

# A-LEVEL

# LAW

Unit 2 The Concept of Liability  
Mark scheme

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LAW02  
June 2014

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Version: 1.0 Final

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

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

Further copies of this Mark Scheme are available from [aqa.org.uk](http://aqa.org.uk)

## **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>	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>

### 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>

## 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 'causation' in criminal law.	<b>[8 marks]</b>
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### Potential Content

(A) Explanation of the meaning of causation.

- Factual causation – “but for” test and explanation, case used to illustrate, eg **White, Pagett**
- Legal causation - this can include:
  - significant contribution / substantial and operating cause eg **Cheshire, Smith**
  - novus actus interveniens: cases/examples to illustrate, eg medical negligence, eg **Smith, Jordan, Cheshire**
  - contribution of others, eg **Benge**
  - victims own contribution, eg **Roberts, Williams**
  - take your victim as you find him, eg **Blaue, Hayward**

**For Sound** both factual and legal causation must be dealt with.

**Max 4** for factual causation only.

Take into account depth and breadth

### Mark Bands

- 8 - 7      The student deals with (A) as follows:  
**one** sound.
- 6 - 5      The student deals with (A) as follows:  
**one** clear.
- 4 - 3      The student deals with (A) as follows:  
**one** some.
- 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.

**0 2** Explain, using **three** examples, how an omission can be the basis of the actus reus of a crime. **[7 marks]**

### Potential Content

(A) Explanation with cases and/or examples of any three omissions amounting to an actus reus. This can include:

- contractual duty, eg **Pitwood**
- public position requiring a person to act, eg **Dytham**
- Act of Parliament requiring action, eg **Children and Young Persons Act 1933**
- creating dangerous situation, eg **Miller**
- assumption of responsibility, eg **Stone and Dobinson**
- parental responsibility/special relationship, eg **Gibbins and Proctor**.

**NB** There must be accurate definitions and illustrations of three bullet points for sound, two for clear and one for some.

### Mark Bands

- 7 - 6 The student deals with (A) as follows:  
**one** sound.
- 5 - 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  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

**03** Explain the actus reus and the mens rea of the offence of assault occasioning actual bodily harm under s47 Offences Against the Person Act 1861 **and** discuss how this offence could be applied to Edward's injury. **[10 marks + 2 marks for AO3]**

## REMEMBER TO AWARD A MARK FOR AO3

### Potential Content

(A) Explanation of the law and discussion of the application of the actus reus and mens rea of assault occasioning actual bodily harm. This can include:

- explanation of actus reus of offence:
  - assault meaning assault or battery
  - occasioning meaning causing
  - actual bodily harm meaning not trivial or insignificant, eg **Chan-Fook** or any hurt or injury calculated to interfere with the health or comfort of the victim, eg **Miller** such hurt or injury need not be permanent, but must be more than merely trifling, even if transient **T v DPP**
- explanation of mens rea of offence:
  - identical to that of assault or battery (depending on the mode by which the offence is committed), eg **Parmenter, Savage, Roberts**. No additional Mens Rea is needed.
- application:
  - should be based on slight touch (punch in this case) being battery
  - take your victim as you find him and so the consequence of chest pain is more than merely trivial
  - Mens rea might be based on recklessness as to the underlying battery, full credit for alternative conclusion that there is no mens rea.

**Max 6** if no application.

**Max 6** if Battery only (no ABH)

**Max 5** Assault in the context of ABH

**Max 3** if based on Assault only

### Mark Bands

- 10 – 8 The student demonstrates a sound understanding of (A).
- 7 – 5 The student demonstrates a clear understanding of (A).
- 4 – 3 The student demonstrates some understanding of (A).
- 2 – 1 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** Outline the actus reus and mens rea of the offence of inflicting grievous bodily harm under s20 Offences Against the Person Act 1861 **and** the principle of transferred malice. Discuss whether this offence and the principle of transferred malice could be applied to Olivia's injury. **[10 marks]**

