

Version 1.0



**General Certificate of Education  
June 2013**

**Law                      LAW02**

**The Concept of Liability**

**Unit 2**

**Final**

***Mark Scheme***

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

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

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## **LAW02**

### **Assessment Objectives One and Two**

#### **General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of students, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.*

#### **Positive Marking**

*You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as students penalise themselves in terms of the time they have spent.*

#### **Mark Range**

*You should use the whole mark range available in the mark scheme. Where the student's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the student's answer does not deserve credit, then no marks should be given.*

#### **Citation of Authority**

*Students will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.*

**Assessment Objective Three**

**QUALITY OF WRITTEN COMMUNICATION (QoWC)**

<b>2 marks</b>	<p>The work is characterised by some or all of the following:</p> <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul>
<b>1 mark</b>	<p>The work is characterised by:</p> <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>
<b>0 marks</b>	<p>The work is characterised by:</p> <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>

### The level of understanding in AS Law – LAW02

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year-old, so the level of understanding required by these criteria will be that of the notional 17-year-old.

<p><b>Sound</b></p>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain material relevant to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<p><b>Clear</b></p>	<ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>
<p><b>Some</b></p>	<ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>
<p><b>Limited</b></p>	<ul style="list-style-type: none"> <li>• The material is of limited accuracy and relevance to the Potential Content.</li> <li>• The material will be supported by minimal relevant authority and/or examples.</li> <li>• The material will deal superficially with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the concepts of the Potential Content will barely be established, as there will be many errors, omissions and/or confusion which almost completely undermine the essential elements of the Potential Content.</p>

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## Section A Introduction to Criminal Liability

Total for this scenario: 45 marks + 2 marks for AO3

<b>0 1</b> Explain the meaning of the term ' <i>mens rea</i> ' in criminal law. (8 marks)
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### Potential Content

- (A) Explanation of the meaning of *mens rea* in general terms (guilty mind). Recognition that the courts have developed definitions of common states of mind found in criminal liability. These are:
- direct intent (the defendant's aim, purpose or desire + example, e.g. **Mohan**)
  - oblique intent (where the consequence is virtually certain, and the defendant goes ahead with his actions knowing that is the case + example, e.g. **Woollin**)
  - recklessness (the defendant knew there was a risk of the consequence but went ahead with the act anyway + example, e.g. **Cunningham**).

**NB** Three are needed for sound, two for clear and one for some.

### Mark Bands

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

<b>0 2</b> Explain the meaning of the coincidence (contemporaneity) rule. <span style="float: right;">(7 marks)</span>
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**Potential Content**

- (A) Explanation of the meaning of the coincidence/contemporaneity rule – *actus reus* and *mens rea* must happen at the same time, place and person; reference to exceptions, e.g. continuing acts/superimposed *mens rea*, Dutch courage, initial *mens rea*/later *actus reus*, etc.

Cases and/or examples in support, eg ***Fagan v MPC; Thabo Meli; Church; Gallagher.***

**Mark Bands**

- 7 - 6 The student demonstrates a sound understanding of (A).
- 5 - 4 The student demonstrates a clear understanding of (A).
- 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

**03** In relation to the criminal liability of Amir:

- outline the law relating to the offence of assault, **and** briefly discuss whether Amir would be guilty of this offence
- briefly discuss what difference, if any, it would have made if Carla had taken Amir's statement as a joke and had not panicked or jumped from the car.

(10 marks + 2 marks for AO3)

## REMEMBER TO AWARD A MARK FOR AO3

### Potential Content

- (A) Outline of the law and application of the *actus reus* and *mens rea* of assault. This should include:
- a recognition of the fear/apprehension of unlawful force and the lack of the need for any physical injury, discussion of sensitivity of victim
  - discussion of intention or recklessness as to creating the fear/apprehension of immediate unlawful force by making the statement about being a prisoner (knowing that she was easily frightened)
  - reference to cases such as ***Savage, Logdon, Smith v Chief Superintendent of Woking Police Station, Ireland***
  - alternative application based on a lack of apprehension of immediate unlawful personal violence – recognition that key *actus reus* element would be missing and therefore no offence.

