

Unit G158/01: Law of Torts Special Study

**Specimen Mark Scheme**

The maximum mark for this paper is [80].

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

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

Candidates are expected to demonstrate understanding of the area(s) of law and the development of law and to use legal methods and reasoning to analyse legal material, to select appropriate legal rules and apply these in order to draw conclusions.

This mark scheme contains indicative content but it is not exhaustive or prescriptive. It should be used alongside the matrix of levels of assessment and live exemplar standardisation scripts (which cover a range of responses identifying where within a level of assessment a particular response lies). Examiners are required to use the indicative content of the mark schemes only in conjunction with the matrix of levels of assessment as informed by actual responses in the standardisation scripts. Examiners should not be drawn prescriptively and quantitatively to the content of the mark scheme when marking candidates' responses and should follow the specific guidance provided by the Principal Examiner in terms of breadth and depth of responses. Appropriate credit will be given for non-standard answers.

Question Number	Answer	Max Mark																		
1*	<p><b>Discuss the extent to which the precedent in <i>Page v Smith</i> [Source 11 page 7 lines Special Study Materials] represents a development of the law on nervous shock (psychiatric damage).</b></p> <table border="0"> <thead> <tr> <th><b>Mark Levels</b></th> <th><b>AO2</b></th> <th><b>AO3</b></th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>11-12</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>9-10</td> <td>4</td> </tr> <tr> <td>Level 3</td> <td>7-8</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 2</b>  Define the principle arising from the case.  Link to any leading case e.g. <i>Dulieu v White</i>.  Consider how the case confirms the existing definition of primary victim:</p> <ul style="list-style-type: none"> <li>• Liability is to a person present at the scene and suffering injury or fearing for own safety.</li> <li>• But only if suffering from a recognised psychiatric injury.</li> </ul> <p>Discuss how the case represents a development:</p> <ul style="list-style-type: none"> <li>• Definition of foreseeable harm – needs only foresight of some injury – does not have to be physical harm – and no reason to separate out physical and psychiatric harm.</li> <li>• Application of thin skull rule to nervous shock in the case of primary victims (credit any reference to contrast with requirement of ‘reasonable phlegm and fortitude’ for secondary victims).</li> <li>• No application of hindsight in assessing claims for primary victims.</li> </ul> <p><i>Credit any reference to Lord Lloyd’s observation that it is essential first to distinguish between primary and secondary victims.</i></p> <p><b>Assessment Objective 3</b>  <i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i>  <i>Reward grammar, spelling and punctuation.</i></p>	<b>Mark Levels</b>	<b>AO2</b>	<b>AO3</b>	Level 5	11-12	-	Level 4	9-10	4	Level 3	7-8	3	Level 2	4-6	2	Level 1	1-3	1	<b>[16]</b>
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2*	<p>As Lord Ackner observed in <i>Alcock</i> [Source 9 page 5 lines 1-3 Special Study Materials] “Because shock is capable of affecting such a wide range of persons, Lord Wilberforce in <i>McLoughlin v O’Brien</i> concluded that there was a real need for the law to place some limitation upon the extent of admissible claims.”</p> <p>Consider the extent of the limitations applied to secondary victims and whether they do in fact meet a ‘real need’.</p> <table border="1" data-bbox="325 539 948 763"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>14-16</td> <td>13-14</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>11-13</td> <td>10-12</td> <td>4</td> </tr> <tr> <td>Level 3</td> <td>8-10</td> <td>7-9</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>5-7</td> <td>4-6</td> <td>2</td> </tr> <tr> <td><b>Level 1</b></td> <td><b>1-4</b></td> <td><b>1-3</b></td> <td><b>1</b></td> </tr> </tbody> </table> <p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Distinguish between primary victim and secondary victim:</p> <ul style="list-style-type: none"> <li>• Primary victim is one present at the scene and at risk of injury <i>Dulieu v White</i>.</li> <li>• Secondary victim is one witnessing a single shocking event causing risk of injury or injury to a related primary victim <i>Hambrook v Stokes</i>.</li> </ul> <p>Define the basic rules on secondary victim:</p> <ul style="list-style-type: none"> <li>• Close tie of love and affection to the person injured in the accident <i>Hambrook v Stokes</i>.</li> <li>• Sufficient proximity in time and space to the event or its immediate aftermath <i>McLoughlin v O’Brien</i>.</li> <li>• Saw or heard the accident or its immediate aftermath with own unaided senses <i>Alcock</i>.</li> <li>• Injury sustained as a result of a single shocking event <i>Sion v Hampstead</i>.</li> </ul> <p>Use any cases to illustrate the development of limitations on claims by secondary victims.</p> <p><b>Assessment Objective 2</b></p> <p>Consider and make any relevant comment on the limitations imposed on secondary victims e.g.:</p> <ul style="list-style-type: none"> <li>• Narrowness with which the close tie of love and affection is interpreted <i>Alcock</i>.</li> <li>• Fact that close friends or colleagues cannot bring themselves within the definition <i>Duncan v British Coal</i>, and <i>Robertson and Rough v Forth Road Bridge Joint Board</i>.</li> <li>• Limitation on claims by ‘bystanders’ even though they may suffer psychiatric harm <i>McFarlane v EE Caledonia</i>.</li> <li>• Restrictive definition of ‘immediate aftermath’ as applied in <i>Alcock</i> (credit any comparison with <i>NE Glamorgan NHS Trust v Walters</i> – or <i>with W v Essex CC</i>).</li> </ul>	Mark Levels	AO1	AO2	AO3	Level 5	14-16	13-14	-	Level 4	11-13	10-12	4	Level 3	8-10	7-9	3	Level 2	5-7	4-6	2	<b>Level 1</b>	<b>1-4</b>	<b>1-3</b>	<b>1</b>	