### Potential Content

(A)

- Outline and application of inflicting grievous bodily harm s20 (definition + application) :
  - actus reus of inflicting really serious harm (evidenced by broken bones and permanent injury)
  - mens rea being maliciously, ie recklessness or intention as to some harm
  - whether there is intention to cause some harm or recklessness as to causing some harm (possible argument of recklessness as to injury to Olivia or full credit for concluding no MR).
  - cases/examples in support of gbh such as; **Bollom, Mowatt, Savage, Smith, Brown and Stratton**

(B)

- Outline and application of the principle of transferred malice:
  - meaning - mens rea directed toward one person is transferred to the victim
  - an understanding that the rule operates from person to person or object to object, but not object to person or vice versa
  - discussion of malice to be transferred (consistent with argument in Q03)
  - cases and/or examples in support, eg **Latimer, Mitchell, Pembliton**

**Max 7** if no application to the scenario.

### Mark Bands

- 10 - 8 The student deals with (A) and (B) as follows:  
 max 10: **two** sound  
 max 9: **one** sound, **one** clear  
 max 8: **one** sound, **one** some **or two** clear.
- 7 - 5 The student deals with (A) and (B) as follows:  
 max 7: **one** sound, **one** limited **or one** clear, **one** some  
 max 6: **one** sound **or one** clear, **one** some (1 clear 1 some can be 6 or 7-quality)  
 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.

**0 5** Outline the aims of sentencing **and** briefly discuss how these aims might apply if David were to be convicted of any offence.

**[5 marks]**

### Potential Content

(A) Outline, and brief discussion of the application to David, of the aims of sentencing - this can include:

- punishment
- reduction of crime
- reform and rehabilitation of offenders
- protection of the public
- reparation by offenders
- general and individual deterrence
- possible reference to s142 of CJA 2003

**For Sound** at least three aims outlined with some attempt at application

### 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.

**0 6** Assume that David has been convicted of the offence of assault occasioning actual bodily harm under s47 Offences Against the Person Act 1861. Outline the **range** of sentences that would be available to the court.

**[5 marks]**

**Potential Content**

(A) Material outlined can include: (in the context of ABH max five years in prison):

- Custodial (immediate or suspended term of imprisonment)
- Community – eg carry out between 40 and 300 hours unpaid work as 'Community Payback' etc
- Financial – fine and/or compensation order
- Conditional or absolute discharge

**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.

## Section B Introduction to Tort

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

**07** Explain how the law decides whether a duty of care is owed in negligence.

**[8 marks]**

### Potential Content

(A) Explanation with cases of the meaning of the term duty of care:

- **Caparo** 3-part test
  - would a reasonable person in the defendant's position have foreseen that the claimant might be injured? Explained through a case such as **Kent v Griffiths**.
  - is there proximity by space, time or relationship between claimant and defendant? Explained through cases such as **Bourhill v Young**, **McLoughlin v O'Brien**.
  - is it fair, just and reasonable to impose a duty of care? Explained through cases such as **Hill v Chief Constable of West Yorkshire**, **Mitchell v Glasgow City Council**.

**NB** There must be accurate definitions and illustrations of all three bullet points for sound, two for clear and one for some.

Reference to **Donoghue v Stevenson** and the neighbour principle may enhance the answer.  
Reference to **Donoghue v Stevenson**/neighbour principle only – **max some**.

### Mark Bands

- 8 - 7 The student deals with (A) as follows:  
**one** sound.
- 6 - 5 The student deals with (A) as follows:  
**one** clear.
- 4 - 3 The student deals with (A) as follows:  
**one** some.
- 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.

**0 8** Breach of duty of care involves the failure to reach the standard of care of the reasonable man, taking into account various risk factors.

