attain a Level 5 answer if they discuss only one or two provided the causation/transferred malice elements are addressed.

### For Doctor Smith

Discuss the potential offence of gross negligence manslaughter, discuss and apply to the facts:

- Is a duty of care owed to Margaret? Yes – *Adamako; Donoghue v Stevenson*
- Has the duty of care been broken? Perhaps, depending on Dr. Smith's knowledge & conduct
- Is Dr. Smith's conduct so far below that to be expected of a reasonable doctor in those circumstances as to amount to a crime? Arguably yes. Up to the jury
- Is there a risk of death? Doctors must be aware of this potentially fatal allergic reaction. Up to the jury?
- As above, argue to a reasoned conclusion

### Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 6 Sinita and Mina share a flat. One night Sinita finds Mina kissing Sinita's boyfriend, Alberto. She picks up a glass of water, raises it in the air and shouts at Mina, "You hussy, I'll kill you!" She tries to throw the water at Mina but the glass slips from her hand and strikes Mina in the face cutting her forehead.

Alberto is so angry that he pushes Sinita and she falls backwards over a stool onto the floor and is knocked unconscious for a few seconds. When Sinita recovers consciousness she is still dizzy and stumbles towards Mina knocking her onto the floor. Mina suffers a fractured arm.

Later that evening, when Sinita is sleeping, Mina gets a pair of scissors and cuts off Sinita's ponytail in an act of revenge.

Discuss the potential criminal liability of Sinita, Alberto and Mina for the above incidents.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define assault & battery at common law – *Tuberville v Savage*; *Wilson*; *Ireland*; *Smith*; *Venna*; *etc*

Define assault occasioning actual bodily harm – S.47 Offences Against the Person Act 1861, *Donovan*; *Miller*; *Chan Fook*; *T v DPP*; *Roberts etc*

Define wounding contrary to s.20 Offences Against the Person Act 1861 – *Eisenhower*; *Mowatt*; *Savage*; *Parmenter*;

Define grievous bodily harm – S.18 Offences Against the Person Act 1861; *DPP v Smith* *Saunders*; *etc*

Define automatism – *Bratty v A-G for Northern Ireland*

#### Assessment Objective 2 (20 marks)

Discuss whether Sinita's words and actions when raising the glass in the air amount to an assault at common law – Yes – *Wilson*; *Ireland*; *Venna*

Discuss whether the cut to Mina's forehead amounts to wounding contrary to S.20 Offences Against the Person Act 1861 – probably yes – *Eisenhower*; *Savage*; *Parmenter*

Discuss whether Alberto's actions in pushing over Sinita amount to actual bodily harm *Martin*; *Miller*; *T v DPP*;

Discuss whether Sinita has occasioned actual bodily harm S.47 or possibly inflicted or caused grievous bodily harm contrary to s.20/S.18 Offences Against the Person Act 1861 by fracturing Mina's arm

Discuss whether Sinita has a possible defence of automatism in respect of the last incident as she is still feeling 'dizzy' *Bratty v A-G for N.I.*

Discuss whether Mina has committed actual bodily harm by cutting Sinita's hair – Yes – *DPP v Smith 2006*

#### Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 7 Ahmed owes Fernando money. Fernando tells Ahmed that unless he repays the debt he will reveal to Ahmed's wife that Ahmed is having an affair. Ahmed carries out a burglary to repay the debt. Ahmed is also a member of a shoplifting gang run by Spike. Spike emails Ahmed from Italy and orders Ahmed to collect a large quantity of heroin or Ahmed will be beaten up later that day. Ahmed collects the heroin.

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

**Statement A:** If Ahmed is charged with burglary the threat to reveal his affair will provide him with a valid defence.

**Statement B:** Ahmed is able to successfully plead a defence if charged with burglary because he had no choice but to commit a burglary to repay the debt.

**Statement C:** Ahmed is able to successfully plead a defence to a charge of possession of a controlled drug even though he is a member of Spike's gang.

**Statement D:** Ahmed is unable to successfully plead a defence to a charge of possession of a controlled drug because Spike is in Italy. [20]

	AO2
Level 5	17 – 20 marks
Level 4	13 – 16 marks
Level 3	9 – 12 marks
Level 2	5 – 8 marks
Level 1	1 – 4 marks

Potential answers **MAY**:

#### **Assessment Objective 2 (20 marks)**

**Statement A: If Ahmed is charged with burglary the threat to reveal his affair will provide him with a valid defence.**

- Identify that duress by threats is a potential defence to a criminal charge
- Reason that the defence of duress is available when the threats made are threats of death or serious harm and this is not the case
- Conclude that duress is definitely unavailable as a defence to the burglary for this reason

**Statement B: Ahmed is able to successfully plead a defence if charged with burglary because he had no choice but to commit a burglary to repay the debt.**

- Identify that duress by threats is only available where the crime committed has been nominated by the threatener
- Reason that Fernando has not nominated any type of criminal offence to be committed by Ahmed
- Conclude that duress is definitely unavailable as a defence to the burglary for this reason



**Statement C: Ahmed is able to successfully plead a defence to a charge of possession of a controlled drug even though he is a member of Spike's gang.**

- Identify that the defence of duress is potentially available when the threats made are threats of death or serious harm
- Reason that the threat must be such that they overbear Ahmed's will and would be sufficient to cause a reasonable person to succumb to them
- Reason voluntary association with a criminal organisation is likely to invalidate the defence
- Conclude that duress may or may not be available for this reason

**Statement D: Ahmed is unable to successfully plead a defence to a charge of possession of a controlled drug because Spike is in Italy.**

- Identify that the defence of duress is only available when threats of death or serious harm are capable of being carried out either immediately or 'imminently' (in the very near future)
- Reason that Spike is in Italy so cannot carry out the threat personally and as such it is not 'immediate or almost immediate'
- Reason that Spike could contact another gang member to carry out the threat so it could perhaps be imminent
- Conclude that the defence of duress may or may not be available

- 8 Gary is in debt. Darren's wife owes Gary £20. Gary sees Darren in the street and threatens to beat him up unless he gives him £20. Darren hands over the money. Gary sees an old lady, Dorothy, in the street. He tries to snatch a bag from her grip. He grabs the handle of the bag but she resists and the bag falls to the ground. Gary runs off.

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

**Statement A:** Gary is not liable for theft because Darren gives him the £20.

**Statement B:** Gary is liable for robbery when Darren gives him the £20.

**Statement C:** Gary is not liable for the theft of Dorothy's bag.

**Statement D:** Gary is guilty of robbery when he grabs Dorothy's bag. [20]

	AO2
Level 5	17 – 20 marks
Level 4	13 – 16 marks
Level 3	9 – 12 marks
Level 2	5 – 8 marks
Level 1	1 – 4 marks

Potential answers **MAY**:

#### **Assessment Objective 2 (20 marks)**

**Statement A: Gary is not liable for theft because Darren gives him the £20.**

- Reason that an appropriation can occur even where the owner of the property consents to it
- Reason that the consent is not a true consent because it is induced by a threat
- Cross credit reference to an honest belief in a legal right to the £20
- Conclude that Darren may still therefore be liable for theft

**Statement B: Gary is liable for robbery when Darren gives him the £20.**

- Reason that the offence of robbery involves the use or threat of force in order to steal
- Reason that Gary has used a threat of force
- Reason that he may honestly believe that he has a legal right to demand the money
- Conclude that Gary may or may not be guilty of robbery

**Statement C: Gary is not liable for the theft of Dorothy's bag.**

- Reason that an appropriation is any assumption of the rights of an owner
- Reason that a theft occurs when Gary touches Dorothy's bag with a dishonest intention to permanently deprive her of it
- Conclude that Gary is guilty of theft even though it falls to the ground

**Statement D: Gary is guilty of robbery when he grabs Dorothy's bag.**

- Identify that robbery involves the use of force in order to steal
- Reason that force has been used on Dorothy's bag and this is sufficient for a robbery
- Conclude that Gary is liable for robbery even though the bag falls to the ground and he runs off empty handed

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

## G144: Criminal Law Special Study

This mark scheme must be used in conjunction with the Advanced GCE Law levels of assessment.

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

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

- 1 Discuss the ways in which *Pommell* [Source 8 page 6 Special Study Materials] developed the defence of duress of circumstances. [12]

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

Potential answers **MAY**:

### Assessment Objective 2

Discuss the major issue in the case: *Pommell* was charged and convicted with possession of a prohibited weapon, a loaded sub-machine gun that he said he had taken from another man who was going to use it;

Discuss that the trial judge had refused to allow the defence because he felt that *Pommell* had not taken the weapon to the police quickly enough;

Discuss the contribution made by the case to the defence of duress of circumstances – the Court of Appeal identified that the defence of duress of circumstances was available to all offences other than murder and attempted murder;

Discuss the reasoning given by the court:

- That the unavailability of a defence of necessity at law does not deal with the situation where someone commendably infringes a regulation in order to prevent another person from committing a crime;
- That the defence is justified because the person is avoiding a greater evil;
- That it would be unsatisfactory to leave it to the prosecution to make a decision not to prosecute.

Discuss the fact that the Court of Appeal agreed that for the defence to apply the defendant should desist from committing it as soon as he reasonably can;

Make any link to other relevant cases eg *Willer*, *Conway* – but recognise that this was the first case not involving a motoring offence.

Make any other relevant comment.

