

OCR ADVANCED SUBSIDIARY GCE IN LAW (3839)

OCR ADVANCED GCE IN LAW (7839)

Specimen Question Papers and Mark Schemes

These specimen assessment materials are designed to accompany the OCR Advanced Subsidiary GCE and Advanced GCE specifications in Law for teaching from September 2000.

Centres are permitted to copy material from this booklet for their own internal use.

The GCE awarding bodies have prepared new specifications to incorporate the range of features required by new GCE and subject criteria. The specimen assessment material accompanying the new specifications is provided to give centres a reasonable idea of the general shape and character of the planned question papers in advance of the first operational examination.

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Oxford Cambridge and RSA Examinations

Advanced Subsidiary GCE

LAW

MACHINERY OF JUSTICE

2568

Specimen Paper

Additional materials:

Answer paper

TIME 1 hour 15 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer two questions.

1. (a) Describe the main civil courts and their jurisdiction. **[30 marks]**
(b) Discuss the problems of making a claim in the civil courts. **[15 marks]**
2. (a) Describe the main sentences available to the courts. **[30 marks]**
(b) Explain the different aims of sentencing. **[15 marks]**
3. Gavin is due to be tried at Amcaster Crown Court on a charge of robbery.
(a) If he is found guilty what appeal routes are open to him? **[30 marks]**
(b) Compare the rights of appeal of the prosecution with those of the defence. **[15 marks]**
4. Desmond, aged 26, has been arrested by the police on suspicion of murder.
(a) Describe the police powers in respect of detention, body searches and interview at the police station in such a case. **[30 marks]**
(b) Advise Desmond of his rights while he is detained. **[15 marks]**

Oxford Cambridge and RSA Examinations



Advanced Subsidiary GCE

LAW

MACHINERY OF JUSTICE

2568

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an AS candidate who has completed one year of study and is writing in controlled examination conditions.

1. (a) Describe the main civil courts and their jurisdiction.

[30 marks]

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Identify the County Court and the High Court as the main civil courts.

Identify the Divisions of the High Court (Chancery, Queen's Bench and Family).

Demonstrate good knowledge of the main types of case that can be heard especially breach of contract cases and disputes over liability in tort (County Court and Queen's Bench Division).

Demonstrate knowledge of other areas of law that are dealt with for example, land law cases, company law, divorce.

Show clear understanding of the allocation of cases to different tracks: small claims for cases up to £5,000; fast track cases £5,000 up to £15,000; multi track cases over £15,000 or involving complex points.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Discuss the problems of making a claim in the civil courts.

[15 marks]

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate knowledge of the Woolf Report.

Assessment Objective 2

Identify problems of cost, delay, complexity, formality, adversarial nature of proceedings.

Discuss the likely effect of the reforms made following the Woolf Report: especially the use of different tracks and judicial case management.

Point out the difficulty of enforcing judgments, especially small claims.

Credit will also be given for comments on the problems of funding cases, though this is not required for maximum marks.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

2 (a) Describe the main sentences available to the courts

[30 marks]

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate knowledge and clear understanding of main sentencing powers:

- imprisonment; (detention and training orders for young offenders)
- suspended sentence;
- community penalties of Community Service Order, probation order, combination order, curfew order;
- fines;
- discharges.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. (b) Explain the different aims of sentencing.

[15 marks]

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Identify the aims of retribution, denunciation, deterrence, prevention/incapacitation, reform/rehabilitation.

Demonstrate clear understanding of each of these aims:

- retribution - punishment imposed because a crime has been committed; use of tariff sentences;
- denunciation - showing society's disapproval;
- deterrence - individual - offender is deterred through fear of further punishment - general - potential offenders warned as to likely punishment;
- prevention/incapacitation - offender prevented from committing further crime and society thus protected;
- reform/rehabilitation - offender's behaviour is targeted; use of individualised sentences.

Assessment Objective 2

Contrast and comment on these different aims.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. Gavin is due to be tried at Amcaster Crown Court on a charge of robbery.

(a) If he is found guilty what appeal routes are open to him? [30 marks]

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate clear understanding of the appeal routes of the defendant:

- appeal to Court of Appeal (Criminal Division) for both appeals against conviction and sentence; need to show conviction 'unsafe';
- leave to appeal needed in all cases (Criminal Appeal Act 1995);
- further appeal to the House of Lords on a point of law of general public importance only - leave to appeal needed.

Assessment Objective 2

Identify the correct appeal routes

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Compare the rights of appeal of the prosecution with those of the defence .
[15 marks]

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate clear understanding of the appeal routes available to the prosecution:

- right to appeal against a lenient sentence by a reference of the Attorney- General; (s36 Criminal Justice Act 1988);
- normally no right to appeal against an acquittal - minor exception of 'tainted' acquittals (Criminal Procedure and Investigations Act 1996);
- Attorney-General's right to refer a point of law to the Court of Appeal (Criminal Division) - but referral does not affect acquittal;
- right to appeal from a decision of the Court of Appeal to House of Lords on a point of law of general public importance - leave to appeal needed.

Assessment Objective 2

Comment on the problems of the system, such as the inability of the prosecution to appeal after an acquittal even though new evidence becomes available.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

4. Desmond, aged 26, has been arrested by the police on suspicion of murder.

- (a) Describe the police powers in respect of detention, body searches and interview at the police station in such a case. [30 marks]**

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate good knowledge of police powers of detention - up to 36 hours and, with magistrates' authorisation up to 96 hours.

Demonstrate knowledge of search powers:

- custody officer may carry out a non-intimate search if it is necessary to record Desmond's belongings when first brought to police station;
- strip search only allowed if reasonable suspicion that Desmond is concealing an article which he should not be allowed to keep while in custody;
- intimate searches must be authorised by a high-ranking officer and carried out by a suitably qualified person (doctor/nurse).

Demonstrate knowledge that the police must caution Desmond before interviewing him and that the interview must be tape recorded.

Assessment Objective 2

Identify that a serious arrestable offence is involved so that:

- the initial period of detention is increased to 36 hours, and
- the right to see a solicitor can be delayed for 36 hours.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (b) Advise Desmond of his rights while he is detained. [15 marks]**

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate good knowledge of the key rights:

- to inform someone of his detention
- to consult a solicitor
- to consult the Code of Practice.