In relation to breach, briefly explain how the law sets the standard of the reasonable man **and** briefly explain any **one** risk factor that may affect that standard. **[8 marks]**

**Potential Content**

- (A) Brief explanation with cases and/or examples of the meaning of the reasonable man
- objective test – explained through a case such as **Blyth v Birmingham Waterworks**
  - special characteristics of the defendant
    - professionals – explained through a case such as **Bolam v Friern Barnet HMC**
    - learners – explained through a case such as **Nettleship v Weston**
    - children – explained through a case such as **Mullins v Richards**.
- (B) Brief explanation with cases of the meaning of any one risk factor and the effect that has on the standard of care, eg:
- special characteristics of the claimant – if known to the defendant to be more vulnerable, then higher standard expected – explained through a case such as **Paris v Stepney BC**
  - the size of the risk – the reasonable man does not take care against minute risks, but does against big risks – explained through a case such as **Bolton v Stone**
  - practical precautions – taking reasonable but not excessive precautions – explained through a case such as **Latimer v AEC**
  - the benefits of taking the risk – emergencies and public utility – explained through a case such as **Watt v Herts CC**.

**NB** Special characteristics of the defendant may be given credit in PC(B) max some if **not** dealt with in PC(A).

**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 answers 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.

**0 9** Assume that Una owes a duty of care to Tom. Discuss whether she was in breach of that duty of care. **[8 marks + 2 marks for AO3]**

## REMEMBER TO AWARD A MARK FOR AO3

### Potential Content

- (A) Discussion and application with appropriate conclusion of breach of duty. This can include:
- the reasonable man performing the task of nanny
  - standard of care raised as child aged three involved
  - magnitude of risk from being on harbour side raises standard required
  - reasonable precautions not taken (eg keeping an eye on Tom or moving to a safer area)
  - concentrating on unrelated activities would not be done by reasonable man in these circumstances
  - conclusion that Una has breached her duty of care
  - relevant authority in support of any of the above issues, eg **Bolam v Friern Barnet HMC**; Paris v Stepney

**NB** There must be accurate application of the idea of the reasonable nanny being the standard of care and a discussion of at least two relevant risk factors and a valid conclusion for **sound**.

### Mark Bands

- 8 - 7 The student deals with (A) as follows:  
**one** sound.
- 6 - 5 The student deals with (A) as follows:  
**one** clear.
- 4 - 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.

**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 0</b> Briefly explain the principle of res ipsa loquitur <b>and</b> briefly discuss whether it applies in the case of Una and Tom. <span style="float: right;"><b>[8 marks]</b></span>
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### Potential Content

(A) Brief explanation and application of the principle. This can include:

- recognition that proof of breach of duty normally rests with the claimant
- definition of res ipsa loquitur
- res ipsa loquitur involves an obvious case of negligence
- description of test:
  - the thing that causes the harm was wholly under the control of the defendant
  - the accident would not have happened unless someone had been negligent
  - there is no other explanation of the injury caused to the claimant.
- burden of proof shifts to the defendant.
- cases in support, eg **Byrne v Boadle**, **Pearson v NW Gas Board**, **Mahon v Osborne**, **Scott v London** and **St Katherine's Docks**
- application to scenario
- students may choose to apply the rules differently ie:
  - principle does not really apply as there are too many possible reasons as to why the accident happened, or
  - principle can apply because of the obvious risks involved if it is argued that there is exclusive control
- credit fully both approaches.

**NB** Max 6 if no application.

### Mark Bands

- 8 - 7 The student deals with (A) as follows:  
**one** sound.
- 6 - 5 The student deals with (A) as follows:  
**one** clear.
- 4 - 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 1** Damage in negligence involves the rules of factual causation **and** the rules of remoteness of damage. Outline these rules **and** assuming that Tom was suing Una for negligence, briefly discuss whether Tom could recover from Una the £70 000 loss and the further £30 000 loss.