2 In Source 1 [page 2 lines 1-3 Special Study Materials] Lord Lane states that *“The law requires a defendant to have the self-control reasonably to be expected of the ordinary citizen in his situation. It should likewise expect him to have the steadfastness reasonably to be expected of the ordinary citizen in his situation.”*

Discuss the limitations and restrictions on the defence of duress by threats developed by the courts in the light of the above statement. [30]

Mark Levels		AO1	AO2
Level 5	25-30	14-16	13-14
Level 4	19-24	11-13	10-12
Level 3	13-18	8-10	7-9
Level 2	7-12	5-7	4-6
Level 1	1-6	1-4	1-3

Potential answers **MAY**:

### Assessment Objective 1

Define the defence of duress and the two-part test in *Graham*:

- That the defendant's will was overborne by threat of imminent violence to self or close family – so that the defendant was impelled to act as he did;
- That the court is satisfied that a sober person of reasonable firmness would have been similarly affected by the threats and would have reacted in the same way;

Explain that the defendant escapes liability as a result of a successful defence having provided an acceptable excuse for his behaviour;

Explain that the defence is thus a 'concession to human frailty';

Identify those offences where the defence is available and those where it is not:

- Generally available;
- But not available to murder or secondary participation in murder *Howe*,
- Nor to attempted murder *Gotts*,
- But comment that it would be available to a charge of s18 GBH.

Identify some of the other limitations to the defence:

- Not available if there is no nexus between the threat and the offence committed by the defendant *Cole*;
- Rarely available if self-induced *Shepherd*;
- So not available where the defendant voluntarily associates with persons of known violent tendencies *Sharp, Hasan*;
- Not available if a safe means of escape exists *Hudson & Taylor*;
- Not available if the threat is not imminent *Abdul Hussain*;
- Not available where the threat is not one of violence *Valderrama-Vega*.

**Assessment Objective 2**

Discuss the fact that the courts have imposed many limitations on the defence in developing it;

Discuss the fact that there are offences for which the defence is available and offences where the courts are not prepared to allow the defence ie:

- not available to murder or secondary participation in murder *Howe*,
- or to attempted murder *Gotts*,
- however, because the defence is otherwise generally available though it would be available to s18 GBH;
- denying the defence to attempted murder but accepting it for s18 is anomalous since the harm suffered in the former might actually be less than that in the latter.

Discuss some of the criticisms that can be made if the defence is not generally available eg:

- there can be circumstances where even a person of reasonable fortitude submits to threats, however repugnant what they are forced to do;
- the effect of *Howe* may be to legally force a person into being a hero – and are persons of reasonable self-control and steadfastness generally also heroes?
- while a person may put his/her own life at risk to save someone else (s)he may not feel it is possible to do the same in respect of his family;
- there is an inconsistency with the defence of provocation.

Discuss the fairness of denying the defence if the threat is not immediate or imminent since the impact on the person claiming the defence may still be very real;

Discuss the limitation based on voluntary association with persons of known violent tendencies – is this always realistic or fair?

Discuss the effect of self-induced defence (arguably limiting the restrictive nature of the defence) – and compare with *Bowen* – restrictive because IQ not relevant;

Discuss the fact that the Law Commission has suggested reforming the defence

Discuss the fact that the means of testing the defence is essentially objective so that it does not really take into account the defendant's own feelings.

- 3 Discuss whether or not the defence of duress would be available to the people accused of various crimes in each of the situations below.
- (a) Harriet steals goods from a local shop. Harriet claims that she only carried out the theft because her boyfriend, Ian, who has several convictions for violence, threatened that he would beat Harriet severely if Harriet did not carry out the theft. (10)
- (b) Jaz burns down his employer's factory. Jaz claims that he only did so after Kulwinder, an ex-workmate who was sacked, rang Jaz from India and said that he would harm Jaz's children when he returned from India if Jaz did not do it. (10)
- (c) Louis commits a violent assault on Malcolm, his manager. Louis claims that he only carried out the assault because he was threatened by Neil, an ex-workmate who was sacked by Malcolm. Neil threatened that he would tell Louis' wife that Louis was having an affair with one of the secretaries if Louis did not do it. (10)

[30]

Mark Levels		AO1	AO2	a) b) c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Potential answers **MAY**:**Assessment Objective 1**

Define duress by threats using the *Graham* test – threat of death or injury to self or family and a reasonable sober person would respond in the same manner;

Identify the importance of the nexus between threat and offence *Cole*;

Identify the rules on voluntary association with persons of known violent tendencies *Shepherd, Sharp, Hasan*;

Identify the unavailability of the defence where there is a safe route of escape *Hudson & Taylor* or where the threat is not imminent *Abdul Hussain*;

Recognise the unavailability of the defence where the threat is other than death or injury to self or family *Valderrama-Vega*;

Use any other relevant cases in illustration.



**Assessment Objective 2**

In the case of a):

- Apply the 2 part test from *Graham*;
- Discuss that the threat here is one of apparently immediate violence towards Harriet;
- Discuss also that on this basis the threat is one that is likely to produce the same response as Harriet's in persons of reasonable fortitude;
- Discuss also that there is a nexus unlike *Cole*;
- Conclude though that the defence will be unavailable to Harriet because of her voluntary association with Ian – there is no requirement that the association is as part of a gang as in *Sharp* – it is sufficient that the person associated with and making the threats is known to be violent by the person using the defence.

In the case of b):

- Apply the 2 part test from *Graham*;
- Discuss that the threat was to Jaz's family;
- Discuss that, although the threat is serious, the threat is neither imminent nor immediate since Kulwinder is in India when he makes the threat *Abdul Hussain*;
- Identify that Jaz would have had the opportunity to seek protection *R v Hudson and Taylor*.

In the case of c):

- Apply the 2 part test from *Graham*;
- Discuss that the threat in this case is not one of death or serious harm to Malcolm or his family *Valderrama-Vega*;
- Discuss that even the argument that Malcolm might suffer psychological harm would fail as it did in *Valderrama-Vega*;
- Conclude that the threat is insufficiently serious so the defence would fail.

Make any other relevant comment.

**Assessment Objective 3****[8]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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



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

## G145: Law of Contract

This mark scheme must be read in conjunction with the advanced GCE Law Assessment Grid.

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

Answers that contain no relevant material at all will receive no marks.

- 1 'The concept of invitation to treat is as important as ever in giving essential protection to those who sell goods.'

Discuss the circumstances in which the courts have identified an invitation to treat. [50]

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

Potential answers **MAY**:

### Assessment Objective 1 (25 marks)

Explain that an invitation to treat is not an offer capable of being accepted, but will often be followed by a bilateral offer.

Explain situations that amount to invitation to treat, including:

- Goods in a shop whether on display in the window or on a shelf inside the shop, *Fisher v Bell*, *Boots v Pharmaceutical Society of Great Britain*.
- Goods being advertised in a newspaper or magazine, *Partridge v Critendon*.
- Giving information about the subject matter of a potential contract, *Harvey v Facey*; *Gibson v Manchester*.
- Advertising an auction, *Harris v Nickerson*.
- Inviting tenders, *Spencer v Harding*.
- Goods on an internet website, the *Kodak case*.

### Assessment Objective 2 (20 marks)

Discuss reasons why the concept is still important today, which can include.

- Protecting a seller from making too many contracts, potential buyers make an offer to buy which can be accepted or rejected.
- Controlling who contracts are made with, some contracts are regulated such as those for solvents or alcohol, shops need to be able to advertise goods for sale without finding themselves in unlawful contracts.
- Not forming binding contracts at the wrong price where goods have been wrongly labelled in a shop, an offer to buy at the advertised price can be rejected by the seller when the goods were wrongly labelled.
- Allowing the exchange of information without having to form a binding contract, *Gibson v Manchester* illustrates the ability of the parties to negotiate while still controlling when they are in a binding contract.
- Allowing goods to be placed on the internet without risk of making contracts when stocks run out or pricing is wrong.

Candidates may discuss the confusion that can arise when, what looks like an offer in the ordinary sense of the word, turns out to be an invitation to treat which cannot be accepted. Credit reference to the Electronic Commerce regulations which impose EU wide regulation of internet trading and so standardise contractual procedure. Candidates may also comment that the regulations shift the balance of control back to the consumer in allowing them to back out of an otherwise binding contract, even when their offer has been accepted by the trader.

**Assessment Objective 3 (5 marks)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

2 'At common law a term will not be implied into a contract simply to make it fair.'

Compare the terms which are implied into a contract by the courts, with those implied by statute, in the light of the above statement.

[50]

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

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Explain the situations when terms will be implied at common law:

- Implied in order to give effect to what the parties must have intended (business efficacy), *The Moorcock*.
- Implied by customary usage, *Hutton v Warren*
- Implied because the parties must have had that term in mind when making the contract (the officious bystander test), *Spring v National Stevedores and Dockers Society*; *Liverpool City Council v Irwin*.
- Implied because it would be expected in the normal course of business dealings, *British Crane Hire v Ipswich Plant Hire*
- Explain recent guidance from the HOL in *Equitable Life v Hyman*, that a term may be implied regardless of the actual intention of the parties, and that the test for implying a term is one of strict necessity.

Explain when terms will be implied under the Sale of Goods Act as amended by Sale and Supply of Goods Act:

- S.12 that the seller of goods has title to them.
- S.13 that goods will comply with any description given of them.
- 14(2) that goods will be of satisfactory quality.
- 14(3) that goods will be fit for any common purpose or purpose that is made known by the buyer.

Explain that these terms are implied into a contract regardless of the wishes of the parties or their knowledge of the terms.

Credit any relevant terms implied by other statutes.

**Assessment Objective 2 (20 marks)**

Compare the reasons for implying terms at common law; being to make sense of the contract and not to make it more fair, *Liverpool City Council v Irwin*.

Compare the common reason at common law being that terms are implied in many commercial cases because both parties should be expecting the term to be implied.

Compare the general reason for the reluctance to improve contracts through implied terms at common law; that this interferes with the bargain that has been struck by the parties, and can cause uncertainty if the deal that has been made is interfered with.

Compare the reasons for terms being implied into contracts by statute:

- That these terms give essential protection to consumers who have an inequality of bargaining power with the shops who they make contracts with.
- Comment that in contrast to common law implied terms, the law is clearly willing to improve contracts and make them fairer.
- Comment that these terms are implied as conditions of the contract in order to maximise the benefit to consumers.

Comment that there is no uncertainty if terms are implied by statute as statutes have prospective effect and the parties are in a position to know the implied terms that will be in the contract.

**Assessment Objective 3 (5 marks)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.



- 3 Discuss to what extent both the common law and equitable remedies for misrepresentation meet the needs of the parties to an action.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Explain the common law remedy of damages.

