
**AS
LAW
COMPONENT CODE**

PAPER 2

Mark scheme

Series

V1.0

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

Level of response marking instructions

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

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

Step 1 Determine a level

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

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

Step 2 Determine a mark

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

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

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

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

Examiners are required to assign each of the students' responses to the most appropriate level according to its overall quality, then allocate a single mark within the level. When deciding upon a mark in a level examiners should bear in mind the relative weightings of the assessment objectives (see page 17) and be careful not to over/under credit a particular skill. For example, in question 14 more weight should be given to AO2 than to AO1. This will be exemplified and reinforced as part of examiner training.

Examiners are reminded that AO1, AO2 and AO3 are regarded as interdependent. When deciding on a mark all should be considered together using the best fit approach. For example, a level 3 mark could be awarded for level 3 evidence against each objective, or a mixture of level 4, 3 and 2 evidence across different objectives.

01 The decision in *Donoghue v Stevenson* established that one person owes a duty of care to which other person?

[1 mark]

Marks for this question: AO1 = 1

B A neighbour.

02 Which one of the following does the test in *Caparo v Dickman* **not** require the court to ask?

[1 mark]

Marks for this question: AO1 = 1

D What are the financial resources of the defendant?

03 Select the one **true** statement about D's liability to compensate V for losses resulting from D's negligence.

[1 mark]

Marks for this question: AO1 = 1

C D may be liable to compensate V for some, but not all, of the losses.

04 Alf has been involved in a car accident caused by the negligence of another driver who collided with Alf's car. Which **one** of the following can Alf **not** claim for in an action for negligence against the other driver?

[1 mark]

Marks for this question: AO1 = 1

A Alf's concern and worry at the distress the accident has caused to his wife.

05 For the purposes of the Occupiers' Liability Act 1984, which one of the following is **not** a trespasser?

[1 mark]

Marks for this question: AO1 = 1

B A police officer executing a search warrant.

06 Choose the **one** option which is **not** an internal aid to statutory interpretation.

[1 mark]

Marks for this question: AO1 = 1

A Explanatory notes.

07 Which **one** of the following institutions drafts and proposes European Union laws?

[1 mark]

Marks for this question: AO1 = 1

A The Commission.

08 In Parliamentary law making, which **one** of these statements is false?

[1 mark]

Marks for this question: AO1 = 1

C Law is enacted when both the House of Commons and the House of Lords agree on its terms.

09 In resolving a negligence case, which **one** method is likely to be the most expensive?

[1 mark]

Marks for this question: AO1 = 1

A A Court Case.

10 Select the **one** court which can supervise the lawfulness of the conduct of national and local government, of inferior courts and tribunals, and of other public bodies.

[1 mark]

Marks for this question: AO1 =1

A The Administrative Court.

11 Explain the role of a high court judge in a trial of an action in negligence.

[3 marks]

Marks for this question: AO1 = 3

Indicative Content

AO1

- Explanation of the role in listening to evidence and legal argument, and ruling on procedure and points of law. (1)
- Explanation of the role in determining the facts, and deciding on liability by application of law to the facts. (1)
- Explanation of the role in determining quantum of damages and awarding any other appropriate remedies, and making orders as to costs. (1)

Credit any other relevant point(s).

12 Beryl broke a duty of care in negligence owed to Callum. Suggest why it is strongly arguable that she would be liable for the full extent of the damage to Callum's eye.

[3 marks]

Marks for this question: AO1 = 1 and AO2 = 2

Indicative Content:

AO1

- Explanation of the requirement for the damage to be caused, in fact and in law, by the breach of duty but including damage which is of a foreseeable kind, albeit far more extensive in nature. (1)

AO2

- Application to Beryl to suggest that Callum's reaction was a direct response to the unexpected exposure to a very hot liquid (1)
- Application to Beryl to suggest that, though the most obvious consequence foreseeable was a burn to the lip or skin, the eye damage, whilst far more severe and arising from an unexpected sequence of events following the breach, was of a kind that was foreseeable (1)

Credit any other relevant point(s).

13 Advise Dan as to his rights and remedies against Ewan in the tort of negligence and assess the alternatives available to him to seek to resolve the dispute.