**[8 marks]**

### Potential Content

(A)

- Outline of rules
  - outline of factual causation – but for the defendant's breach of duty the consequence would not have occurred – eg **Barnett v Chelsea & Kensington Hospital**
  - outline of the meaning of remoteness of damage – reasonable foreseeability test – eg **The Wagon Mound**
  - outline of the effect of the kind of damage/method of damage has on remoteness – eg **Doughty v Turner Manufacturing, Hughes v Lord Advocate, Bradford v Robinson Rentals**
  - outline of the effect of the thin skull rule – eg **Smith v Leech Brain**.
- Application to Tom
  - factual causation – Una's breach a 'but for' cause of both losses
  - legal causation – reasonable man would foresee loss of fees income for actor but not necessarily of subsidiary future advertising fees
  - Conclusion – Tom's loss of £70 000 not too remote but £30 000 may be.

**NB:** For a Sound response the student must deal with an outline of the rules as follows: an outline of factual causation and the meaning of remoteness of damage (as noted in the first two bullet points above) **AND EITHER** an outline of the effect of the kind of damage/method of damage on remoteness (as noted in the third bullet point above) **OR** outline of the effect of the thin skull rule (as noted in the fourth bullet point above).

**NB:** Max 6 if no application to Tom.

### Mark Bands

- 8 - 7 The student deals with (A) as follows:  
**one** sound.
- 6 - 5 The student deals with (A) as follows:  
**one** clear.
- 4-3 The student deals with (A) as follows:  
**one** some.
- 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 2** Outline the three-track case management system used in the civil courts **and** briefly explain which track and which court is most likely to be used in any claim that Tom makes against Una. **[5 marks]**

**Potential Content**

- Outline of tracks (small claims track (up to £10 000 of which max £1 000 for personal injuries), fast track from there to £25 000) and multi track- above that)
- Brief explanation with respect to Tom’s claim – multi track for entire loss, (as over £50 000 and personal injuries) – High Court.

**Max 3 if no application.**

**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.

## Section C Introduction to Contract

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

**1 3** Explain the meaning of both an offer and an invitation to treat **and** the differences between them. **[8 marks]**

### Potential Content

(A)

- explanation of meaning of offer – a statement of the terms by which the offeror is prepared to be bound.
- explanation of meaning of invitation to treat – an invitation to make an offer, eg
  - goods in a shop
  - advertisements
  - auctions
  - machines
- explanation of the differences between an offer and an invitation to treat:
  - offers can be accepted to form a contract, invitations cannot
  - invitation is a preliminary to negotiations and cannot be an offer
- cases or examples to illustrate the above, eg **Fisher v Bell**, **Partridge v Crittenden**, **Pharmaceutical Society of GB v Boots**, **Harvey v Facey**.

**NB** accurate definitions and cases used as illustrations of definitions and at least one distinction is needed for sound.

### Mark Bands

- 8 - 7 The student deals with (A) as follows:  
**one** sound.
- 6 - 5 The student deals with (A) as follows:  
**one** clear.
- 4 - 3 The student deals with (A) as follows:  
**one** some.
- 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>1 4</b> Explain the meaning of 'intention to create legal relations'.	<b>[8 marks]</b>
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### Potential Content

- (A) Explanation of intention to create legal relations – a basic requirement of a valid contract
- rebuttable presumptions in relation to commercial situations – explained through cases such as **Rose & Frank v Crompton Bros; Jones v Vernons Pools; Esso Petroleum v Commissioners of Customs and Excise**
  - rebuttable presumptions in relation to social /domestic situations – explained through cases such as **Balfour v Balfour; Merritt v Merritt; Simpkins v Pays.**

**NB Max 5** if only commercial or social and domestic explained.

### Mark Bands

- 8 - 7      The student deals with (A) as follows:  
**one** sound
- 6 - 5      The student deals with (A) as follows:  
**one** clear
- 4 - 3      The student deals with (A) as follows:  
**one** some
- 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 5** In relation to contract law, discuss the stages in the negotiations between FTA and Dewi.  
**[10 marks + 2 marks for AO3]**