Explain that the remedy depends upon the type of misrepresentation.

Types of misrepresentation 1 Fraudulent

2 Negligent

3 Innocent

Fraudulent damages are available at common law.

Explain the action is for the tort of deceit.

Explain that damages are calculated on the basis of all direct damage, reference to cases such as *Doyle v Olby*, *Smith and New Court Securities v Scrimgeour Vickers Ltd*.

Negligent damages at common law based upon tort of negligence.

Explain damages under S. 2(1) Misrepresentation Act 1967.

Reference to cases such as *Royscot Trust Ltd v Rogerson*, *Gran Gelato Ltd v Richcliff* and *Standard Charter Bank v Pakistan National Shipping Corp*.

Explain that damages are not normally available for innocent misrepresentation.

Explain S. 2(2) of Misrepresentation Act 1967.

Explain the equitable remedy of rescission.

Explain the bars to rescission; 1 Affirmation *Long v Lloyd*, 2 Delay *Leaf v International Galleries*, 3 Restitution impossible, 4 Third party rights *Phillips v Brooks*, 5 S. 2(2)

Misrepresentation Act 1967.

#### Assessment Objective 2 (20 marks)

Discuss whether the distinctions between the kinds of misrepresentations are valid.

Discuss whether the kind of misrepresentations should affect the calculation of damages.

Discuss whether fraudulent misrepresentation damages should be calculated on all direct damages; consider the judgement in *Smith and New Court Securities v Scrimgeour Vickers Ltd*.

Discuss whether fraudulent and negligent misrepresentation should be treated differently.

Discuss whether S. 2(1) Misrepresentation Act 1967 means that these kinds of misrepresentation should be treated the same as for calculating damages.

Discuss whether damages instead of rescission is fair to the parties.

Discuss whether rescission is a fair remedy for the innocent party.

Discuss whether the bars to rescission act in the best interest of justice.

#### Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 4 Lewis works in a shop owned by Scott, his father. One of Lewis' duties is to keep the shop clean. Scott is becoming increasingly annoyed at the dirty state of the shop and thinks that Lewis is not working hard enough. To motivate Lewis he offers him an extra £30 a week.

Scott is also concerned about cars parked illegally behind the shop which prevent supplies from being delivered. He offers Shelley, a local traffic warden, £20 a week if she makes a particular effort to give parking tickets to anyone who illegally parks behind the shop.

For the next month Lewis and Shelley carry out their side of the deals. When they ask Scott for the money he refuses and says they are only doing their jobs anyway.

Advise Lewis and Shelley whether they are able to claim their money.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Explain that a second promise to pay for an existing legal obligation is not generally enforceable unless the maker of the promise gains some extra benefit or avoids a specific detriment, *Stilk v Myrick*; *Hartley v Ponsonby*; *Williams v Roffey*.

Explain that a promise to pay someone for carrying out an obligation that is imposed by law will not normally be enforceable unless the promisee goes beyond their public duty in some way, *Collins v Godefroy*; *Glasbrook v Glamorgan*; *Ward v Byham*.

Explain that contracts made between family members will not normally have contractual effect as there is a presumption against an intention to create legal relations, *Balfour v Balfour*; *Jones v Padavatton*.

Explain that this presumption can be rebutted by evidence that the contract is of a kind that would normally be expected to have legal effect, *Merritt v Merritt*; *Simpkins v Pays*.

#### Assessment Objective 2 (20 marks)

Discuss the enforceability of the promise made to Lewis, this is a promise to pay extra for Lewis carrying out his obligation from his contract of employment and so he should not be able to claim the extra money.

Discuss whether Lewis is going beyond his original obligations and so is providing consideration, although this is probably not the case here.

Discuss whether the promise is given in order to gain some specific benefit or avoid a particular detriment, if so then this counts as consideration from Lewis. This may not be the case here as there is no specific detriment identified in having a dirty shop.

Identify the family relationship between Lewis and Scott, and that there would be a presumption of no intention to create legal relations here. Consider that the presumption may be rebutted as the relationship is one of employer and employee and so commercial in nature.

Identify that Shelley is carrying out a public duty, and is probably not going beyond that duty, and so gives no consideration for the promise of the extra money.

Credit any suggestion that Shelly may be working for a private company and so is not performing a public duty. In this case she is accepting payment from a third party (Scott) for performing her contractual duty with her employer and so may be providing consideration, as in *Pau On v Lau Yiu Long*.

Credit any relevant discussion of whether Shelley or Lewis's consideration is past.

Credit any discussion of whether the outcome in these cases is satisfactory; for example should the rules on consideration stand in the way of enforcing a promise which appears to have legal intention to be binding?

### **Assessment Objective 3 (5 marks)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 5 Rosie, a builder, contracts with Erin to build an extension to her house. On 1<sup>st</sup> February they agree a price and a start date of 8<sup>th</sup> March. On 1<sup>st</sup> March Rosie sends Erin a full set of written terms, these include:

- (1) Rosie does not accept any liability for any loss or damage, however caused, and;
- (2) Rosie has the right to start the work at any time.

Rosie eventually starts the work on 8<sup>th</sup> April. Shortly after starting the job Rosie drills through a water pipe and causes flooding to the downstairs of the house. She also leaves an electric cable exposed, which gives Erin an electric shock. Erin asks for compensation from Rosie for the damage, the electric shock and the late start but Rosie says she has no liability for any of these things.

Advise Rosie whether she can rely on the exclusion clause in relation to any of these claims.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Explain principles of incorporating terms into the contract, that they must be available before the offer is accepted, *Thornton v Shoe Lane Parking*.

Explain principles of interpretation of exclusion clauses, that they must be clear and unambiguous, *Dorset v Southern Felt Roofing*; *Photo Production v Securicor*.

Discuss regulation under Unfair Contract Terms Act 1977:

S.2(1) terms excluding liability for negligence liability causing death or injury being void.

S.2(2) terms excluding liability for negligence causing other kinds of loss being subject to the requirement of reasonableness.

S.3(1) terms excluding liability for breach of contract in a consumer contract being subject to the requirement of reasonableness.

Explain the principles used by the court to determine reasonableness; availability of insurance, knowledge of the term, bargaining power, *Smith v Bush*.

Explain regulation under the unfair Terms in Consumer Contract Regulations, some terms being made unenforceable if they contravene the general principles of the act or are included in the schedule to the act.

Credit should be given for discussion of the implied term that services are carried out with reasonable care and skill, Supply of Goods and Services Act, but this is not required for full marks.

**Assessment Objective 2 (20 marks)**

Identify the written terms as an exclusion clause.

Consider whether the terms were incorporated into the contract, here the contract may well have been made during the initial meeting and so any further terms would not have any effect.

**The electric shock**

Consider whether the term is explicit enough to cover negligence liability, probably not as it does not state negligence or any other word meaning negligence, as in *Dorset v Southern Felt Roofing*.

Explain that term 1 is void in relation to negligence causing personal injury and so Erin can sue Rosie for the electric shock under UCTA Section 2(1).

**The flooding**

Explain that term 2 is subject to a requirement that it is reasonable in relation to the flooding, here it may be reasonable for Rosie to have insurance against damage to client's houses, as in *Smith v Bush*.

**The late start to the work**

Consider that term 2 may be subject to a requirement that it is reasonable as it purports to protect Rosie from liability for breach of contract. Alternatively consider that the term is probably unenforceable under the Unfair Terms in Consumer Contracts regulations as it takes rights away from Erin without justification.

Credit any discussion of whether the outcome in these cases is satisfactory; for example is it reasonable for a tradesman like Rosie to exclude liability in any circumstances as she is providing a professional service?

**Assessment Objective 3 (5 marks)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 6 Gill and Sanjay are married and live in a large house which they jointly own. Gill is the principal earner having a very good job as an accountant. It is decided that Sanjay's elderly parents should live with them as they are starting to have difficulties looking after themselves. Sanjay's parents decide to make a large payment which considerably reduces the mortgage on the house in exchange for living there. They think that this will give them the care and protection they want in their old age. No documents are ever signed.

Gill persuades Sanjay to sign a document for an investment loan using the house as security. He knows that it is for an investment but does not really understand the risks involved so he relies on his wife's knowledge and does not read the document properly.

Sanjay's parents know nothing of this transaction. The investment fails and the bank wishes to sell the house to pay off the loan.

Advise Sanjay and his parents whether the house can be sold.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Explain the doctrine of undue influence.

Explain the requirements of *Royal Bank of Scotland v Etridge*.

Explain the duty on the bank with regard to notice.

Explain reasonable steps.

Discuss the implication of *National Westminster Bank v Amin*.

Explain cases such as *William v Glynn Bank v Bowland*, *City of London Building Society v Flegg*.

Explain the doctrine of non est factum (not my deed), make reference to *Saunders v Anglia Building Society*, *Lloyds Bank v Waterhouse*.

Explain the rules being (1) whether the doctrine signed was radically different and (2) the issue of carelessness.

#### Assessment Objective 2 (20 marks)

Apply the doctrine of undue influence to the problem.

Consider whether Sanjay has been subject to undue influence.

Apply the principles in *Royal Bank of Scotland v Etridge* to Sanjay's situation.

Consider whether the bank is in breach of its duty to Sanjay.

Apply the principle in *Williams v Glynn's Bank v Bowland* and *City of London Building Society v Flegg* to Sanjay's parents.

Apply the principles of non est factum, consider whether the doctrine was radically different and whether Sanjay was careless, apply the case of *Saunders v Anglia Building Society*.

Reach a conclusion with regard to Sanjay and his parents' situation.

**Assessment Objective 3 (5 marks)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 7 Bob has seen a camera for sale on an Internet website for £20, he is aware that the normal selling price of that model is £300 and so he jumps at the chance to buy it so cheaply. He completes an order form and emails it to the company. A few moments later he receives an automatically generated email from the company thanking him for his order.

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

**Statement A:** Bob and the company have completed offer and acceptance, when Bob receives the automatically generated email, and made a binding contract.