Demonstrate knowledge of the right to the presence of an appropriate adult at the interview if Desmond is mentally ill or retarded.

Demonstrate understanding that the police have no automatic right to search Desmond.

Assessment Objective 2

Discuss the problem of balancing the rights of individuals with the need for police to be able to carry out investigation into crime.

Comment on specific points such as:

- the right to consult a lawyer;
- fact that an accused's refusal to answer questions can lead to adverse inferences being drawn at his trial;
- all interviews at a police station must be tape recorded;
- the role of the custody officer in recording events and in reviewing whether the detention should continue;
- the right of the trial court to exclude evidence obtained through oppression.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced Subsidiary GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced Subsidiary GCE

LAW

LEGAL PERSONNEL

2569

Specimen Paper

Additional materials:

Answer paper

TIME 1 hour 15 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer two questions.

1. (a) Describe and comment on the training and work of solicitors. **[30 marks]**
- (b) Explain and comment on the supervisory role of:
(i) the Law Society;
(ii) the Legal Service's Ombudsman. **[15 marks]**
2. (a) Explain the theory of the separation of powers. **[15 marks]**
- (b) To what extent can it be said that the Lord Chancellor's role is in conflict with the theory of the separation of powers? **[30 marks]**
3. (a) Describe the selection, training and role of lay magistrates. **[30 marks]**
- (b) Discuss the advantages and disadvantages of using lay magistrates in the English Legal System. **[15 marks]**
4. (a) Explain how a person in a criminal case can obtain legal advice and representation. **[30 marks]**
- (b) Discuss the problems a person might encounter in trying to obtain legal advice and representation in a criminal case. **[15 marks]**

Oxford Cambridge and RSA Examinations

Advanced Subsidiary GCE

LAW

LEGAL PERSONNEL

2569

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an AS candidate who has completed one year of study and is writing in controlled examination conditions.

1. (a) Describe and comment on the training and work of solicitors.

[30 marks]

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate clear knowledge of the training of solicitors:

- normally degree entry (CPE for those with a non-law degree);
- Legal Practice Course;
- training contract;
- possibility of qualifying via legal executive route for mature entrants
- possibility of obtaining higher advocacy qualification.

Demonstrate clear knowledge and understanding of the work of solicitors:

- office based but can be very varied - one-man firms to large city firms with specialist solicitors;
- Type of work - negotiating, drafting leases, contracts, wills, conveyancing, doing litigation; rights of audience - certificates of advocacy.

Assessment Objective 2

Comment on the positive points of training - the practical emphasis of the LPC; the 'hands on' training during the period of the training contract; the increasing amount of ongoing training.

Comment on difficulties in training - cost of LPC (and CPE) - grants rarely available - difficulty of obtaining a training contract.

Discuss the ability to specialise in work; the increasing rights of audience (both through increasing County Court limits and certificates of advocacy); the loss of the monopoly on conveyancing and the revenue from it.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (b) **Explain and comment on the supervisory role of:**
(i) **the Law Society;**
(ii) **the Legal Service's Ombudsman.**

[15 marks]

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate clear knowledge and understanding that the Law Society is the professional body of solicitors and responsible for disciplinary procedures, especially through the Disciplinary Tribunal which has the power to order that a solicitor may be struck off the roll and thus prevented from practising.

Demonstrate knowledge that the post of Legal Services Ombudsman was created by the Courts and Legal Services Act 1990 to examine complaints against lawyers where their own professional bodies did not provide a satisfactory answer.

Assessment Objective 2

Comment on whether an independent body is need for supervision instead of the Law Society.

Comment on the number of complaints received by the Legal Services Ombudsman.

Discuss whether his powers are adequate.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. (a) **Explain the theory of the separation of powers.**

[15 marks]

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate good knowledge of the three functions of the state:

- legislative - making the law
- executive - administering the law
- judiciary - applying the law

Demonstrate clear understanding of Montesquieu's theory these three functions should be exercised by independent and separate bodies and that this is needed so that each can keep a check on the others.

Assessment Objective 2

Comment on the fact that Britain does not have a written constitution setting out this separation of powers.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (b) To what extent can it be said that the Lord Chancellor's role is in conflict with the theory of the separation of powers? [30 marks]**

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate good knowledge and clear understanding of the Lord Chancellor's role in all three areas of the state's functions. This includes:

- legislative - speaker of the House of Lords in its legislative function; introduces government Bills, e.g. Access to Justice Bill 1998;
- executive - member of the cabinet, head of Lord Chancellor's Department with responsibility for many areas, e.g. appointment of judges and other court staff and for legal aid; takes executive decisions on areas such as the Criminal Injuries Compensation scheme;
- judiciary - can sit as one of the judges in the House of Lords; nominal head of the Chancery division; one of the judges on the Judicial Committee of the Privy Council.

Assessment Objective 2

Comment on the fact that the Lord Chancellor is a political appointment.

Discuss the conflict of interests which occur through being involved in all three arms of the State.

Give examples where there may be a conflict of interest, e.g. the judicial review of the previous Lord Chancellor's changes to the legal aid scheme.

Comment on the Lord Chancellor's key role in the appointment of judges.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. (a) Describe the selection, training and role of lay magistrates. [30 marks]

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate good knowledge of the selection of lay magistrates:

- no formal qualifications; must live within 15 miles of commission area;
- local advisory committees recommend candidates to the Lord Chancellor who makes the appointment.

Demonstrate good knowledge of the training of lay magistrates:

- initial short course and observation of cases in court;
- refresher courses every three years;
- extra training for family panel and youth panel.

Demonstrate good knowledge of the role of lay magistrates:

- try all summary cases; decide where triable either way cases in which defendant has plead guilty will be dealt with; committal proceedings; sentencing; bail applications;
- administrative matters such as licensing;
- family cases;
- youth court - young offenders aged 10-17.

Assessment Objective 2

Comment on the low numbers of working class lay magistrates.

Point out that there are guidelines on keeping a balance of male/female, age and occupation in selection.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Discuss the advantages and disadvantages of using lay magistrates in the English Legal System. [15 marks]

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Marks for this objective will mostly have been given in part (a) but credit relevant knowledge not already credited.

Assessment Objective 2

Discuss advantages of using lay magistrates:

- wider cross section of society than professional judiciary;
- local knowledge;
- low cost as not paid.