**Max 4 if no application; Max 8 if alternative not addressed**

### Mark Bands

- 8 – 10 The student demonstrates a sound understanding of (A).
- 5 – 7 The student demonstrates a clear understanding of (A).
- 3 – 4 The student demonstrates some understanding of (A).
- 1 – 2 The student demonstrates limited understanding of (A).
- 0 The answer contains no relevant information.



**AO3**

<b>2 marks</b>	The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul>
<b>1 mark</b>	The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>
<b>0 marks</b>	The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>

**0 4** Briefly explain the rules on causation **and** briefly discuss whether Amir has caused the permanent damage to Carla's wrist (10 marks)

**Potential Content**

(A) Brief explanation of the rules of causation:

- factual causation – “but for” test and explanation, cases/examples to illustrate, e.g. **White**
- application to scenario - if Amir had not scared Carla, she would not have got out of the car whilst it was moving and ended up at hospital
- legal causation – significant and operative cause; *novus actus interveniens*: cases/examples to illustrate, e.g. victim’s own contribution, e.g. **Roberts, Williams**; medical negligence, e.g. **Smith, Jordan, Cheshire**; contribution of others, e.g. **Benge**, pre-existing medical condition, e.g. **Hayward**

Application to scenario:

- take your victim as you find them – Carla's sensitivity
- consideration of victim's own act as a break in the chain – is it a 'daft' reaction? (possible reference to **Roberts/Williams**)
- discussion of whether incorrect use of splint breaks the chain of causation – is such failure palpably wrong? (possible reference to **Smith/Jordan**)
- conclusion argued by student (either conclusion is arguable on the facts).

**Max Clear if no application**

**Mark Bands**

- 8 – 10 The student demonstrates a sound understanding of (A).
- 5 – 7 The student demonstrates a clear understanding of (A).
- 3 – 4 The student demonstrates some understanding of (A).
- 1 – 2 The student demonstrates limited understanding of (A).
- 0 The answer contains no relevant information.

<b>0 5</b> Outline the pre-trial procedure which would be followed if Amir were to be charged with assault (a summary offence). <span style="float: right;"><i>(5 marks)</i></span>
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**Potential Content**

- (A) Outline and application of procedure:
- first appearance at Magistrates Court
  - duty solicitor/legal representation
  - plea
  - pre-trial review
  - bail
  - trial at Magistrates Court.

**Mark Bands**

- 5            The student demonstrates a sound understanding of (A).
- 4            The student demonstrates a clear understanding of (A).
- 3            The student demonstrates some understanding of (A).
- 2 - 1        The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application
- 0            The answer contains no relevant information.

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<b>0 6</b> Assuming that Amir is convicted of an offence, briefly outline the factors which the court would take into account before Amir is sentenced. (5 marks)
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**Potential Content**

- (A) Outline of the relevant factors, both jurisdictional and personal
- recognition of maximum penalty available/linked to trial venue
  - possible recognition of the 'seriousness' criteria (CJA 1991)
  - possible reference to other relevant legislation and aims of sentencing
  - aggravating factors such as aim of statement, knowledge of vulnerability of victim
  - possible mitigating factors such as early plea, cooperation with police, etc.
  - application to Amir.

**Max 3 if no application**

**Mark Bands**

- 5 The student demonstrates a sound understanding of (A).
- 4 The student demonstrates a clear understanding of (A).
- 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

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## Section B Introduction to Tort

Total for this scenario: 45 marks + 2 marks for AO3

<b>07</b>	Breach of duty involves the failure to reach the standard of care of the reasonable man, taking into account various risk factors.  Briefly explain <b>three</b> risk factors.	(8 marks)
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### Potential Content

- (A) Brief explanation with cases and/or examples of the meaning of three risk factors and the effect that has on the standard of care:
- special characteristics of the claimant – if known to the defendant to be more vulnerable, then higher standard expected, e.g. **Paris v Stepney Borough Council**
  - the size of the risk – the reasonable man does not take care against minute risks, but does against big risks, e.g. **Bolton v Stone**
  - practical precautions – taking reasonable but not excessive precautions e.g. **Latimer v AEC**
  - the benefits of taking the risk – emergencies and public utility, e.g. **Watt v Hertfordshire County Council**.