**Statement B:** The camera being placed on the website is a unilateral offer that is accepted by the conduct of Bob emailing an order form.

**Statement C:** Even if Bob is aware that the company have made a mistake he is still entitled to accept the offer and make a binding contract.

**Statement D:** If Bob makes a contract without realising the mistake of the seller, the law of equity will provide a remedy for this mistake and correct the price to what it should normally be.

[20]

	<b>AO2</b>
<b>Level 5</b>	<b>17 - 20</b>
<b>Level 4</b>	<b>13 – 16</b>
<b>Level 3</b>	<b>9 – 12</b>
<b>Level 2</b>	<b>5 – 8</b>
<b>Level 1</b>	<b>1 – 4</b>

Potential answers **MAY**:

**Statement A:** Bob and the company have completed offer and acceptance, when Bob receives the automatically generated email, and made a binding contract.

- Reason that goods on a website are usually an invitation to treat.
- Reason that Bob has made a bilateral offer to buy the goods.
- Reason that the automatically generated email is unlikely to amount to an acceptance, either on the wording given here or following the practice of most Internet traders.
- Conclude that no contract has been made until formal acceptance of Bob's offer is made by the website company.

**Statement B:** The camera being placed on the website is a unilateral offer that is accepted by the conduct of Bob emailing an order form.

- Reason that a unilateral offer is one where the other person must complete some sort of conduct in order to accept.
- Reason that if goods on a website were offers there would be a risk that they would be inundated with offers that they could not meet.
- Reason that the website would have had to clearly state that the goods were being offered.
- Conclude that Bob did not accept an offer merely by placing an order.



**Statement C: Even if Bob is aware that the company have made a mistake he is still entitled to accept the offer and make a binding contract.**

- Reason that where one party knows that the other has made a mistake, and yet accepts the offer the other has made, the contract will be void.
- Conclude that Bob is not entitled to accept an offer that he knows has been mistakenly made.
- Credit any relevant comments on the requirement that each side is only required to provide sufficient consideration to a contract.

**Statement D: If Bob makes a contract without realising the mistake of the seller, the law of equity will provide a remedy for this mistake and correct the price to what it should normally be.**

- Reason that the remedy of rescission on terms, whereby the price will be corrected to an appropriate amount, has now been disapproved of and is unlikely to be applied by the courts.
- Reason that where a contract is not void at common law it will not be affected by the law of equity either.
- Conclude that if Bob makes a contract without realising the sellers have made a mistake the price will not be corrected by equity.

- 8 Barbara has purchased a ticket for an opera performance; she has also booked a taxi to take her there. The main star of the opera is Juliano, a world famous singer, who has just flown in from Italy. Juliano is to be paid all his fee for singing on the night of the performance. On the night of the performance there is a fire in the building next to the opera house and the police close the street, preventing the performance from going ahead.

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

**Statement A:** The opera company would not be liable to Barbara for compensation as the performance would have been frustrated.

**Statement B:** The taxi company are still entitled to the fare they would have expected if the opera had gone ahead.

**Statement C:** Juliano is entitled to claim his lost expenses from the opera company as he has paid for an expensive hotel and a private jet to get there.

**Statement D:** Barbara is not entitled to a refund of the price of her ticket.

[20]

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

Potential answers **MAY**:

**Statement A:** The opera company would not be liable to Barbara for compensation as the performance would have been frustrated.

- Reason that a contract may be frustrated when it is illegal to perform it or where it would be impossible to perform it.
- Reason that both circumstances could possibly apply to the facts of this question.
- Reason that when a contract is frustrated the parties are relieved of any further obligation to perform it or pay compensation for non-performance.
- Conclude that the contract is frustrated and so the opera company would not be liable to pay Barbara compensation.

**Statement B: The taxi company are still entitled to the fare they would have expected if the opera had gone ahead.**

- Reason that where there is a radical change of circumstances a contract may be frustrated.
- Reason that when a contract is frustrated neither side has any future liability to pay for performance of the contract.
- **Either** conclude that the contract would have been frustrated, as performance was directly linked to the opera going ahead, and so there is no liability to pay for the taxi.
- **Or** conclude that the taxi contract was not dependant upon the opera, and so was not frustrated, and there is still liability to pay for the taxi fare.

**Statement C: Juliano is entitled to claim his lost expenses from the opera company as he has paid for an expensive hotel and a private jet to get there.**

- Reason that where a contract has been frustrated a party may be able to reclaim just expenses as a deduction from any advance payment that the other side has made.
- Reason that in this case the opera company had made no advance payment.
- Conclude that Juliano is not able to reclaim any of his lost expenses.

**Statement D: Barbara is not entitled to a refund of the price of her ticket.**

- Reason that if the contract has been frustrated a party who has paid some money before the frustration is entitled to reclaim their money minus a just amount for expenses incurred by the other party.
- Reason that in this case Barbara has paid money but received no benefit before the frustrating event.
- Conclude that she is entitled to her money back minus a possible claim by the opera company for just expenses.

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



## **G146: Law of Contract Special Study**

This mark scheme must be used in conjunction with the Advanced GCE Law levels of assessment.

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

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

- 1 Discuss the ways in which *Glasbrook Bros v Glamorgan County Council* [Source 8 page 6 Special Study Materials] developed the law on consideration. [12]

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

Potential answers **MAY**:

### Assessment Objective 2

Discuss the major issue in the case: the colliery had requested extra cover from the police during a strike by miners, agreed to pay for the extra cover but then refused to pay;  
Discuss the reasoning offered by the colliery – that the police had done nothing more than their public duty so had provided no consideration for the fresh promise;

Discuss the contribution made by the case to the rules on consideration – extended the principle in *Hartley v Ponsonby* (that where something additional is added to an existing contractual duty that this provides consideration for a fresh agreement) to existing public duties;

Discuss the reasoning of the court:

- The duty owed by the police was to provide efficient protection to the colliery;
- The colliery asked for a specific form of protection – while the police thought that the flying column was sufficient the colliery wanted the garrison;
- So the colliery should be bound to pay for the extra protection;
- They had provided good consideration in return for the promise to pay over and above their public duty.

Discuss the case as an exception to the rule in *Collins v Godefroy*;

Link to any other relevant case eg *Stilk v Myrick*.

Make any other relevant comment.

- 2 In Source 4 [page 3 lines 1-3 Special Study Materials] the author states that *'Although a nominal consideration will suffice at law, there are cases in which the act of forbearance, promised or performed, is of such a trifling character that it becomes doubtful whether it can be regarded as consideration at all.'*

Discuss the extent to which judges, in developing the rules on consideration, have been prepared to accept 'nominal consideration' and to avoid accepting things of 'a trifling character'. [30]

Mark Levels		AO1	AO2
Level 5	25-30	14-16	13-14
Level 4	19-24	11-13	10-12
Level 3	13-18	8-10	7-9
Level 2	7-12	5-7	4-6
Level 1	1-6	1-4	1-3

Potential answers **MAY**:

### Assessment Objective 1

Identify the original definition of consideration – some benefit moving from one party and some detriment suffered by the other party *Currie v Misa*;

Identify the modern definition from *Dunlop v Selfridge* and based on exchange – 'an act of forbearance, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable';

Explain that consideration need not be adequate (according to the ordinary dictionary definition of the word) *Thomas v Thomas*;

Explain that the consideration must be sufficient – a legal term meaning:

- Real *White v Bluett*;
- Tangible *Ward v Byham*;
- Of value in the eyes of the law *Chappell v Nestle*.

Credit any reference to Lord Somervell's point in *Chappell v Nestle* that "A peppercorn does not cease to be good consideration if it is established that the promisee does not like pepper and will throw away the corn." So that even very little can amount to consideration;

Explain that consideration must be something that is passed from the promisee *Tweddle v Atkinson*;

Credit any explanation that the consideration must come after rather than precede the agreement *Roscorla v Thomas*, *Re McArdle*;

Explain that merely completing an existing contractual obligation is insufficient to be consideration for a fresh agreement *Stilk v Myrick*.



**Assessment Objective 2**

Discuss the fact that original definitions of consideration focused on a benefit/detriment relationship, which was itself an inadequate definition because it failed to take account of the realities of contractual relationships;

Discuss the broader character of the modern definition based on exchange;

Discuss the fact that the consideration need not be adequate – in other words the courts have nothing to do with policing the quality of the bargain only whether a bargain actually exists or not;

Discuss those situations where the courts have been unprepared to accept that consideration exists i.e. because what is offered is too intangible or lacks any meaningful value *White v Bluett*;

Discuss the many situations in which the court accepts as consideration things that appear not to be real or tangible or seem to lack meaningful value:

- Emotional concepts *Ward v Byham*;
- Ancillary products that would be destroyed anyway *Chappell v Nestle*;
- Free gifts *Esso Petroleum Co. Ltd v Commissioners of Customs and Excise*;
- Commercial integrity *Alliance Bank v Broom*;
- Extra benefit *Williams v Roffey Bros & Nicholls Contractors*.

Discuss that policy was also a factor for accepting the consideration in these cases;

Discuss the reasons behind the basic rule in *Stilk v Myrick* – that merely performing an existing contractual obligation is actually providing no consideration;

Discuss the bending of the principle in the Privy Council cases of *Pao On v Lau Yiu Long* and *The Eurymedon* and the justifications given;

Discuss the problems caused by consideration and offer and acceptance by Lord Wilberforce in *The Eurymedon*;

Consider the very 'intangible' character of the extra benefit identified as consideration in *Williams v Roffey* and whether this has anything to do with exchange set against the justifications of ensuring commercial efficacy.