[12 marks]

Marks for this question: AO1 = 3, AO2 = 6, AO3 = 3

Levels of response mark scheme 12marks – AO1 (3), AO2 (6) and AO3 (3).	
Mark range	Description
10-12 Band 4	<p>Excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>Excellent use and explanation of relevant authority to support the application.</p> <p>An excellent legal argument is presented using appropriate terminology to support advice.</p> <p>Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p>
7-9 Band 3	<p>Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>Good use and explanation of relevant authority to support the application.</p> <p>A good legal argument is presented using some appropriate terminology to support advice.</p> <p>Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study</p>
4-6 Band 2	<p>Limited analysis of legal rules and principles to the scenario leading to limited application of the correct rules and principles to the scenario.</p> <p>Limited use and selection of relevant authority.</p> <p>Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study</p>
1-3 Band 1	<p>Knowledge is minimal and demonstrates a minimal understanding of legal rules and principles and of the English legal system. Minimal use and selection of relevant authority.</p>
0	Nothing worthy of credit

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
6	6	12

Indicative Content:**AO1:**

- Explanation of the elements of the tort of negligence as requiring duty, breach and damage, with the main remedy as financial compensation
- Explanation of duty in terms of the three-part test in *Caparo v Dickman* (or, more simply, in a personal injury case, in terms of *Donoghue v Stevenson*)
- Identification and outline explanation of methods of dispute resolution: litigation ending in trial in a civil court; negotiation, mediation, conciliation and arbitration

AO2:

- Application to argue that Ewan clearly owed a duty of care in relation to reasonable foreseeability of harm, proximity of relationship, and that imposition of a duty would be fair just and reasonable
- Application to suggest that, whether as tradesperson or DIY repairer, Ewan probably failed to meet the objective standard required of a competent exponent and so was in breach of the duty
- Application to conclude that, since there was no causation/remoteness issue, Ewan was liable to Dan in the tort of negligence, in the sum of approximately £40 000.
- Application to argue that any action in the formal court system would require a trial in the County Court, under the multi-track procedure and be potentially very expensive
- Application to suggest that some alternative form of dispute resolution, though not guaranteed to produce a satisfactory result, would initially be far less expensive and pose fewer financial risks
- Application to conclude that, at least initially, Dan would be best advised to look for some less formal method of resolving the dispute than litigation, even at the cost of foregoing some of the compensation he might obtain in a successful court action

AO3

- Analysis and evaluation of the meaning of breach of duty with particular reference to the objective standard of competence required of a person who represents himself to be either a skilled tradesperson or a skilled DIY exponent, supported by reference to relevant authority (for example, *Wells v Cooper*)
- Analysis and evaluation of the possibility of resolution through the formal court system, referring to the County Court and allocation to an appropriate track (multi track), and to issues of cost
- Analysis and evaluation of the possibility of resolution outside the formal court system, perhaps concentrating on negotiation and mediation, and emphasising issues of cost, informality, speed

Credit any other relevant point(s).

14 Advise Krystyn as to her liability to Janek under the Occupiers' Liability Act 1957, and assess the contribution of different sources of law to the rules which you have considered.

[12 marks]

Marks for this question: AO1 = 3, AO2 = 6 and AO3 = 3

Levels of response mark scheme 12marks – AO1 (3), AO2 (6) and AO3 (3).	
Mark range	Description
10-12 Band 4	<p>Excellent analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>Excellent use and explanation of relevant authority to support the application.</p> <p>An excellent legal argument is presented using appropriate terminology to support advice.</p> <p>Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p>
7-9 Band 3	<p>Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>Good use and explanation of relevant authority to support the application.</p> <p>A good legal argument is presented using some appropriate terminology to support advice.</p> <p>Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study</p>
4-6 Band 2	<p>Limited analysis of legal rules and principles to the scenario leading to limited application of the correct rules and principles to the scenario.</p> <p>Limited use and selection of relevant authority.</p> <p>Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study</p>
1-3 Band 1	<p>Knowledge is minimal and demonstrates a minimal understanding of legal rules and principles and of the English legal system. Minimal use and selection of relevant authority.</p>
0	Nothing worthy of credit