Discuss problems of using lay magistrates:

- are they sufficiently trained?
- inconsistency in sentencing and granting bail;
- 'middle class, middle age, middle minded' composition of the bench.

Comment on the role of the clerk in advising on points of law.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4. (a) Explain how a person in a criminal case can obtain legal advice and representation.**
[30 marks]

Mark levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate good knowledge of the various ways in which government funded legal advice is available:

- advice and assistance at police stations - rota scheme - free - not means tested;
- duty solicitor at Magistrates' Court - free - not means tested;
- Green from scheme - only available to those below income support level - 2 hours free advice.

Demonstrate good knowledge of criminal legal aid:

- application to the clerk at the Magistrates' Court;
- free below minimum levels of disposable income and capital;
- contributions (per week) of one third of excess income;
- merits test; interests of justice criteria.

Assessment Objective 2

Comment on the possibility of instructing a solicitor privately.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (b) Discuss the problems a person might encounter in trying to obtain legal advice and representation in a criminal case.**
[15 marks]

Mark levels

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

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Marks for this objective will mostly have been given in part (a) but credit relevant knowledge not already credited.

Assessment Objective 2

Discuss problems of variation in grant rates of legal aid between different courts and the interpretation of the interest of justice criteria; use statistics or research to explore this problem.

Comment on the decreasing number of solicitors doing legal aid work and manning the duty solicitor schemes.

Comment on the low minimum levels of the means test.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling

Advanced Subsidiary GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced Subsidiary GCE

LAW

SOURCES OF LAW

2570

Specimen Paper

Additional materials:

Answer paper

TIME 1 hour 15 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **one** question.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **one** question only.

1. Read the following sources and answer questions (a) to (d) which follow.

Exercise on Law Reform and Judicial Precedent

SOURCE A

In *Schorsch Meier GmbH v Hennin* the German company sued and asked for judgment in Deutschmarks. The judge refused. The company appealed. There was a decision of the House of Lords only fourteen years before (*Re Havana Railways*) which held that an English court could only give judgment in sterling. The Court of Appeal ought to have followed the *Havana* case. We turned a blind eye. We were guilty of what Lord Wilberforce afterwards described as “some distortion of the judicial process”. We gave judgment in Deutschmarks.

In *Miliangos v George Frank Textiles* the Swiss firm saw the report in the Times of the *Schorsch v Hennin* case. Counsel amended his claim and asked for judgment in Swiss Francs. The case reached the House of Lords. The House themselves overruled the *Havana* case for it was only by doing so that they could give judgment in Swiss Francs.

It was a decision of the greatest importance. But it only came about because we were guilty of a “distortion of the judicial process”. If in *Schorsch* we had held ourselves bound by *Havana*, in *Miliangos* the Swiss firm would automatically have taken judgement in sterling [and] would not have appealed. The House of Lords would never have had the opportunity of overruling the *Havana* case.

(Adapted from, *The Discipline of Law*, Lord Denning, Butterworths)

SOURCE B

There can be no doubt that the institution of the Law Commission marks a great step forward in the process of law reform. [This] will mean that the importance of judicial law-making, which has been dwindling now for a century or more, will probably almost entirely vanish but without, I hope, dimming the name and reputation of Lord Denning, who will stand for future generations as the last great judicial innovator.

(Adapted from, ‘The Process of Law Reform’, Lord Devlin, *Law Society Gazette*, 1966)

- (a) Refer to Source A. Explain how the doctrine of precedent usually works. [30]
- (b) Refer to Source B. Describe the character and role of the Law Commission. [20]
- (c) Discuss the ways in which a judge of the Court of Appeal is able to reform the law. [20]
- (d) *Re Havana Railways* was decided by the House of Lords in 1961. *Miliangos* reached the House of Lords in 1975.
- (i) Explain the doctrine which allowed the House of Lords to overrule its precedent in the earlier case.
- (ii) How, if at all, would their answer have differed if *Miliangos* had come before the House of Lords in 1965? [20]

[Total: 90 marks]

2. Read the following source and answer parts (a) to (c) which follow.

Exercise on Statutory Interpretation

The case of *R v Maginnis* [1987] 1 All ER 907, HL, was concerned with the Interpretation of the Misuse of Drugs Act 1971, by s. 5(3) of which:

“...it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply to another ...”

The police had found a package of cannabis resin in the defendant’s car. He said that the package was not his but had been left in his car by a friend for collection later. The defendant was convicted and appealed ...

[In the House of Lords] their Lordships held that the defendant was guilty of the offence because a person in unlawful possession of a controlled drug left with him for safekeeping by another person had the necessary ‘intent to supply it to another’ (even though the supply was not being made from the provider’s own resources) if his intention was to return it to the other person and for that other person’s purposes.

The majority of their Lordships purported to apply the ordinary, natural meaning of the word ‘supply’. Lord Goff of Chieveley, however, dissented on that very point and referred to definitions of the word given in *The Shorter Oxford English Dictionary*. In his view the word ‘supply’ was not apt to describe a transaction in which A handed back to B goods which B had previously left with A. Thus the cloakroom attendant, left luggage officer, warehouseman and shoe repairer do not, in ordinary parlance, ‘supply’ their customers. Lord Goff was further of the opinion that the particular offence in question was aimed at drug ‘pushers’; the defendant was not a ‘pusher’ and should have been charged with the lesser offence of ‘unlawful possession’. If, he said, persons in the position of the defendant were to be convicted of ‘possession with intent to supply’, it was up to Parliament and not the courts to enlarge the definition of ‘supply’.

(Adapted from, *The English Legal Process*, Terence Ingman, Blackstones)

- (a) Refer to the Source. Using examples, explain the literal rule of statutory interpretation. [30]
- (b) Identify and explain other approaches to statutory interpretation that could have been used by the judges in *Maginnis*. [36]
- (c) Using your knowledge of the rules of statutory interpretation, consider whether each of the following has committed an offence by having “... a controlled drug in his possession, whether lawfully or not, with the intent to supply it to another ...”:
- (i) George has cannabis in his pocket which he intends to smoke with his girlfriend Hannah.
- (ii) Simon, a doctor, has taken controlled drugs from his patient Tim, an addict, and is planning to deliver them to the police.
- (iii) Annie is Bill’s mother. One day Bill asks if she will keep a sealed brown paper package for him while he goes out. The package contains a kilogram of heroin. [24]

[Total: 90 marks]

Oxford Cambridge and RSA Examinations



Advanced Subsidiary GCE

LAW

SOURCES OF LAW

2570

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an AS candidate who has completed one year of study and is writing in controlled examination conditions.