- 3 Discuss whether or not good consideration could be identified in each of the following situations.
- (a) Hewel is researching for an article in a modern history journal. Hewel contacts Idris, a retired history professor, and interviews him. Hewel is so pleased with the detailed information that he receives from Idris that he later phones Idris and promises to pay Idris £200. In fact Hewel never does pay Idris the money. (10)
- (b) Jose contracts with Keybooks in January 2007 to write a new textbook and submit the manuscript by December 2007 for the book to be published in March 2008. Jose is to be paid £1,000 under the contract. By October 2007 Jose has only written half of the book. Knowing that Largeprint has a rival textbook due in March 2008 and that Keybooks will lose sales if their book is not out at the same time, Keybooks promises to pay Jose an extra £1,000 if he gets the book finished by December. Jose does so but Keybooks refuses to pay Jose the extra £1,000. (10)
- (c) Malik edits a law magazine for New Publishers and is paid £500 per issue. Each monthly issue includes twenty five feature articles. New Publishers decides that for the December issue it will accept all thirty articles that have been submitted and produce a larger issue. New Publishers promise to pay Malik an extra £100 but in fact fail to pay him any extra. (10)

[30]

Mark Levels		AO1	AO2	a) b) c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Potential answers **MAY**:**Assessment Objective 1**Define consideration *Dunlop v Selfridge*;Explain the rule on past consideration *Re McArdle*, *Roscorla v Thomas*;Explain the basic exceptions to the rule where there is a request with an implied promise to pay *Lampleigh v Braithwait* and where expertise is sought *Re Casey's Patent*;Explain the basic rule that performance of an existing duty cannot be consideration for a fresh promise *Stilk v Myrick*;Explain also the exception where something extra is done or given *Hartley v Ponsonby*;Explain also that there can be good consideration where the other party receives an extra benefit *Williams v Roffey Bros & Nichols*;

Use any other relevant cases in illustration.

**Assessment Objective 2**

In the case of a):

- Discuss that consideration is past here *Re McArdle* and the usual rule is that past consideration is no consideration so Hewel would not be obliged to pay Idris;
- Discuss the application of the exception to the past consideration rule in *Lampleigh v Braithwait*;
- Discuss whether there is good consideration because the activity followed a request for the service;
- Discuss the extension of the principle in *Re Casey's Patents* – is there an implied promise to pay because of Idris' professional expertise.

In the case of b):

- Identify that Jose is in fact doing no more than he was already bound to do under his existing contract;
- Discuss the application of the rule in *Stilk v Myrick* – merely performing an existing obligation cannot be consideration for a fresh promise;
- Discuss whether or not the rule from *Williams v Roffey Bros & Nicholls (Contractors)* can be applied ie whether Keybooks gains an extra benefit from Jose's promise to complete his contract on time
- Discuss whether the chance of competing with Largeprint that would otherwise be lost would be classed as an extra benefit.

In the case of c):

- Identify that Malik is already in a contract with New Publishers and has reached a new agreement;
- Discuss whether the principle in *Stilk v Myrick* applies in the circumstances;
- Discuss whether Malik has done enough extra or different to his original contract to come within the rule in *Hartley v Ponsonby*.

**Assessment Objective 3****[8]**

For the paper as a whole:

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

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



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



## G147: Law of Torts

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

When using the mark scheme the points made are merely those that a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all, will receive no marks.

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

- 1 Discuss the extent to which the defences of *volenti non fit injuria* (voluntary assumption of risk) and contributory negligence are fair to both claimant and defendant. [50]

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

Potential answers **MAY**:

### Assessment Objective 1

[25]

Explain the defence of *volenti non fit injuria* – complete defence when, although the defendant has been negligent and caused damage to the claimant, the claimant has voluntarily exposed himself to the risk of harm;

Explain the essential elements of the defence:

- The claimant exercised free choice in accepting the risk *Smith v Baker*;
- The claimant understood the exact nature of the risk *Stermer v Lawson*;
- The claimant voluntarily accepted the risk *ICI v Shatwell*.

Explain the application of the defence in a sporting context – injury occurred within the rules of the game – compare *Simms v Leigh RFC* and *Condon v Basi*;

Explain the application of the defence in a medical context – patient must consent to all treatment *Re T*, and must be made aware of risk in broad terms *Chatterton v Gerson*, but emergency treatment may be an exception *Leigh v Gladstone*;

Explain the defence of contributory negligence – partial defence under Law Reform (Contributory Negligence) Act 1945 reducing damages by the extent to which the claimant is responsible for his own harm;

Explain the essential elements of the defence:

- Claimant failed to take reasonable care for his own safety *Jones v Livox Quarries*;
- This failure to take care was a cause of the harm suffered *Sayers v Harlow UDC*;

Explain the slightly different approach in emergencies *Jones v Boyce*;

Explain the application of the defence in road traffic accidents *Froom v Butcher and Owens v Brimmell*;

Recognise the technical possibility of a 100% reduction in damages *Jayes v IMI (Kynoch)*.

### Assessment Objective 2

[20]

Compare the effects of the defences – *volenti* is a complete defence, contributory negligence is a partial defence only – on the face of it *volenti* would appear to be fair to the defendant and contributory negligence, since damages are reduced to the extent that the claimant is responsible for his own harm appears to be fair to both parties;

Discuss the fact that before the 1945 Act the effects were the same for both defences, both were complete defences – so contributory negligence was definitely unfair to the claimant at that point;

Compare the essential elements – *volenti* is the free acceptance of a known risk, contributory merely means that the claimant failed to take care of his own safety and partially caused the harm;

Identify that there is a more common approach between the two defences where the claimant is a child *Gough v Thorne*;

Discuss whether the existence of two defences causes confusion and whether reform is needed;



Discuss the possible confusions caused by both defences being referred to as consent to harm;

Discuss the difficulty of succeeding under *volenti*;

Discuss whether or not the approach of apportioning blame, as in contributory negligence is a more fair approach;

Discuss the difficulties associated with apportioning blame and whether on that basis contributory negligence actually produces a fair result;

Discuss the fact that *volenti* in any case has been used much less since the passing of the 1945 Act.

**Assessment Objective 3**

**[5]**

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 2 'Since the development of the principle in *Lister v Hesley Hall* the doctrine of vicarious liability has become even more unfair to employers.'

Discuss the way in which the courts apply the rules of vicarious liability in the light of the above statement. [50]

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

Potential answers **MAY**:

### Assessment Objective 1

[25]

Explain the basic principle of vicarious liability – one party (usually an employer) is fixed with liability for the torts (and sometimes the crimes) of another party (usually an employee);

Explain the main rules for imposing liability:

- tortfeasor must be an employee;
- tort must occur in the course of employment.

Explain the basic tests for establishing that the tortfeasor is an employee:

- control test *Mersey Docks & Harbour Board v Coggins & Griffiths*;
- integration test *Stevenson, Jordan & Harrison v Macdonald & Evans*;
- economic reality (multiple) test *Ready Mixed Concrete* case.

Explain the circumstances where the tort falls within the course of employment:

- authorised acts *Poland v Parr*;
- acting in an unauthorised manner *Limpus v London General Omnibus*;
- or in a purely careless manner *Century Insurance v Northern Ireland Transport Board*;
- where the employer benefits from the tort *Rose v Plenty*;
- paid travelling time *Smith v Stages*.

Explain circumstances that are not within the course of employment:

- activities not within the scope of employment *Beard v London General Omnibus*;
- a 'frolic on his own' *Hilton v Thomas Burton*;
- giving unauthorised lifts *Twine v Beans Express*.

Credit any reference to liability for the crimes of employees where these are:

- within the authorised scope of employment *Lloyd v Grace Smith*;
- have a close enough connection with the employment *Lister v Hesley Hall*, *Dubai Aluminium v Salaam*, *Mattis v Pollock*.

Credit also any reference to the 'loaned car' cases *Morgans v Launchbury*;

Use any other relevant cases.

**Assessment Objective 2****[20]**

Discuss the basic justifications for imposing vicarious liability:

- employer benefits from work so should be responsible;
- if employer responsible for work then should ensure that it is carried out safely;
- employer can more easily bear any loss than the employee;
- the rule thus ensures that the claimant can be compensated;
- employer in any case is subject to compulsory insurance – so pays only the premiums not the actual damages;
- increased premiums may act as a deterrent to poor employment practices;
- the employer is able to discipline employees for unsafe practices;
- the employee may in any case be a 'man of straw'.

Discuss the ways in which imposing vicarious liability may be considered unfair:

- it is a contradiction of the basic fault principle;
- the employer may still be fixed with liability even though he has expressly prohibited the unsafe practice;
- the rule may operate inconsistently or arbitrarily e.g. compare *Rose v Plenty* with *Twine v Beans Express*;
- the tort will often have occurred before the employer realises that the employee behaves badly and should be disciplined;
- the employer may be liable even for mere carelessness on the employee's part *Century Insurance*;
- Consider the potential fairness or unfairness of the rule in *Lister v Hesley Hall* and how it has been applied in subsequent cases *Dubai Aluminium v Salaam*, *Mattis v Pollock*;
- Credit any reference to the argument that the 'close connection' test may have replaced the 'Salmond' test or the argument that it only applies to the 'most heinous of activities of the employee'.

Credit any discussion of the tenuous justification for applying the rule in the 'loaned car' cases.

**Assessment Objective 3****[5]**

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 Discuss the extent to which the range of defences available under the Animals Act 1971 limits the effectiveness of an otherwise very effective tort. [50]

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

Potential answers **MAY**:

### Assessment Objective 1

[25]

Explain that a keeper of an animal may be liable under s6(3) – either the owner of the animal or the head of a household in which a person under 16 is the owner;

Define dangerous species under the Act:

- By s6(2) – an animal not commonly domesticated in UK & with characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe;
- Dangerous is a question of fact in each case *Behrens v Bertram Mills Circus*;
- By s2(1) the keeper is strictly liable for any animal defined as dangerous;
- By s5 the only defences are *volenti* or where the damage was caused by the claimant's own fault.