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
6	6	12

Indicative Content:**AO1:**

- Explanation of the provisions of the Occupiers' Liability Act 1957 in terms of occupier, visitor and dangers due to the state of the premises and things done or omitted to be done on them
- Explanation of the duty imposed by the 1957 Act on occupiers to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there
- Identification and outline explanation of the sources of law as being statute and common law

AO2:

- Application to argue that Krystyn was clearly an occupier, Janek a visitor, and that there was a danger owing to the state of the premises (the live wires in the loose cable)
- Application to argue that Janek was acting in the exercise of his calling (as a supplier and installer of washing machines) and might have been expected to be aware of, and guard against, risks of the kind in question
- Application to conclude that it is strongly arguable that Krystyn was not in breach of her duty to take such care as was reasonable in all the circumstances, since those circumstances included a person who should have guarded against risks incidental to his calling (an alternative conclusion is, of course, permissible).
- Application to indicate that the 1957 Act supplied the framework to govern the liability of an occupier of premises, whilst either largely re-enacting common law rules, or directing reliance upon them in certain key areas (for example, in the definition of an occupier)
- Application to indicate that the common law supplied the original rules on which the statute was largely founded and that case law was active in resolving subsequent difficulties of interpretation
- Application to conclude that both sources of law made vital contributions to the law as it currently stands, and which was applied in dealing with the substantive law issues

AO3

- Analysis and evaluation of the extent of the occupier's duty with particular reference to the provision in s2(3)(b) that 'an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so', supported by reference to relevant authority (for example, *Roles v Nathan*)
- Analysis and evaluation of the role of statute law in providing frameworks, introducing reform, anticipating developments
- Analysis and evaluation of the contribution of common law, originally as introducing and developing new forms of liability, but increasingly as maintaining existing common law rules or interpreting statutes

Credit any other relevant point(s).

15 Consider Wilson’s liability to compensate Zoe for the injuries which she suffered.

[20 marks]

Marks for this question: AO1 = 7, AO2 = 7 and AO3 = 6

Levels of response mark scheme 20 marks – AO1 (7), AO2 (7) and AO3 (6).	
Mark range	Description
17-20 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
13-16 Band 4	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
9-12 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
5-8 Band 2	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>

1-4 Band 1	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
0	Nothing worthy of credit

Indicative Content:**AO1**

- Identification and outline explanation of the basic elements of the obligations imposed by the Occupiers' Liability Act 1984: occupier, non-visitor (trespasser), dangers due to the state of the premises or things done/omitted to be done thereon, conditions for duty to arise (s1(3)), content of duty s1(4)
- Explanation of the first requirement in s1(3): the occupier is aware of the danger or has reasonable grounds to believe that it exists
- Explanation of the second requirement in s1(3): the occupier knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger
- Explanation of the third requirement in s1(3): the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer the other some protection
- Explanation of the remedy of damages (compensation) provided by a lump sum payment or by a structured settlement
- Reference to supporting case authority (for example, Tomlinson v Congleton BC, Donoghue v Folkstone Properties, Young v Kent County Council, Keown v Coventry Healthcare Trust, Ratcliff v McConnell)

AO2

- Application to suggest that, despite the grounds in general being open to the public, Zoe was a trespasser in relation to the river and that area fenced off and subject to warning notices
- Application to argue that Wilson had sufficient information on which he knew of the danger (the shallow river, the stones on the river bed)
- Application to suggest that Wilson had sufficient information on which he knew or had reasonable grounds to believe that someone (including Zoe) might come into the vicinity of the danger (the evidence of persistent ignoring of warning signs, swinging over the river from ropes, swimming in the river)
- Application to suggest that it was arguable that the danger was one against which Wilson might reasonably be expected to offer Zoe some protection, and that the warning signs in themselves might be insufficient
- Application to query whether Zoe, as a 25 year old, ought to have been able to appreciate the risks of swinging over the river, so that the s1(3) conditions for existence of the duty may not be satisfied and/or the warnings were adequate discharge of the duty
- Application to conclude that the arguments for and against liability are, perhaps, finely balanced but that, if Zoe succeeded, she would be entitled to claim very substantial damages, probably dealt with by way of a structured settlement

AO3

- Analysis and evaluation of the meaning of 'trespasser'

- Analysis and evaluation of dangers due to the state of the premises
- Analysis and evaluation of the significance of 'obvious dangers' in relation both to the existence and the scope of the duty to 'take such care as is reasonable in all the circumstances of the case to see that [the trespasser] does not suffer injury on the premises by reason of the danger
- Use of supporting case authority (further development of cases cited above)

Credit any other relevant point(s).