1. Exercise on Law Reform and Judicial Precedent

(a) Refer to Source A. Explain how the doctrine of precedent usually works. [30 marks]

Mark Levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Explain what *stare decisis* means and the way in which it operates;
Identify and define *ratio decidendi* and *obiter dicta*;

Demonstrate knowledge of binding and persuasive precedent;

Explain the hierarchy of the courts, with courts being bound by those equal or superior to them in the court hierarchy, and explain also the position of the House of Lords with the Practice Statement 1966, the Court of Appeal (Civil Division) with *Young v Bristol Aeroplane*, and the Court of Appeal (Criminal Division) with *R v Gould*;

Show understanding of available areas of flexibility: Practice Statement, distinguishing, reversing and overruling;

Use any relevant cases in illustration.

Assessment Objective 2

Candidates may identify in the source that the Court of Appeal in *Schorsch Meier* is going against the established rules of precedent since it is overruling the precedent of a higher court.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Refer to Source B. Describe the character and role of the Law Commission. [20 marks]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Identify the Law Commission as being created in the Law Commission Act 1965, as a full time law reform body with 5 full time commissioners and powers and responsibilities laid down in the Act;

Explain that the main roles are: to systematically keep all English law under review; to codify areas of law particularly the criminal law; to receive and consider proposals for law reform and to consult with appropriate bodies; to put forward proposals for reform; to consolidate the law and remove outdated laws;

Discuss the autonomous nature of the Law Commission in comparison to the part time and ad hoc character of the other law reform bodies;

Consider the achievements of the Law Commission, refer to appropriate Acts and to the removal of obsolete laws;

Discuss the limitations imposed on the Law Commission, the problems of getting proposals enacted e.g. the draft criminal code, and the problem of Ministers overloading the Commissioners with other work

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(c) Discuss the ways in which a judge of the Court of Appeal is able to reform the law.
[20 marks]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Use any cases which show judges of the Court of Appeal as a reformer e.g. Lord Denning in *Central London Properties Trust v Hightrees House*.

Assessment Objective 2

Identify those areas of flexibility enjoyed by judges in the Court of Appeal within the doctrine: the exceptions in *Young v Bristol Aeroplane*, distinguishing, reversing a decision of a lower court in the same case, overruling.

Discuss any appropriate cases to illustrate instances where a court has tried to go beyond established procedure and overrule its own cases e.g. *Davis v Johnson*, *Tiverton Estates v Wearwell*; or cases of a higher court e.g. *Schorsch Meier v Hennin*, *Broome v Cassell*, *The Hanna Blumenthal* .

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (d) **Re Havana Railways was decided by the House of Lords in 1961. Miliangos reached the House of Lords in 1975.**
- (i) **Explain the doctrine which allowed the House of Lords to overrule its precedent in the earlier case.**
 - (ii) **How, if at all, would their answer have differed if *Miliangos* had come before the House of Lords in 1965?** [20 marks]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 2

In the case of (i): identify the Practice Statement 1966, and the power of the House of Lords to depart from their own past precedents ‘*when it is right to do so*’, which will be to prevent injustice in the present case or to aid the due development of law.

In the case of (ii): Explain the position of the House of Lords prior to the Practice Statement, that by *London Tramways v LCC*, they were bound to follow their own past precedents, unless the precedent could be shown to have been decided *per incuriam*, was inconsistent with subsequent statute, or could be distinguished.

Discuss whether or not *Re Havanna* could have been departed from before 1966, and why it was after 1966.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. Exercise on Statutory Interpretation

(a) Refer to the Source. Using examples explain the literal rule of statutory interpretation.

[30 marks]

Mark Levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Identify that the literal rule involves applying the ‘plain, ordinary and literal meaning’ of the words.

Consider that judges applying this rule may do so even where it leads to a ‘manifest absurdity’ (Lord Esher in *R v City of London Court*).

Discuss the use of dictionary definitions and the problems that this can lead to e.g. words having more than one dictionary meaning.

Use any relevant cases to illustrate the problems that can arise from using the literal rule e.g. absurdity *IRC v Hinchey*, injustice *LNER v Berriman*, forcing Parliament into fresh legislation *Fisher v Bell* etc.

Assessment Objective 2

Discuss the fact that the Literal Rule protects the separation of powers.

Consider though that it ‘punishes parliament’ e.g. *Fisher v Bell*; and can produce absurd results e.g. *IRC v Hinchey*; and injustice e.g. *Berriman*; and seem to ignore the true intent of Parliament e.g. *Magor & St. Melons v Newport Corporation*; and has been criticised by the Law Commission; and that it implies ‘*an unattainable perfection in draughtsmanship*’.

Apply any of the problems to the extract e.g. Lord Goff’s criticism that the judges are inaccurately representing the dictionary definition, and that seemingly innocent people will be convicted.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Identify and explain other approaches to statutory interpretation that could have been used by the judges in *Maginnis*. [36 marks]

Mark Levels

Level 4	28-36
Level 3	19-27
Level 2	10-18
Level 1	1-9

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Identify the possibility of judges favouring the literal rule using the Golden Rule instead either to prevent absurdity, or for policy reasons.

Use any relevant cases in illustration e.g. *Adler v George*, *Re Sigsworth*

Identify the mischief rule as a possible alternative.

Explain the mischief rule – look to defect in previous law and remedy proposed in Act (*Heydon's case*)

Identify the purposive approach as an alternative.

Explain how this looks for the reason that Parliament passed the Act rather than merely concentrating on the specific words in question.

Use any relevant cases to illustrate use of the purposive approach e.g. *Royal College of Nursing v DHSS*, *Pickstone v Freemans*, *Fothergill v Monarch Airlines* etc.

Refer to any of the intrinsic aids or extrinsic aids or to the use of presumptions.