Define where liability exists for non-dangerous species under s2(2) of the Act:

- The keeper is liable if:
  - (a) The damage is of a kind the animal is likely to cause unless restrained or if caused by the animal is likely to be severe; and
  - (b) The likelihood or severity of damage is due to abnormal characteristics of the individual animal or species or of species at specific times; and
  - (c) The keeper knows of the characteristics.
- Identify that all three parts of s2(2) must be shown for liability;
- By s2(2)(a) 'likely' means possible rather than probable *Smith v Ainger* and 'severe' is a question of fact *Curtis v Betts*;
- By s2(2)(b) characteristic is abnormal if not common in other animals *Cummings v Grainger* and circumstances can include eg bitch looking after litter of pups – but can include even unforeseeable circumstances where the keeper is not at fault *Mirhavedy v Henley*;
- Explain that available defences include:
  - S5(1) – Damage due entirely to fault of victim *Sylvester v Chapman*;
  - S5(2) – Victim voluntarily accepted risk *Cummings v Grainger*;
  - S5(3) – Animal was either not kept for protection or if so then it was reasonable to do so;
  - S10 – Contributory negligence *Cummings v Grainger*.

Use any other relevant cases.

**Assessment Objective 2****[20]**

Discuss the fact that in the case of 'dangerous' animals liability is strict so that the keeper is liable for any damage and so the tort is effective in this respect;

Discuss the fact that the definition of dangerous may even include animals that are not actually dangerous *Tutin v Chipperfields*, *Behrens v Bertram Mills Circus* so that it ensures complete safety in the case of dangerous species;

Discuss the more restrictive rules on non-dangerous species – dependent on specific characteristics and knowledge of those characteristics so that eg 'the dog always gets the first bite free', although this may have been modified by *Mirvahedy v Henley*, but that the tort is generally less effective in the case of non-dangerous species;

Consider the broad definition of keeper – meaning that there is a greater chance of an action and in this respect the tort is effective;

Discuss the fact that there is no need for a link between the characteristics and the damage *Curtis*, *Jandrell v Gillett*, *Dhesi v West Midlands Police*;

Consider also the difficulty of distinguishing between permanent and temporary characteristics *Kite v Japp*, *Gloster v Greater Manchester Police*, *Curtis v Betts*;

Consider the position in relation to animals used for guard purposes *Cummings v Grainger*;

Discuss the possible impact of the defences on claims – and the extent to which this reduces the possibility of a successful claim even though the animal has caused damage

- S5(1) is perfectly fair and does not limit the effectiveness
- S5(2) may be argued either way
- S5(3) has the potential to be unfair
- S10 only reduces damages so liability is still possible.

**Assessment Objective 3****[5]**

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 4 Heantun Wanderers play a football match against Midwich Albion away at Midwich's stadium. After the game Jay, a Wanderers' player, goes for a shower. Jay is electrocuted and badly burned when he turns on the shower control. The shower has recently been installed by a local plumbing company.

Rob, a Wanderers' player, is looking for the toilet. Rob goes through a door with a sign on which reads, "No admittance other than to Midwich Albion ground staff." The room is in darkness as a light bulb has not been replaced. Rob treads on a rake which swings up breaking Rob's nose.

Rob's son Matthew, aged eight, who has attended the game to watch his father play, goes in search of his father. Matthew walks into the players' changing room and slips on the wet floor. Matthew is unhurt but his expensive watch is broken beyond repair as he falls.

Advise Jay, Rob and Matthew of any claims that they may make against Midwich Albion in occupiers' liability. [50]

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

Potential answers **MAY**:

#### Assessment Objective 1 [25]

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

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

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

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

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

Identify the common duty of care under OLA 57 s2(1);

Identify the scope of the duty under OLA 57 s2(2) – to keep the visitor safe for the purposes for which he is invited to enter;

Identify also that the occupier can exclude or modify the duty but consider the effect of UCTA s2(1);

Explain that an occupier can be relieved of liability under s2(4) if an independent contractor is at fault for the damage – but it must be reasonable to hire one *Haseldine v Daw*; a competent contractor must be chosen *Ferguson v Welsh*; and the work inspected if it is possible *Haseldine v Daw*, *Woodward v Mayor of Hastings*;

Identify that a visitor going beyond the terms of his entry may become a trespasser *The Calgarth* – so may then be subject to the '84 Act;

Explain that a lesser duty is owed under the '84 Act – covers injury but not property *Tomlinson v Congleton BC* (credit any reference to *B R Board v Herrington*);

Explain the basis of liability under s1(3) – has reason to believe there may be trespasser, is aware of danger, and ought reasonably to offer some protection;

Identify the effects of warnings as a defence under s1(5) *Westwood v Post Office*;

Identify the possibility of *volenti* under s1(6) *Ratcliffe v McConnell*;

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

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

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

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

### Assessment Objective 2

[20]

In the case of Jay:

- Identify Jay as a lawful visitor – he has been invited to attend to play in the football match and if the match involves professional teams then there would be a contractual right to enter;
- Identify that Midwich Albion has control and is identifiable as an occupier;
- Identify also that the football stadium would easily fall within the definition of premises – so Midwich Albion owes a duty to Jay safe for the purpose of his visit which would include showering after the game;
- Discuss whether or not Midwich Albion can avoid liability if Jay's injury is the fault of the plumber – it is reasonable to hire contractors for a skilled task – the question is whether competent contractors have been hired and whether it was reasonable to inspect their work – Midwich Albion officials could at least have switched on the shower beforehand themselves – so Midwich Albion may be liable – if not the plumber will be in negligence.

In the case of Rob:

- Identify that Rob entered the stadium as a lawful visitor but has exceeded his permission by entering an unauthorised place – so falls under 1984 Act;
- Discuss whether or not the sign on the door amounts to a warning since a warning is effective in the case of an adult trespasser – it is unlikely since the sign gives no indication of any dangers;
- Apply the three aspects of s1(3);
- Discuss whether Midwich Albion can claim contributory negligence;
- Discuss the effect of the Law Reform (Contributory Negligence) Act 1945 on any claim by Rob;
- Identify that *volenti* is unlikely to apply in the circumstances since Rob is unaware of any risks so could not have freely accepted them.

In the case of Matthew:

- Identify that Matthew entered the stadium as a lawful visitor but may have exceeded his legitimate purpose when he entered the players' changing room;
- Discuss the fact that Rob would be unable to supervise Matthew during the game or while he was getting washed and changed afterwards;
- Discuss the fact that if Midwich Albion invited Matthew to the game then they may have assumed responsibility for him – and to not supervise him may constitute an allurement when he goes looking for his father;
- Discuss the fact that, if Matthew has exceeded his lawful purpose then there would be no liability for the damage to his watch.

### Assessment Objective 3

[5]

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 5 Twin sisters, Jenny and Kate, and their friend Leanne go to RaveOn Night Club. A fire starts and, owing to the negligence of the night club, only one narrow exit is unlocked. When the fire starts Kate is already outside taking a breath of fresh air. Jenny is overcome by the smoke while she and Leanne are trying to get out. Martin, a fire officer, who is also Jenny's and Kate's father, brings both girls out of the blazing club. Leanne is still conscious and unharmed but Jenny suffers severe burns and dies before Martin can get her outside. Kate becomes hysterical when she sees her sister's body brought out of the club by her father. Martin telephones his wife, Natalie, to tell her what has happened. Natalie goes to the hospital immediately and insists on seeing her daughter Jenny's body in the mortuary. Kate, Leanne and Natalie are all now suffering from post-traumatic stress disorder. Martin is grief stricken and is unable to go to work.

Advise Kate, Leanne, Martin and Natalie whether each of them will be able to bring successful claims for nervous shock (psychiatric damage) against RaveOn Night Club. [50]

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

Potential answers **MAY**:

### Assessment Objective 1

[25]

Define nervous shock (psychiatric injury) – requires a recognised psychiatric injury caused by the defendant's negligence (PTSD is sufficient *Alcock*, but emotional reactions such as insomnia are not *Reilly v Merseyside HA*) and nor is grief unless it is profound grief linked to severe depression *Vernon v Boseley*;

Distinguish between primary victims and secondary victims:

- A primary victim is one present at the scene and at risk of injury *Dulieu v White* or someone who is present at the scene and while not physically injured is at risk of harm and suffers foreseeable harm *Page v Smith*;
- A secondary victim is one who witnessed the single shocking event causing risk of injury or injury to a related primary victim *Hambrook v Stokes*.

Define the basic rules on secondary victims from *Alcock*:

- A close tie of love and affection to the primary victim *Hambrook v Stokes* (presumed in the case of husbands and wives and parents and children – but all other relationships must prove a sufficiently close tie)
- Sufficient proximity in time and space to the event or its immediate aftermath *McLoughlin v O'Brian* (restricted to two hours in *Alcock*)
- The claimant witnessed the accident or immediate aftermath with his or her own unaided senses *Alcock*
- The claimant is of reasonable phlegm and fortitude

Explain that in either case the injury must be sustained as a result of a single shocking event *Sion v Hampstead*;

Explain that the injury must also be directly caused by witnessing the single shocking event *Calascione v Dixon*;

Explain that mere 'bystanders' are unable to claim even though they may suffer psychiatric harm *McFarlane v EE Caledonia*, *Rough & Robertson v Forth Road Bridge* – and even though they are close friends of the primary victim *Duncan v British Coal*;



Explain that a rescuer can only claim if a he or she is a genuine primary victim *White v Chief Constable of South Yorkshire* – or a genuine secondary victim within the *Alcock* criteria *Greatorex v Greatorex*.  
Use any other relevant cases.

**Assessment Objective 2****[20]**

Identify that there is negligence by RaveOn Night Club and that this does lead to a single traumatic event;

In the case of Kate:

- Identify that Kate suffers a recognised psychiatric injury caused by a single traumatic event;
- Identify that Kate will be unable to claim as a primary victim (she was outside the club during the fire and its therefore unlikely that she was at risk of foreseeable harm *Page v Smith*);
- Identify that Kate will need to claim as a secondary victim according to the criteria in *McLoughlin* and *Alcock*;
- Consider that Kate satisfies the final two criteria ie proximity in time and space and witnessing or hearing the event with her own unaided senses;
- Consider also that Kate will need to prove a close tie of love and affection to Jenny and as a sister may fail under *Alcock* – but credit any reference to the sisters being twins and whether this makes a difference;
- Credit any reference to Kate being classed as a bystander *Duncan v British Coal*.