**NB 1** Special characteristics of the defendant – the position of professionals and learners may be given one mark credit although really more appropriate to an explanation of the reasonable man.

**NB 2** Three are needed for sound, two for clear and one for some.

### Mark Bands

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

<b>08</b>	Damage in negligence involves the rules of factual causation <b>and</b> the rules of remoteness of damage. Briefly explain these rules.	(8 marks)
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**Potential Content**

(A)

- Brief explanation of factual causation – but for the defendant's breach of duty, the consequence would not have occurred, e.g. ***Barnett v Chelsea & Kensington Hospital***
- brief explanation of the meaning of remoteness of damage – reasonable foreseeability test, e.g. ***The Wagon Mound***
- explanation of the effect that the kind of damage/method of damage has on remoteness, e.g. ***Doughty v Turner Manufacturing, Hughes v Lord Advocate, Bradford v Robinson Rentals***
- explanation of the effect of the thin skull rule, e.g. ***Smith v Leech Brain***.

**NB** If no factual causation - max 6. If no legal causation - max 4.

**Mark Bands**

- 8 - 7      The student demonstrates a sound understanding of (A).
- 6 - 5      The student demonstrates a clear understanding of (A).
- 4 - 3      The student demonstrates some understanding of (A).
- 2 - 1      The student demonstrates limited capacity for explanation  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0          The answer contains no relevant information.

- |  |
|--|
| <b>0 9</b> Outline the tests used to decide whether a duty of care is owed <b>and</b> briefly discuss whether or not Susan owed a duty of care to Tim. (8 marks + 2 marks for AO3) |
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## REMEMBER TO AWARD A MARK FOR AO3

### Potential Content

- (A) Outline explanation and application of **Caparo v Dickman** 3-part test, with appropriate conclusion of duty owed:
- it is foreseeable that someone in Tim's positions would suffer loss as a result of handling toxic materials, e.g. **Kent v Griffiths**
  - they are proximate in time and space, e.g. **Bourhill v Young**
  - there is no reason to exclude liability as there is no public policy reason for this on the grounds of extending categories of liability or protecting public services, e.g. **Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council**.

**NB** Three are needed for sound, two for clear and one for some.

### Max 4 if no application

### Mark Bands

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

**A03**

<b>2 marks</b>	The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul>
<b>1 mark</b>	The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>
<b>0 marks</b>	The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>



<b>10</b>	Assuming that Susan did owe a duty of care to Tim, discuss whether she was in breach of that duty of care.	(8 marks)
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### Potential Content

- (A) Discussion and application with appropriate conclusion of breach of duty.
- The reasonable man – effect of age on the standard expected, e.g. **Mullins v Richards** – the reasonable babysitter and lack of experience issue, e.g. **Nettleship v Weston**
  - risk factors include vulnerable claimant – two year-old more vulnerable so risk and standard higher
  - size of the risk – known danger from container warning so standard higher
  - practicality of precautions – easy to check paint suitable for children so standard of care not reduced
  - benefits of taking the risk - no benefit for allowing Tim to use the paint

### Mark Bands

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

**1 1** Outline the three-track case management system used in the civil courts **and** identify which track and which court would be used in any claim that Tim could make against Susan. *(5 marks)*

**Potential Content**

(A)

- Outline of tracks (small claims, fast and multi) + financial limits – Civil Procedure Act 1997
- Identification with respect to Tim's claim, fast track for entire loss, (as over £1000 personal injury, but not likely to be complex), so in County Court.

**NB** Accept old track limits or current limits (£10 000 max for small claims track)

**Max 3 if no application**

**Mark Bands**

- 5            The student demonstrates a sound understanding of (A).
- 4            The student demonstrates a clear understanding of (A).
- 3            The student demonstrates some understanding of (A).
- 2 - 1        The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application
- 0            The answer contains no relevant information.