Assessment Objective 2

Make any relevant comments on the differences between the approaches.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (c) Using your knowledge of the rules of statutory interpretation, consider whether each of the following has committed an offence by having “... a controlled drug in his possession, whether lawfully or not, with the intent to supply it to another...”
- (i) George has cannabis in his pocket which he intends to smoke with his girlfriend Hannah.
 - (ii) Simon, a doctor, has taken controlled drugs from his patient Tim, an addict, and is planning to deliver them to the police.
 - (iii) Annie is Bill’s mother. One day Bill asks her if she will keep a sealed brown paper package for him while he goes out. The package contains a kilogram of heroin.

[24 marks]

Mark Levels

Level 4	19-24
Level 3	13-18
Level 2	7-12
Level 1	1-6

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 2

Apply the extract in assessing the problem;

Apply rules of statutory interpretation to the problem;

In the case of (i) : consider that Hannah is to use the drugs, therefore that, applying s5(3), George has committed the offence whichever rule of interpretation is used.

In the case of (ii): discuss how applying a literal interpretation or a purposive rule may produce different results - the doctor has a controlled drug in his possession and intends to pass it on to another person, according to the extract of s5(3) it is immaterial whether he has it lawfully or not, who he is going to give it to, and with what motive, so under the literal rule he may have committed the offence - but on Lord Goff’s reasoning would not if the purposive approach was used.

In the case of (iii): consider that the same result may occur using the literal rule, but consider that the word possession may also need interpretation, and whether possession is possible without knowledge of the thing possessed, since Annie apparently does not know what is in the package.

Consider also the presumption of mens rea in crime.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced Subsidiary GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Advanced GCE

LAW

CRIMINAL LAW 1

2571

Specimen Paper

Additional materials:
Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions, one from Section A and one from Section B.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **TWO** questions, **one** from Section A and **one** from Section B.

SECTION A

1. 'Strict liability must be retained. It provides social benefits which would not otherwise be obtained and the injustice caused by it is often exaggerated.'

Discuss.

[50 marks]

2. In order to secure a conviction for an attempted crime the accused must be proved to have done an act which is " more than merely preparatory " to the intended offence.

How satisfactory has this definition proved to be?

[50 marks]

SECTION B

3. Pauline, a woman of 28, has been married to Rodney for seven years. Rodney is an alcoholic and often returns home drunk. Whilst in this state, he often punches and slaps Pauline. This behaviour has been taking place for the past three years. One evening, Rodney returns home drunk and slaps Pauline on the face. Rodney then falls asleep on the sofa. Pauline spends a couple of hours contemplating what has happened and, in a sudden burst of fury, beats Rodney on the head intending to kill him.

Pauline is charged with the murder of Rodney. She does not dispute that at the time of the incident she intended to kill him.

Consider how Pauline might defend herself on a charge of murder.

[50 marks]

4. Alice and Briony belong to a group of animal rights activists called Born Free. They are involved in a national campaign against Eurodrug who own a chain of stores that sell pharmaceutical and cosmetic products. The group believes that some of these products have been developed by testing their possible side effects upon animals. One evening Alice and Briony plant a bomb inside a carrier bag which they place inside the doorway of one of Eurodrug's main shops in a large shopping mall. They telephone the police to warn them that the bomb has been timed to explode in two hours' time.

The area is quickly cleared of all members of the public and David, an army bomb disposal expert, is brought in to de-fuse the device. Unfortunately the bomb explodes as he is trying to move it and David is seriously injured. He is rushed to hospital where he refuses to undergo a blood transfusion as it is against his religious beliefs. Doctors are of the opinion that such a transfusion would almost certainly have saved his life.

Alice and Briony have now been charged with David's murder. Discuss their possible liability.

[50 marks]

Oxford Cambridge and RSA Examinations



Advanced GCE

LAW

CRIMINAL LAW 1

2571

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

1. ' Strict liability must be retained. It provides social benefits which would not otherwise be obtained and the injustice caused by it is often exaggerated. '

Discuss.

[50 marks]

Mark levels

Level 5	41 - 50
Level 4	31 - 40
Level 3	21 - 30
Level 2	11 - 20
Level 1	1 - 10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Define the concept of strict liability by reference to the lack of requirement of *mens rea*;

Demonstrate knowledge of the relevant principles relating to strict liability;

Emphasise the common law presumption of *mens rea* e.g. *Sweet v Parsley*;

Identify the statutory nature of strict liability offences;

Realise the significance of statutory interpretation in this context;

Recognise the summary nature of strict liability offences;

Provide examples of strict liability offences - road traffic, licensing, food safety, pollution etc.;

Elaborate the examples by reference to appropriate cases e.g. *Sherras v De Rutzen*, *Alphacell, Smedleys v Breed*, *James & Son v Sme* etc.;

Refer to the distinction between 'absolute' and 'strict' liability;

Give examples of 'no -negligence' / 'due diligence' defences;

Refer to some of the social benefits claimed or injustices caused e.g. the regulatory nature or administrative convenience or the possible injustice of imposition of liability without fault e.g. 'spiking' of drinks or 'planting' of drugs e.g. *Warner*, *Gammon*, *Storkwain*, *Lim Chin Aik* etc.

Assessment Objective 2

(20 marks)

Comment on the confusion and inconsistency caused by the way in which the courts have interpreted strict liability offences;

Analyse of some of the following 'benefits':-

- protection of society from harmful acts / the 'quasi-criminal' nature of strict liability offences creates little stigma /
- regulatory nature, promotes high standards of care in socially important activities / practical effectiveness i.e.. too many polluted rivers, too many drunk drivers as it is / administrative convenience, difficulty of establishing *mens rea* in many such cases removed etc.

Consider some of the counter arguments / 'injustices'

- too much inconsistent use of discretion used by prosecuting agencies (more Parliamentary guidance as to fault element preferable ?) / conviction of the morally innocent is never justifiable/ public respect for the criminal law is potentially undermined by dubious prosecutions / room for the development of criminal responsibility based on negligence ?;

Address the question by considering arguments for and against the imposition of strict liability before concluding whether or not to agree with the assertion in the question that it ought to be retained.

Assessment Objective 3

(5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. **In order to secure a conviction for an attempted crime the accused must be proved to have done an act which is " more than merely preparatory " to the intended offence.**

How satisfactory has this definition proved to be?

[50 marks]

Mark levels

Level 5	41 - 50
Level 4	31 - 40
Level 3	21 - 30
Level 2	11 - 20
Level 1	1 - 10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Refer to the 1981 Criminal Attempts Act and so as to define the *actus reus* of the offence

Recognise importance of establishing at what point a criminal intention can be said to have progressed to the stage of an attempt.