In the case of Leanne:

- Identify that Leanne suffers a recognised psychiatric injury caused by a single traumatic event;
- Consider whether Leanne will be able to claim as a primary victim (she was present inside the club and even though she was physically unharmed she was at risk of foreseeable harm *Page v Smith*);
- Credit any comment on the difficulties that Leanne would have in bringing a claim as a secondary victim (as a friend she would generally rank as a bystander *Duncan v British Coal*).

In the case of Martin:

- Identify Martin as a professional rescuer;
- Explain that, following *White* rescuers would now generally be classed as secondary victims but may still succeed if able to show that they are genuine primary victims ie at risk themselves (as the fire is still burning while Martin rescues the girls this may be the case *Chadwick*);
- Consider whether alternatively Martin has a claim as a secondary victim (he has a presumed close tie with Jenny as her parent and satisfies the other two *Alcock* criteria);
- Identify, however, that it is unlikely that Martin suffers a recognised psychiatric injury since grief is not accepted unless it is pathological and linked to severe depression *Vernon v Boseley*.

In the case of Natalie:

- Identify that Natalie suffers a recognised psychiatric injury;
- Identify as a secondary victim;
- Consider that Natalie passes the first *Alcock* test as a close tie is presumed in the case of parents and children;
- Consider the similarity with *McLoughlin v O'Brien* – Natalie should fall within the immediate aftermath test;
- Consider, however, that her injury is caused by seeing Jenny's body in the mortuary not through RaveOn's negligent omission – and comment on the similarity with *Taylor v Somerset HA*.

**Assessment Objective 3****[5]**

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

- 6 The University of Midhampton Science Department occupies the ground floor of a building. Oddbridge College Electronics Department occupies the first floor. A fire is accidentally started during an electronics class on the first floor and escapes to the ground floor. The fire is put out but causes thousands of pounds worth of damage to University of Midhampton equipment. University staff members carry several containers of toxic chemicals outside to the back of the building during the fire and these are left outside overnight. Some Oddbridge students take the lids off these containers and knock them over. The chemicals seep from the containers and run along the ground escaping into the next door premises which are downhill from the building. These premises are occupied by Norton Riding School. Several of the horses come into contact with the chemicals and have to be killed.

Discuss the potential liability of Oddbridge College to the University of Midhampton and of the University of Midhampton to Norton Riding School, including any available defences. [50]

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

Potential answers **MAY**:

#### Assessment Objective 1

[25]

Define the tort of *Rylands v Fletcher* – liability for a bringing onto land and accumulation of a thing likely to cause mischief if it escapes, amounting to a non-natural use of land, and the thing does escape causing damage;

Explain the various elements:

- A bringing on and accumulation *Rylands v Fletcher*, but there is no liability for accumulations caused naturally *Ellison v MOD*, and no liability for natural accumulations *Giles v Walker*;
- Of a thing likely to cause mischief if it escapes *Musgrove v Pandelis* – but the thing does not need to be inherently dangerous *Shiffman v The Order of the Hospital of St John of Jerusalem*;
- Involving a non-natural use *Cambridge Water v Eastern Counties Leather* (some things are always non-natural use), *Rickards v Lothian*, *Perry v Kendrick's Transport* (others may depend on whether the context is domestic or commercial), *Rylands v Fletcher* (or upon the volume of the accumulation);
- Escape – compare *Read v Lyons* (an escape from land within the defendant's control to land not in his control) with *British Celanese v Hunt* (an escape from circumstances within the defendant's control to circumstances over which he has no control) - (note also that it is not the thing itself which has to escape *Miles v Forest Rock Granite*);
- Harm must be foreseeable *Cambridge Water v Eastern Counties Leather plc* (approved in *Transco plc v Stockport MBC*).

Credit any reference to the Prevention of Fires (Metropolis) Act 1774;

Explain the available defences:

- Consent *Peters v Prince of Wales Theatre*;
- Common benefit *Dunne v North Western Gas*;
- Act of a stranger *Perry v Kendrick's Transport*;
- Statutory Authority *Green v Chelsea Waterworks*;
- Credit any reference to inevitable accident *Stanley v Powell*.

**Assessment Objective 2****[20]**

Identify that the problem involves the tort of *Rylands v Fletcher*;

In the case of Oddbridge College:

- Consider that there is a bringing onto land and accumulation of a thing likely to do mischief if it escapes – electricity;
- Discuss whether or not University of Midhampton can be a claimant – possibly under *Read v Lyons* but definitely under *British Celanese v Hunt*;
- Discuss whether there is a non-natural use – relate to commercial use *Transco plc v Stockport MBC*;
- Discuss also whether the harm is foreseeable in the circumstances – this seems probable *Cambridge Water, Transco*;
- Discuss whether the defences of consent or common benefit apply in the circumstances – since Oddbridge College is a public body statutory authority may also apply;
- Credit also any reference to inevitable accident since the fire starts accidentally.

In the case of the University of Midhampton:

- Consider that there is a bringing onto land and accumulation of a thing liable to cause mischief if it escapes – the toxic chemicals;
- Identify that Norton Riding School will be able to claim under the test in *Read v Lyons* and would be able to under the test in *British Celanese v Hunt* also;
- Discuss whether or not there is a non-natural use of land involved – *Cambridge Water* would seem to suggest that there is as storage of chemicals was said to always involve a non-natural use of land, and *Transco* would confirm this;
- Consider the issue of foreseeability – this depends on what test of remoteness is used but there would appear to be foreseeable harm;
- Discuss the possible defences – the only possibility here appears to be act of a stranger.

**Assessment Objective 3****[5]**

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 7 Tina, a keen animal rights activist, is walking along a country road and sees John and his son, Mark, fishing in the river. Tina leaves the road and, waving her walking stick at John, shouts, "Fish killer – I'd like to kill you!" Mark grabs Tina by her arm and slaps her face to make her be quiet. Tina has bruises on her arm for a week.

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

**Statement A:** Tina is liable in assault for waving her walking stick at John.

**Statement B:** Tina is liable in assault for shouting at John.

**Statement C:** Tina can sue John and Mark in battery for the bruises on her arms.

**Statement D:** Mark is liable for the false imprisonment of Tina.

[20]

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

Potential answers **MAY**:

### Assessment Objective 2

**Statement A:** Tina is liable in assault for waving her walking stick at John.

- Reason that this may be a potential assault as it is a threatening act
- Reason that Tina's act may directly cause John to fear an imminent battery
- Reason no harm or contact is needed if Tina's act is intentional
- Conclude that the statement is accurate.

**Statement B:** Tina is liable in assault for shouting at John.

- Reason that traditionally words alone were not an assault
- Reason that words can be enough if accompanied by gestures and now in criminal law words or even silence sufficient
- Reason Tina's act as intentional
- Conclude that the statement is accurate.

**Statement C:** Tina can sue John and Mark in battery for the bruises on her arms.

- Reason that grabbing hold of Tina and slapping her can be a battery
- Define battery as intentional, direct and unlawful physical contact
- Reason that direct contact is needed but there is no need for hostility
- Does Mark use reasonable physical force?
- Conclude that the statement may be accurate for the bruises.

**Statement D:** Mark is liable for the false imprisonment of Tina.

- Reason the need for an intentional and direct total restraint on Tina's liberty
- Reason that there is no action if there is a means of escape
- Reason that restraint needs to be total
- Conclude that the statement is not accurate.

- 8 Colin wants to buy a barn to convert into holiday cottages. He pays Karen, a qualified surveyor, to check on planning permission and survey the barn. Karen says everything is fine so Colin buys and converts the barn. The local council says Colin cannot rent out the cottages because he does not have the correct planning permission. Basic tests by the council's surveyors show the roof beams are rotten and expensive repairs are needed to make the cottages safe.

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

**Statement A:** Colin cannot claim from Karen for negligent misstatement as there is no special relationship.

**Statement B:** Karen is liable for negligent misstatement because Colin cannot rent out the cottages.

**Statement C:** Karen is not liable for negligent misstatement for repairs needed to make the cottages safe.

**Statement D:** Karen cannot avoid liability for negligent misstatement by saying that she did not think Colin was relying on her advice.

[20]

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

Potential answers **MAY**:

### Assessment Objective 2

**Statement A:** Colin cannot claim from Karen for negligent misstatement as there is no special relationship.

- Reason that a professional or business relationship has the potential to be a special relationship
- Karen is expected to give advice
- Karen is a specialist and is being paid to give a professional opinion
- Conclude that the statement is inaccurate.

**Statement B:** Karen is liable for negligent misstatement because Colin cannot rent out the cottages.

- Reason there is generally no liability for pure economic loss
- Reason the need to distinguish whether a negligent act or a negligent misstatement led to the loss
- Reason Colin's loss was due to Karen's report that the necessary planning permission was in place
- Conclude that the statement is accurate.

**Statement C: Karen is not liable for negligent misstatement for repairs needed to make the cottages safe.**

- Reason that Karen knows Colin's plans for the barn
- Reason that Karen was reasonably expected to know Colin would not have had the barn converted if he knew the roof was unsafe
- Reason that as a professional she should have completed basic and standard tests
- Conclude that the statement is inaccurate.

**Statement D: Karen cannot avoid liability for negligent misstatement by saying that she did not think Colin was relying on her advice.**

- Reason a special and contractual relationship as Colin paid Karen
- Karen had the specialist skills and knowledge required
- Reason Karen knew the purposes for which her advice was needed and it was reasonable to expect Colin to rely on it
- Conclude that the statement is accurate.





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



## G148: Law of Torts Special Study

This mark scheme must be used in conjunction with the Advanced GCE Law levels of assessment.