**1 2** Outline how a court calculates an award of damages **and** briefly explain how the court would calculate an award of damages to Tim. (8 marks)

**Potential Content**

(A) Outline explanation of the calculation of damages:

- general and special damages; pecuniary and non-pecuniary
- heads of damage (damage to property + expenses incurred, loss of future earnings, loss of amenity, pain and suffering, ‘tariff’ award based on the injury itself)
- mitigation
- structure of awards (lump sum or structured settlement).

Application to Tim

- general damages, personal injury + pain and suffering + loss of amenity
- no special damages stated for physical losses and no loss of earnings as only aged two
- possible reference to authority, e.g. **Jefford v Gee**.

**NB** Account should be taken of depth and breadth, i.e. a strong application can be balanced by a weaker framework explanation or vice versa.

**Max 5 if no application**

**Mark Bands**

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

## Section C Introduction to Contract

Total for this scenario: 45 marks + 2 marks for AO3

<b>13</b>	Other than by acceptance, outline <b>three</b> ways in which an offer can come to an end.	<i>(8 marks)</i>
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### Potential Content

- (A) Outline of the ways an offer can come to an end. These are any three from the following:
- counter offer – once communicated, rejects the original offer and opens a new offer, e.g. **Hyde v Wrench**
  - rejection – once rejection is communicated, an offer cannot be accepted, e.g. **Stevenson v McLean**
  - revocation – withdrawal can be done at any time by communicating revocation whilst the offer is open, e.g. **Routledge v Grant**
  - lapse of time – ends the offer when a fixed time expires or, if no time is set, after a reasonable time, e.g. **Ramsgate Victoria Hotel v Montefiore**.
  - death

**NB** Three are needed for sound, two for clear and one for some.

### Mark Bands

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

**1 4** Briefly explain the law on acceptance by conduct **and** acceptance by post. (8 marks)

**Potential Content**

- (A) Brief explanation of acceptance by conduct – the doing of a positive act (not silence, e.g. *Felthouse v Brindley*) – e.g. reward cases; *Carlill v Carbolic Smoke Ball Co.*
- (B) Brief explanation of acceptance by post – postal rule applying to letters of acceptance only, contract complete on posting, requirements and provisos, e.g. *Household Fire Insurance Co v Grant*; *Adams v Lindsell*; *Byrne v Van Tienhoven*.

**Mark Bands**

- 8 - 7 The student deals with (A) and (B) as follows:  
 Max 8: **one** sound, **one** clear  
 Max 7: **one** sound, **one** some or **two** clear.
- 6 - 5 The student deals with (A) and (B) as follows:  
 Max 6: **one** sound or **one** clear, **one** some  
 Max 5: **one** clear or **two** some
- 4 - 3 The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)
- 2 - 1 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
 mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

<b>1 5</b> Discuss, in terms of contract law, the stages in the negotiations between Jess and Baz. <i>(8 marks + 2 marks for AO3)</i>
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## REMEMBER TO AWARD A MARK FOR AO3

### Potential Content

- (A) Discussion of the stages in the negotiations:
- car with sticker is an invitation to treat
  - asking for a reduction in price is merely an enquiry (no offer yet)
  - the 'no' has no legal effect
  - 'how much for part exchange' is a request for information resulting in an offer of £1750
  - £1500 is a counter offer and ends offer of £1750
  - £1600 with conditions is a counter offer
  - £1750 from Jess is a new offer (not an acceptance of an offer which no longer exists)
  - there is no apparent acceptance from Baz
  - conclusion - no offer and acceptance so therefore no contract.

NB The above is one potential analysis of the facts. Students may adopt a different approach. Credit fully any alternative, credible approach.