Cite relevant cases that provide principles applying the meaning of 'more than merely preparatory' these may include:- *Widdowson*, *Gullefer Campbell* and *Jones*;

Recognise that aspects of attempting the impossible may very well refer to the practical and theoretical absence of an *actus reus* of any sort unless defined by the accused's belief and refer to Ss 1 (2) and (3) as well as *Haughton v Smith*, *Anderton v Ryan* and *Shivpuri*.

Demonstrate an awareness of the Law Commission's report which preceded the Criminal Attempts Act and describe some of the questions considered by the Report. e.g. the desirability of striking a balance between the protection of the public from the social danger caused by the contemplation of crime and the individual freedom to think or even fantasise.

Assessment Objective 2

(20 marks)

Analyse the rationale of criminalising attempts;

Discuss the principle that a person ought not to be punished for merely contemplating the commission of offence.

Consider, perhaps, some reference to 'proximity', 'equivocality' or 'last act' principles which may very well demonstrate the candidate's true understanding of the topic older relevant cases discussed might include *Robinson*, *Stonehouse etc.*

Observe that the decision in *Gullefer* reflects the wish expressed by the Law Commission that the point at which a course of conduct amounts to an offence is a matter of fact for the jury in each case using principles of common sense and that the older common law principles would not normally need to be considered in order for a jury to come to a conclusion about this.

Explain that point at which the law intervenes to criminalise such thoughts is the point defined in the Act by the phrase in the question;

Examine the difficulties in defining at what precise point if any an attempt can be said to have occurred e.g. the problems in *Gullefer* and *Jones*

Consider how realistic is it to expect the ordinary juror to be able to determine this without some further guidance?

Comment on whether it should still be permissible for a judge to make reference to the previous law in order to clarify matters for the jury?

Analyse it should be necessary e.g. in a case of attempted murder that the accused need go as far as pointing a gun at his / her intended victim? etc.

Address the question by considering not only what the law of attempt currently is, but how satisfactory it is.

Assessment Objective 3

(5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

3. **Pauline, a woman of 28, has been married to Rodney for seven years. Rodney is an alcoholic and often returns home drunk. Whilst in this state, he often punches and slaps Pauline. This behaviour has been taking place for the past three years. One evening, Rodney returns home drunk and slaps Pauline on the face. Rodney then falls asleep on the sofa. Pauline spends a couple of hours contemplating what has happened and, in a sudden burst of fury, beats Rodney on the head intending to kill him.**

Pauline is charged with the murder of Rodney. She does not dispute that at the time of the incident she intended to kill him.

Consider how Pauline might defend herself on a charge of murder.

[50 marks]

Mark levels

Level 5	41 - 50
Level 4	31 - 40
Level 3	21 - 30
Level 2	11 - 20
Level 1	1 - 10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Demonstrate good understanding of the defences of provocation and diminished responsibility and their effect on a charge of murder

Define the defence of provocation under the Homicide Act 1957 S.3

Illustrate the operation of that definition by reference to cases such as *Doughty*; *Camplin*; *Thornton*; *Morhall*; *Humphreys*; *Dryden*; *Parker*; *Smith*

Refer to the development of the concept of 'Battered Woman Syndrome'

Acknowledge the burden of proof on the prosecution

Give the definition of diminished responsibility from S2 Homicide Act 1957;

Recognise the nature of 'abnormality of mind' and 'substantial impairment'

Acknowledge the burden of proof on the accused – medical evidence required in support

Expand that definition by reference to cases such as *Byrne*; *Campbell*; *Ahluwalia*; *Luc*

Better candidates may refer to the recent conflict between the Privy Council and Court of Appeal over the application of ‘mental characteristics’ in a provocation defence

Assessment Objective 2

(20 marks)

Analyse the facts in the light of the scenario

Apply the legal principles to the facts and reach the reasoned conclusion that provocation may be available as a defence to Pauline (*Ahluwalia*)

Apply the principles of diminished responsibility to the facts and observe that this seems the more likely defence in the light of what appears to be a ‘cooling off’ period

Assessment Objective 3

(5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

4 Alice and Briony belong to a group of animal rights activists called Born Free. They are involved in a national campaign against Eurodrug who own a chain of stores that sell pharmaceutical and cosmetic products. The group believes that some of these products have been developed by testing their possible side effects upon animals. One evening Alice and Briony plant a bomb inside a carrier bag which they place inside the doorway of one of Eurodrug’s main shops in a large shopping mall. They telephone the police to warn them that the bomb has been timed to explode in two hours’ time.

The area is quickly cleared of all members of the public and David, an army bomb disposal expert, is brought in to de-fuse the device. Unfortunately the bomb explodes as he is trying to move it and David is seriously injured. He is rushed to hospital where he refuses to undergo a blood transfusion as it is against his religious beliefs. Doctors are of the opinion that such a transfusion would almost certainly have saved his life.

Alice and Briony have now been charged with David’s murder. Discuss their possible liability.

[50 marks]

Mark levels

Level 5	41 - 50
Level 4	31 - 40
Level 3	21 - 30
Level 2	11 - 20
Level 1	1 - 10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Define the offence of murder and demonstrate knowledge of its elements

Distinguish between motive and intention and recognise that the existence of a good motive is irrelevant to the concept of intention in law - *Steane*

Explain the meaning of intention in murder and in particular make clear that foresight of consequences is merely evidence from which a jury may find that a result was intended *Moloney; Nedrick; Woollin*

Distinguish between direct and oblique intention

Refer to Ld. Mustill's concept of 'indiscriminate malice' in *A-G's Ref No3 of 1994*

Explain the principles of causation in fact and in law *Pagett; Smith; Cheshire; Blaue*

Assessment Objective 2

(20 marks)

Apply the legal principles to the facts

Analyse whether, upon the application of *Moloney; A-G's Ref No. 3 of 1994; Woollin etc.* this is an example of oblique intention sufficient to justify a murder conviction

Comment on the distinction between murder and manslaughter

Comment upon the critical nature of the trial judge's direction

Assess the significance of the warning given

Assess whether their states of mind fall short of Ld. Mustill's idea of indiscriminate malice

Apply the rules of causation to fix their liability for homicide, in particular *Blaue*

Assessment Objective 3

(5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Advanced GCE

LAW

CRIMINAL LAW 2

2572

Specimen Paper

Additional materials:

Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions, one from Section A and one from Section B.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **TWO** questions, **one** from Section A and **one** from Section B.