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

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

- 1 Discuss the ways in which *McLoughlin v O'Brian* [Source 3 and Source 4 pages 2 and 3 Special Study Materials] developed the law on secondary victims in nervous shock. [12]

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

Potential answers **MAY**:

### Assessment Objective 2

Discuss the key issue in the case: the claimant was not present at the scene of the event but saw her family at the hospital in essentially the same condition that she would have seen them at the scene;

Identify Mrs McLoughlin as a secondary victim;

Discuss the contribution made by the case to the law on secondary victims – would include a person present at the immediate aftermath of a single traumatic event;

Discuss the controls introduced by Lord Wilberforce – the law should take account of:

- The class of persons who should be recognised – those with a close tie of love and affection to a primary victim;
- The proximity of such persons to the accident – must be close in both time and space to the event or its immediate aftermath;
- The means by which the shock is caused – must witness the event or its immediate aftermath with own unaided senses (sight or hearing).

Discuss Lord Wilberforce's point that foreseeability of harm alone is insufficient to create a duty of care;

Discuss the policy reasons for not extending the scope of claims further – 'floodgates', unfair to defendants, evidential difficulties, for Parliament to extend;

Show development by linking to *any relevant case eg Dulieu v White, Alcock v Chief Constable of South Yorkshire*.

Make any other relevant comment.

- 2 In Source 5 [page 3 lines 10-14 Special Study Materials] the author states that “A further difficulty is the ‘floodgates’ problem. Ordinary physical damage caused by negligent conduct will by its nature be limited to those within the range of impact. Nervous shock is not so limited, as persons not within the range of impact may be affected. The courts have been conscious of this problem and imposed restrictions on those who can recover.”

Discuss the restrictions imposed by the courts on those who can claim for nervous shock in the light of the above statement. [30]

Mark Levels		AO1	AO2
Level 5	25-30	14-16	13-14
Level 4	19-24	11-13	10-12
Level 3	13-18	8-10	7-9
Level 2	7-12	5-7	4-6
Level 1	1-6	1-4	1-3

Potential answers **MAY**:

### Assessment Objective 1

Define nervous shock – a recognised psychiatric injury caused by a single traumatic event  
*Calascione v Dixon*;

Define primary victim:

- Someone present at the scene and at risk of foreseeable injury *Page v Smith*; or
- Someone present at the scene and suffering injury *Dulieu v White*.

Define secondary victim and the *Alcock* criteria:

- A person with a close tie of love and affection to the person injured in the accident;
- With sufficient proximity in time and space to the event or its immediate aftermath  
*McLoughlin v O'Brian*;
- Who also saw or heard the accident or its immediate aftermath with their own unaided senses *Alcock*.

Identify those who cannot claim:

- People not suffering a recognisable injury *Reilly v Merseyside HA*;
- People not within the area of impact *King v Phillips*;
- People not within the area of shock *Bourhill v Young*;
- Bystanders *McFarlane v EE Caledonia*;
- People without close ties to a primary victim *Duncan v British Coal*;
- People falling outside of the event or its immediate aftermath *McLoughlin v O'Brian*;
- People who are told of the event rather than witnessing it *Alcock*;
- Slow burn victims *Sion v Hampstead*.

Use any relevant cases.

**Assessment Objective 2**

Discuss the fact that originally the courts would not accept claims at all because of scepticism surrounding psychiatric injury and fear of opening the *floodgates* *Victoria Railway Commissioners v Coultas*;

Discuss the fact that initially liability was only towards primary victims *Dulieu v White*;

Discuss the fact that the development of liability towards secondary victims was restricted to those within the zone of impact to avoid 'floodgates' *King v Phillips*;

Discuss the fact that liability to primary victims is based on foreseeable harm (not necessarily psychiatric) and recognises the 'thin skull' rule *Page v Smith*;

Make any relevant comment on the limitations imposed on secondary victims eg:

- Narrowness with which the close tie of love and affection is interpreted *Alcock*;
- Close friends or colleagues cannot bring themselves within the definition *Duncan v British Coal*, and *Robertson and Rough v Forth Road Bridge Joint Board*;
- Restrictive definition of 'immediate aftermath' as applied in *Alcock* – but see the more liberal definition in *N E Glamorgan NHS Trust v Walters*, *W v Essex CC*;
- Comment on the discussion on TV Broadcasts in *Alcock*;
- Before *White* professional rescuers were treated more liberally than amateurs – compare *Frost* with *McFarlane v EE Caledonia*;
- Secondary victim must show psychiatric injury would foreseeably have been suffered by a person of reasonable phlegm and fortitude unlike primary victims;
- Credit any reference to any relevant ethical principles.

Discuss the limits of accepted injury or illness eg not claustrophobia *Reilly v Merseyside HA*, no account paid to excessive grief even though this may be long lasting *Tredget v Bexley* but has included 'pathological grief' *Vernon v Boseley*;

Discuss the narrow application of principles of causation *Sion v Hampstead HA* and *Calascione v Dixon*, and the refusal to merely accept a test of foreseeability;

Discuss inconsistent cases *Attia v British Gas*, *Owen v Liverpool Corporation*;

Discuss the significance of policy and the 'floodgates' argument as the only justifications for the limitations;

Discuss that the Law Commission has proposed a much less restrictive definition.

- 3 Harminder is in labour at the Ickborough County Hospital. Due to the negligence of the doctor carrying out a forceps delivery, Harminder's baby is born with severe head injuries, suffers massive brain damage and dies shortly after the birth.

Consider the possibility of each of the following succeeding in a claim against Ickborough County Hospital.

- (a) Jaspreet, Harminder's friend, was present at the birth and suffers severe depression as a result of seeing the baby's injuries. (10)
- (b) Kelly, a nurse, was called to give a blood transfusion to Harminder and suffers post-traumatic stress disorder after seeing the baby's injuries. (10)
- (c) Mandeep, Harminder's husband, is unavoidably out of the country on business at the time of the birth. He is told about the baby's death by telephone later that evening by Harminder and suffers grief as a result of the baby's death. (10)

[30 marks]

Mark Levels		AO1	AO2	a) b) c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

Define nervous shock – a legally recognised psychiatric injury caused by a single traumatic event;

Define recognised psychiatric injury – PTSD or severe depression but not eg grief or other normal emotions *Tredget v Bexley HA*, *Vernon v Boseley*;

Define secondary victim – present at the scene and fearing for the safety of the primary victim *Hambrook v Stokes*;

Identify the controls for successful claims by secondary victims – close tie of love and affection with primary victim, present at scene or immediate aftermath, witnessed with own unaided senses *Alcock v Chief Constable of South Yorkshire*;

Explain that friends are usually bystanders and not able to claim *Duncan v British Coal*, *Robertson and Rough v Forth Road Bridge Joint Board*;

Explain the rule on rescuers – traditionally presumed primary victims *Chadwick v BR Board* but now must be genuine primary or genuine secondary victim *White v Chief Constable of South Yorkshire*;

Use any relevant cases in illustration when applying the law to the problems.

**Assessment Objective 2**

In the case of a):

- Identify that Jaspreet is a secondary victim according to the criteria in *McLoughlin* and *Alcock* unless she can show that she was at risk (improbable here);
- Consider that she satisfies the final two criteria ie proximity in time and space and witnessing or hearing the event with her own unaided senses;
- But consider also that Jaspreet is likely to fail in not having what would be accepted as a close tie of love and affection, only being a friend *Duncan v British Coal*, *Robertson and Rough v Forth Road Bridge Joint Board*;
- Consider the fact that severe depression would probably otherwise be accepted as a recognised psychiatric illness for the purposes of a nervous shock claim.

In the case of b):

- Identify Kelly as a rescuer – traditionally able to recover for nervous shock *Chadwick v British Transport Commission*;
- Consider the fact that, following *White* Kelly would be unable to claim unless she could show that she was a genuine primary victim ie at risk herself – which appears improbable here;
- Comment on the fact that otherwise Kelly's claim could succeed because of the type of injury she suffered.

In the case of c):

- Identify that within the *Alcock* criteria Mandeep has a sufficiently close tie of love and affection with the baby (close tie presumed in the case of parents and children);
- Comment on the fact that he may nevertheless fail both on proximity – on the Wilberforce test in *McLoughlin* he is not present at the event or its immediate aftermath – and on hearing or seeing the event or its immediate aftermath;
- Clearly Mandeep will also fail on the type of injury – grief does not satisfy the definition of nervous shock *Tredget v Bexley Health Authority*.

**Assessment Objective 3****[8 marks]**

For the paper as a whole:

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

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





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



# Grade Thresholds

GCE Law H124/H524

January 2008 Examination Series

Unit		Maximum Mark	A	B	C	D	E	U
G141	Raw	120	93	83	73	63	53	0
	UMS	120	96	84	72	60	48	0
G142	Raw	60	49	44	39	34	29	0
	UMS	80	64	56	48	40	32	0
G143	Raw	120	93	82	71	60	50	0
	UMS	120	96	84	72	60	48	0
G144	Raw	80	66	59	52	45	39	0
	UMS	80	64	56	48	40	32	0
G145	Raw	120	93	82	71	60	50	0
	UMS	120	96	84	72	60	48	0
G146	Raw	80	66	59	52	45	39	0
	UMS	80	64	56	48	40	32	0
G147	Raw	120	93	82	71	60	50	0
	UMS	120	96	84	72	60	48	0
G148	Raw	80	66	59	52	45	39	0
	UMS	80	64	56	48	40	32	0

## Specification Aggregation Results

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

	Maximum Mark	A	B	C	D	E	U
H124	200	160	140	120	100	80	0

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

	A	B	C	D	E	U	Total Number of Candidates
H124	14.6	32.0	55.7	77.6	94.6	100	569

For a description of how UMS marks are calculated see:

[http://www.ocr.org.uk/learners/ums\\_results.html](http://www.ocr.org.uk/learners/ums_results.html)

Statistics are correct at the time of publication.

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

**OCR Customer Contact Centre**

**14 – 19 Qualifications (General)**

Telephone: 01223 553998

Facsimile: 01223 552627

Email: [general.qualifications@ocr.org.uk](mailto:general.qualifications@ocr.org.uk)

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**Head office**  
**Telephone: 01223 552552**  
**Facsimile: 01223 552553**