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<p><b>2*</b> <b>cont'd</b></p>	<ul style="list-style-type: none"> <li>• Secondary victim must show that psychiatric injury would foreseeably have been suffered by a person of reasonable phlegm and fortitude, so secondary victim already suffering a psychiatric illness has no claim, whereas there is no such restriction on primary victims, only 'injury' need be foreseeable <i>Page v Smith</i>.</li> <li>• No account paid for a shock suffered gradually over time even though appreciation of extent of harm to primary victim may indeed be gradual <i>Sion v Hampstead</i>.</li> <li>• No account paid to excessive grief even though this may be long lasting <i>Tredget v Bexley</i>.</li> </ul> <p>Discuss the significance of policy and the 'floodgates' argument as the only justifications for the limitations. Consider that the Law Commission has proposed a much less restrictive definition.</p> <p><b>Assessment Objective 3</b> <i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i> <i>Reward grammar, spelling and punctuation.</i></p>	<p>[34]</p>																								
<p><b>3</b></p> <p><b>3(a)</b></p> <p><b>3(b)</b></p> <p><b>3(c)</b></p>	<p><b>A large crane is being used in building work immediately adjacent to the law school where Chris works as a lecturer. Through the negligence of the construction firm, Bodgejob, part of the crane falls off and drops on Chris as he is walking into the law school causing him severe injuries. Consider the possibility of each of the following succeeding if they claim against Bodgejob.</b></p> <p><b>Jennifer, a lecturer and Chris's friend, is in the law school at the time of the accident, and on hearing of the accident looks through the window and seeing the extent of Chris's injuries suffers post traumatic stress disorder.</b></p> <p><b>Sukhy, another lecturer and close friend of Chris's, on hearing of the accident rushes out of the law school and realising that Chris's heart has stopped, resuscitates him and keeps him alive until the emergency services arrive. While Sukhy is doing this there is always a danger that more of the crane will drop. Sukhy suffers severe depression as a result and cannot return to work.</b></p> <p><b>Karen, Chris's wife, is called immediately and is at the hospital entrance when Chris arrives in the ambulance. She suffers grief when Chris is pronounced dead.</b></p> <table border="1" data-bbox="325 1688 1118 1917"> <thead> <tr> <th><b>Mark Levels</b></th> <th><b>AO1</b></th> <th><b>AO2</b></th> <th><b>(for each of a, b, c)</b></th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>9-10</td> <td>17-20</td> <td>9-10</td> </tr> <tr> <td>Level 4</td> <td>7-8</td> <td>13-16</td> <td>7-8</td> </tr> <tr> <td>Level 3</td> <td>5-6</td> <td>9-12</td> <td>5-6</td> </tr> <tr> <td>Level 2</td> <td>3-4</td> <td>5-8</td> <td>3-4</td> </tr> <tr> <td>Level 1</td> <td>1-2</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p><i>Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.</i></p>	<b>Mark Levels</b>	<b>AO1</b>	<b>AO2</b>	<b>(for each of a, b, c)</b>	Level 5	9-10	17-20	9-10	Level 4	7-8	13-16	7-8	Level 3	5-6	9-12	5-6	Level 2	3-4	5-8	3-4	Level 1	1-2	1-4	1-2	
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<p><b>3(c)</b> <b>cont'd</b></p>	<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b></p> <p>Define nervous shock (psychiatric injury). Use any relevant cases in illustration when applying the law to the problems.</p> <p><b>Assessment Objective 2</b></p>	
<p><b>3(a)</b></p>	<ul style="list-style-type: none"> <li>• Identify Jennifer as a secondary victim according to the criteria in <i>McLoughlin and Alcock</i> unless she can show that she was at risk.</li> <li>• Consider that she satisfies the final two criteria i.e. proximity in time and space and witnessing or hearing the event (or more precisely here the immediate aftermath) with her own unaided senses.</li> <li>• But consider also that Jennifer is likely to fail in not having what would be accepted as a close tie of love and affection, only being a friend and colleague <i>Duncan v British Coal</i>, <i>Robertson and Rough v Forth Road Bridge Joint Board</i> and may be classed as a bystander <i>McFarlane v EE Caledonia</i>.</li> <li>• Consider that PTSD is commonly accepted as a recognised psychiatric illness.</li> <li>• Conclude that Jennifer will probably have no claim.</li> </ul>	[10]
<p><b>3(b)</b></p>	<ul style="list-style-type: none"> <li>• Identify Sukhy as a rescuer (<i>Chadwick</i> – even if not a professional rescuer).</li> <li>• Explain that, following <i>White</i> rescuers would now generally be classed as secondary victims in which case Sukhy would probably fail for the same reasons as Jennifer.</li> <li>• Identify that under <i>White</i> rescuers may still succeed if able to show that they are genuine primary victim i.e. at risk themselves – which appears to be the case here with Sukhy.</li> <li>• Explain that Sukhy's injuries can be accepted as recognised psychiatric injury <i>Vernon v Boseley</i>.</li> </ul>	[10]
<p><b>3(c)</b></p>	<p><b>Assessment Objective 2 (continued)</b></p> <ul style="list-style-type: none"> <li>• Identify Karen as a secondary victim under <i>Alcock</i>.</li> <li>• Explain that within the <i>Alcock</i> criteria Karen has a presumed close tie of love and affection with Chris as his wife.</li> <li>• Comment on the similarity with <i>McLoughlin v O'Brien</i> she probably comes within the immediate aftermath.</li> <li>• Conclude though that Karen's action is likely to fail as mere grief alone will be insufficient to be classed as psychiatric injury <i>Tredget v Bexley Health Authority</i>.</li> </ul>	[10]
	<b>Paper Total</b>	<b>[80]</b>

## Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

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