## REMEMBER TO AWARD A MARK FOR AO3

### Potential Content

(A) Discussion of the stages in the negotiations

- On Monday 3 September Dewi emailed FTA enquiring about the availability of two speedboats for a scene in a film they were making – request for information – no offer
- The same day FTA replied by sending a price list and order form – invitation to treat
- Dewi filled in an order form for two speedboats for the week beginning 1 October – offer
- FTA replied that they only had one speedboat available on that week but could get one elsewhere at an additional cost – counter offer
- Dewi replied that was too expensive – rejection of counter offer
- and states his requirement for 8 October – offer
- FTA replied, 'our two speedboats hired to you week beginning 8 October' and sent the email late on Friday afternoon but in time for Dewi to read it before his office was closed for the weekend – acceptance of the offer to hire the two speedboats.
- Dewi sent an email to FTA saying 'Speedboats not required' – attempted withdrawal of his offer but not communicated before acceptance by FTA
- Conclusion – offer and acceptance complete. Therefore a contract in place for 8 October. Reasoned alternative conclusion can be credited.

**NB** the above are the most likely analysis of the facts. Students may adopt a different approach. Credit fully any alternative, credible approach. Credit an argument consistently developed following an early error in legal analysis.

### 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>

**1 6** Assume there is a contract between FTA and Dewi to supply the speedboats on 8 October.

Outline the difference between actual breach and anticipatory breach of contract **and** briefly explain if and when FTA could start legal action against Dewi. **[7 marks]**

### Potential Content

(A)

- outline of actual breach and anticipatory breach outlining the distinction between breach and anticipatory breach:
  - both are forms of breach but anticipatory breach takes place before the date due for performance of the contract – explained through cases such as **Hochster v De La Tour; Poussard v Spiers, Bettini v Gye, White and Carter Councils v McGregor, SK Shipping (S) Pte Ltd v Petroexport Ltd**
  - claimant can start action as soon as anticipatory breach occurs – does not have to wait to see if performance takes place
- Application to the scenario:
  - Dewi's final email amounts to an (anticipatory) breach of contract
  - Therefore, FTA can sue immediately.

Note – credit alternative **reasoned** application (consistent with Q 15) which suggests that there is no contract to breach.

Max 5 if no application

### Mark Bands

- 7 - 6 The student deals with (A) as follows:  
**one** sound.
- 5 - 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.



**17** Outline the procedure to trial which would be followed in a claim for breach of contract arising from a contract between FTA and Dewi.

**[5 marks]**

**Potential Content**

(A) This can include:

- Possible ADR through negotiation
- Completion of N1 form or money claim online to start court proceedings
- Compliance with pre action requirements (aimed at avoiding litigation)
- Paying fee
- Serving claim on defendant
- Responding to the claim by defendant
- Admitting or defending claim
- Possible counterclaim
- Allocation to track by case manager/judge

**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 how damages are awarded in contract claims **and** briefly discuss how damages might be awarded to FTA in this case.

**[7 marks]**

**Potential Content**

(A)

- Outline of the way in which the court awards damages, ie the aim of damages, the two stage test in **Hadley v Baxendale, Victoria Laundry v Newman; The Heron II**; mitigation of loss.
- Brief discussion of FTA’s potential claim – loss of profit from usual hire charges - mitigation of loss

**Max 5** if no application

**Mark Bands**

- 7 - 6      The student deals with (A) as follows:  
**one** sound.
- 5 - 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.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level Law (LAW02)**

		<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
<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>	3	2	
Totals Section A		23	22	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	5	
Question	<b>1   2</b>	3	2	
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	10	2
Question	<b>1   6</b>	4	3	
Question	<b>1   7</b>	4	1	
Question	<b>1   8</b>	4	3	
Totals Section C		22	23	2