### Mark Bands

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

**AO3**

<b>2 marks</b>	The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul>
<b>1 mark</b>	The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>
<b>0 marks</b>	The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>

<b>1 6</b>	Outline the meaning of 'consideration' <b>and</b> briefly discuss the consideration that would exist if there were a contract between Jess and Baz for Jess to buy the car from Baz. <span style="float: right;">(8 marks)</span>
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**Potential Content**

- (A) Outline of consideration as something of value given by each party to a contract to the other, e.g. **Currie v Misa**. This may include:
- consideration is something of value, e.g. **Chapple v Nestle, Thomas v Thomas, White v Bluett**
  - must move from promisee
  - can be executed or executory
  - must not be past consideration - something already done at time of making contract so does not provide some new act or forbearance, e.g. **Re McArdle, Lampleigh v Braithwaite**
  - brief discussion/application of consideration rules to Jess and Baz, e.g. cross promises of payment of money in return for the car, possible reference to executed/executory, time for payment/delivery.

**Max 6 if no application**

**Mark Bands**

- 8 - 7      The student demonstrates a sound understanding of (A).
- 6 - 5      The student demonstrates a clear understanding of (A).
- 4 - 3      The student demonstrates some understanding of (A).
- 2 - 1      The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0          The answer contains no relevant information.



**17** Outline the procedure which would be followed in any claim for breach of contract arising out of the potential contract between Baz and Jess. *(5 marks)*

**Potential Content**

- (A) Outline of procedure which would be followed in any claim for breach of contract:
- money claim on line in the County Court
  - compliance with pre-action requirements (aimed at avoiding litigation)
  - making claim/probable reference to small claims track and/or County Court, given the sums of money involved
  - paying fee
  - serving claim on defendant
  - responding to the claim by defendant
  - admitting or defending claim
  - possible counterclaim
  - possible application of actual breach – either failure to perform or poor/incomplete performance by either party to the contract
  - possible explanation of anticipatory breach – where one party to the contract states or otherwise indicates that performance will not take place as contracted

**Mark Bands**

- 5            The student deals with (A) as follows:  
**One sound**
- 4            The student deals with (A) as follows:  
**One clear**
- 3            The student deals with (A) as follows:  
**One some**
- 2 - 1        The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application
- 0            The answer contains no relevant information.

**1 8** Outline the law relating to calculation of damages in contract **and** briefly discuss how this law would apply to any claim arising out of any potential contract between Baz and Jess.  
(8 marks)

**Potential Content**

(A)

- Outline of the way in which court calculates an award of damages, i.e. the two-stage test in *Hadley v Baxendale*, *Victoria Laundry v Newman*; *The Heron II*; mitigation
- brief discussion of Baz’s potential claim – loss of profit from usual sale
- brief discussion of Jess’s potential claim – additional costs if Jess has to buy elsewhere.

**Mark Bands**

- 8 - 7 The student demonstrates a sound understanding of (A).
- 6 - 5 The student demonstrates a clear understanding of (A).
- 4 - 3 The student demonstrates some understanding of (A).
- 2 - 1 The student demonstrates limited capacity for explanation and/or application but neither is clear  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level Law (LAW02)**

		AO1	AO2	AO3
<b>Section A:</b>				
Question	<b>0   1</b>	5	3	
Question	<b>0   2</b>	5	2	
Question	<b>0   3</b>	3	7	2
Question	<b>0   4</b>	3	7	
Question	<b>0   5</b>	4	1	
Question	<b>0   6</b>	4	1	
Totals Section A		24	21	2
<b>Section B:</b>				
Question	<b>0   7</b>	5	3	
Question	<b>0   8</b>	5	3	
Question	<b>0   9</b>	3	5	2
Question	<b>1   0</b>	3	5	
Question	<b>1   1</b>	3	2	
Question	<b>1   2</b>	3	5	
Totals Section B		22	23	2
<b>Section C:</b>				
Question	<b>1   3</b>	5	3	
Question	<b>1   4</b>	5	3	
Question	<b>1   5</b>	0	8	2
Question	<b>1   6</b>	5	3	
Question	<b>1   7</b>	3	2	
Question	<b>1   8</b>	4	4	
Totals Section C		22	23	2