SECTION A

1. The defences of duress, necessity and duress of circumstances all recognise that a person ought not always to be regarded as criminally liable if he or she feels compelled to act against their will.

Critically evaluate how and why the courts have limited the availability of these defences.

[50 marks]

2. Evaluate the effectiveness of insanity as a defence.

[50 marks]

SECTION B

3. Daphne, while playing hockey, receives a blow on the head which causes concussion and she has to leave the pitch. In the changing rooms, while still semi-conscious, Daphne rips a jersey belonging to Naomi, a fellow player.

After recovering from the immediate effects of the concussion, Daphne still occasionally suffers from bouts of semi-consciousness due to the blow which she had received. Her doctor warns her that drinking any alcohol will greatly increase the likelihood of any blackout. Two days later, at a party, Daphne drinks one small whisky which causes her to become semi-conscious. She then smashes several crystal glasses on a nearby table. Sanjay tries to restrain her, but Daphne punches him in the face fracturing his jaw.

- (a) Discuss Daphne's criminal liability. Would your answer differ if Daphne was drinking orange juice at the party and Julie spiked the drink with whisky?.

[40]

- (b) Daphne has been detained by the police for questioning and is anxious to know whether or not she is likely to be released on bail. Advise her.

[10]

[Total: 50 marks]

4. Martin, a student, is heavily in debt. Since he has no food left at his flat, he goes to a local supermarket. He takes his flatmate's personal stereo player without asking so that he can listen to some music. He enters the supermarket and goes to the freezer units where the frozen food is kept. He reaches inside and selects a tray of chicken breasts which he places inside his jacket. Just then he notices that another shopper is watching him. Afraid that the person observing him is a store detective Martin sheepishly replaces the item in the freezer and quickly runs out of the store.

Feeling cold and miserable he decides to go to the local cinema to keep warm. He has just enough money to pay for his ticket. On his way out he notices that there is no one around so he reaches behind a glass counter at the kiosk in the foyer and takes six bars of chocolate.

As he is walking home that evening, his luck seems to change when he sees a wallet lying in the gutter. It contains £100 in ten pound notes. Seeing that no one is around Martin decides to keep the money but leaves the wallet. He gives the personal stereo player back to his flatmate but the batteries are now completely flat.

- (a) Consider what offences, if any, Martin has committed.

[40]

- (b) Advise Martin as to which courts may have power to try his case if he is charged with an offence or offences and why the venue may be significant for him.

[10]

[Total: 50 marks]

Oxford Cambridge and RSA Examinations



Advanced GCE

LAW

CRIMINAL LAW 2

2572

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

SECTION A

1. The defences of duress, necessity and duress of circumstances all recognise that a person ought not always to be regarded as criminally liable if he or she feels compelled to act against their will.

Critically evaluate how and why the courts have limited the availability of these defences.
[50 marks]

Mark levels

Level 5	41 - 50
Level 4	31 - 40
Level 3	21 - 30
Level 4	11 - 20
Level 5	1 - 10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Define accurately one or more of the defences by reference to relevant cases;

Realise that duress in any of its forms is a recognition that an accused may be entitled to be asked to be excused liability on the basis of their will being overborne in the face of an external threat as a result of which they felt compelled to commit the alleged offence;

Demonstrate knowledge of the relevant principles relating to duress, necessity and / or duress of circumstances;

Refer to subjective / objective aspects of the defences *Graham, Martin, Bowen, Emery* / the nature of the threat *Valderrama Vega*, / the requirement of immediacy *Hudson & Taylor*;

Realise the limited availability of the defences e.g. not available in answer to a charge of murder etc. *Lynch, Howe, Gotts*;

Recognise the apparent denial of necessity as a defence until the emergence of duress of circumstance *Dudley & Stephens, Buckoke, Conway, Willer, Martin, Pommell* etc.

Appreciate duress denied if criminal associations voluntarily joined *Fitzpatrick, Shepherd*

Assessment Objective 2

(20 marks)

Evaluate the moral arguments that can be applied to duress, necessity and d of c. concerning the degree of resistance to be expected from an individual under threat; is it hypocritical to claim this higher moral ground?

Discuss the type of threat, ought it be confined to self and immediate family? Why?

Consider whether threats other than death or serious harm be allowable?

Analyse of the policy arguments for not allowing duress as a defence to murder etc. the anti-terrorism element of policy. Hailsham in *Howe* etc.;

Comment on which characteristics (frailty, cowardice, submissiveness, low IQ) ought to be taken into account? *cf* provocation etc.;

Consider whether the proposals suggested by the Law Commission and the law as developed by recent cases are becoming more favourable to an accused in terms of the subjective element?

Justify the development by the Court of Appeal of the defence of duress of circumstances. Evaluate whether or not the limitations are justified, based on the preceding arguments. Criticise that it is still apparently available to a S.18 OAP Act 1861 gbh charge.

Is there a case for legislation as called for by the Court of Appeal?

Assessment Objective 3

(5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. Evaluate the effectiveness of insanity as a defence.

[50 marks]

Mark levels

Level 5	41 - 50
Level 4	31 - 40
Level 3	21 - 30
Level 2	11 - 20
Level 1	1 - 10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Define insanity by accurate reference to the *McNaghten Rules*

Explore that definition by considering how the courts have dealt with the meaning of:

Defect of reason

Disease of the mind

The nature and quality of the act

Distinguish between insanity and non-insane automatism

Illustrate the definition of insanity by citing relevant cases such as *Windle*; *Kemp*; *Quick*; *Sullivan*; *Burgess etc.*

Demonstrate good understanding of the effect of the defence and refer to the 'special verdict' and the provisions of the Criminal Procedure (Insanity and Unfitness to Plead Act 1991

Assessment Objective 2

(20 marks)

Comment in a sophisticated way on such points as:

The legal irrelevance of the temporary or curable nature of the illness

The fact that it may arise from physical as well as mental factors so long as they impinge upon the 'operation of the mind in all its activities'

The unfairness of the McNaghten Rules with regard to the stigmatisation of diabetics and epileptics

The exclusion of people such as *Windle* and, even more significantly, the apparent exclusion of psychopaths who are deemed to know the nature and quality of their acts

The need to use diminished responsibility in murder cases

The effect of the defence and the different methods of disposal now available to the courts

Assessment Objective 3

(5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

3. Daphne, while playing hockey, receives a blow on the head which causes concussion and she has to leave the pitch. In the changing rooms, while still semi-conscious, Daphne rips a jersey belonging to Naomi, a fellow player.