16 Explain the influences on Parliament in the law-making process and discuss their value to that process.

[20 marks]

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

Levels of response mark scheme 20 marks – AO1 (10) and AO3 (10).	
Mark range	Description
17-20 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and/or English Legal System. Excellent selection and use of relevant examples.</p> <p>Excellent analysis and evaluation of legal concepts.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
13-16 Band 4	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and/or English Legal System. Good selection and use of relevant examples.</p> <p>Good analysis and evaluation of legal concepts.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
9-12 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and/or English Legal System. Satisfactory selection and use of relevant examples.</p> <p>Satisfactory analysis and evaluation of legal concepts</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
4-8 Band 2	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and/or English Legal System. Limited selection and use of relevant examples.</p> <p>Limited analysis and evaluation of legal concepts.</p> <p>Some reasoning is attempted which leads to a limited conclusion</p>
1-4 Band 1	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and/or English Legal System. Minimal selection and use of relevant examples.</p> <p>Minimal analysis and evaluation of legal concepts.</p> <p>No chain of reasoning is attempted.</p>
0	Nothing worthy of credit

Indicative Content:

AO1

- Explanation of political imperatives and pressure such as that derived from manifesto commitments

- Explanation of pressure groups, however classified (for example, as sectional or cause groups, or in relation to their status in terms of access to government)
- Explanation of media/social media and the pressure of public opinion, however generated
- Explanation of law reform proposals via the work of the Law Commission
- Appropriate illustrative examples of the various influences in operation
- Outline explanation of benefits/advantages of the influences – for example: fulfilment of electoral promises, specialist knowledge/expertise, raising public awareness, independent legal expertise
- Outline explanation of detriments/disadvantages – for example: impracticality, narrow bias, hysteria, excessive haste, relegation to non-urgent status

AO3

- Analysis and evaluation of political and manifesto commitments: fulfil promises made to the electorate, encourage explicit policy making, and give the electorate clear choices. Alternatively, manifesto commitments are sometimes impractical once in office and failure to carry through can affect confidence in the democratic system
- Analysis and evaluation of the influence of pressure groups in raising public awareness, reflecting large membership and extensive technical knowledge. Alternatively, pressure groups focus disproportionate attention on unbalanced campaigning
- Analysis and evaluation of media/social media and the pressure of public opinion: informs public opinion, gives a broader voice, can create overwhelming pressure for action. Alternatively, may be derived from powerful vested media interests, create hysteria, generate overwhelming pressure for hasty and ill-conceived legislation
- Analysis and evaluation of the work of the Law Commission: brings extensive technical knowledge which is both legal and independent. Recommendations follow research. Draft bills are accurate and detailed and can be introduced swiftly. Alternatively, the very nature of the subject matter, as well as the careful and considered process, can result in lengthy delays and often, ultimately, shelving of action
- A conclusion which draws together the analysis and evaluation to propose some judgment, however qualified, about the value of the influences, and which is clearly grounded in that analysis and evaluation.

Credit any other relevant point(s) (in particular, reference may be made to alternative influences such as the European Union)

Assessment Objectives Grid

	AO1	AO2	AO3	Total
1	1			1
2	1			1
3	1			1
4	1			1
5	1			1
6	1			1
7	1			1
8	1			1
9	1			1
10	1			1
11	3			3
12	1	2		3
13	3	6	3	12
14	3	6	3	12
15	7	7	6	20
16	10		10	20
Paper Total	37	21	22	80

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
1-5	1 x 5		5
6-10		1 x 5	5
11		3	3
12	3		3
13	6	6	12
14	6	6	12
15	20		20
16		20	20
Tot	40	40	80
Tot %	50	50	100