After recovering from the immediate effects of the concussion, Daphne still occasionally suffers from bouts of semi-consciousness due to the blow which she had received. Her doctor warns her that drinking any alcohol will greatly increase the likelihood of any blackout. Two days later, at a party, Daphne drinks one small whisky which causes her to become semi-conscious. She then smashes several crystal glasses on a nearby table. Sanjay tries to restrain her, but Daphne punches him in the face fracturing his jaw.

- (a) Discuss Daphne's criminal liability. Would your answer differ if Daphne was drinking orange juice at the party and Julie spiked the drink with whisky?

[40 marks]

Mark levels

Level 5	33-40
Level 4	25-32
Level 3	17-24
Level 2	9-16
Level 1	1 - 8

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(20 marks)

Define the crimes of criminal damage – Criminal Damage Act 1971 S.1

and malicious wounding/inflicting g.b.h. S18 and S20 Offences Against the Person Act 1861

Recognise that causing g.b.h. (S18) is a crime of specific intent while criminal damage and malicious wounding are crimes of basic intent

Define the defence of automatism – *Ld. Denning in A-G for N.I. v Bratty*

Explain the principles of automatism and how it operates as a defence using relevant cases and examples as illustrations e.g. *Hill v Baxter*

Assessment Objective 2

(16 marks)

Apply the principles of automatism to the criminal damage to the jersey, recognising that automatism is a complete defence, concussion is generally acknowledged as affording the defence providing it negates the formation of the *mens rea*

Discuss the effect of the warning given by the doctor recognising that Daphne's state of automatism at the party is almost certainly self-induced and will not afford her a defence to the criminal damage or S20 charges since these are crimes of basic intent – *Bailey* (fall-back position from a S18 charge).

If Julie had spiked the drinks then Daphne's actions would be involuntary and she would appear to have a good defence for the offences committed at the party.

Note: Candidates who discuss intoxication as a possible defence will receive credit especially if they relate the decision in *Kingston* to the spiked drinks scenario. However a discussion of intoxication is not essential in order to gain maximum marks.

Assessment Objective 3

(4 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Daphne has been detained by the police for questioning and is anxious to know whether or not she is likely to be released on bail. Advise her.

[10 marks]

Mark levels

Level 5	9-10
Level 4	7-8
Level 3	5-6
Level 2	3-4
Level 1	1-2

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate knowledge of the Bail Act 1976.

State the circumstances under the Bail Act when bail may be refused by a court

Recognise that where an accused cannot be brought before magistrates within 24 hours the police may grant bail and attach conditions.

Assessment Objective 2

Recognise that there is a presumption in favour of bail.

Suggest that bail is likely to be granted unless there is evidence that Daphne if released:

- would fail to surrender to bail; or
- commit further offences; or
- interfere with witnesses; or
- should be kept in custody for her own protection

and conclude that there would seem to be no reason for bail to be refused but that conditions may be attached.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4. Martin, a student, is heavily in debt. Since he has no food left at his flat, he goes to a local supermarket. He takes his flatmate's personal stereo player without asking so that he can listen to some music. He enters the supermarket and goes to the freezer units where the frozen food is kept. He reaches inside and selects a tray of chicken breasts which he places inside his jacket. Just then he notices that another shopper is watching him. Afraid that the person observing him is a store detective Martin sheepishly replaces the item in the freezer and quickly runs out of the store.**

Feeling cold and miserable he decides to go to the local cinema to keep warm. He has just enough money to pay for his ticket. On his way out he notices that there is no-one around so he reaches behind a glass counter at the kiosk in the foyer and takes six bars of chocolate.

As he is walking home that evening, his luck seems to change when he sees a wallet lying in the gutter. It contains £100 in ten pound notes. Seeing that no-one is around Martin decides to keep the money but leaves the wallet. He gives the personal stereo player back to his flatmate but the batteries are now completely flat.

- (a) Consider what offences, if any, Martin has committed.

[40 marks]

Mark levels

Level 5	33-40
Level 4	25-32
Level 3	17-24
Level 2	9-16
Level 1	1 - 8

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(20 marks)

Define theft Theft Act 1968 S.1 and in relation to the various aspects of the problem consider

- S2 and the meaning of dishonesty the partial definition in S2(i)(b) and (c), the *Ghosh* test in other situations emphasising the role of jury equity
- S3 and the meaning of appropriation as developed through *Lawrence*, *Morris* and *Gomez*
- S6 intention to permanently deprive in relation to the personal stereo and the chicken breasts. The significance of *Lloyd*.

Define burglary S.9 Theft Act and its elements.

Assessment Objective 2

(16 marks)

Apply the relevant law to the above situations. In particular:

- Dishonesty and intention to permanently deprive in relation to the personal stereo and batteries. There seems to be no intention to permanently deprive in relation to the personal stereo but what about the batteries? Could Martin plead S2(i)(b) in his defence? Did he honestly believe that the flatmate would consent to his exhausting the batteries? It seems from *Lloyd* that the batteries may well have been stolen even though they have been returned since all their virtue has been exhausted and the intention to permanently deprive is satisfied.
- Consider burglary and theft in relation to the supermarket. Martin has entered as a trespasser if he had the intention to steal at the time of entry S9(1) (b). Does he appropriate the chicken? Clearly yes even according to *Morris*. Evidence that he intended to permanently deprive by his placing it inside his coat. Burglary may also have occurred under S9(1)(b) since his conduct is in excess of the implied permission given to customers and according to *Jones and Smith* may be inferred to make the original entry a trespassory one even if at the time of entry he had not intended to steal.
- Although not a trespasser in the cinema Martin does in fact trespass into a part of the building, the kiosk, and may be liable for burglary –*Walkington*, as well as theft of the chocolate.

Assessment Objective 3

(4 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Advise Martin as to which courts may have power to try his case if he is charged with an offence or offences and why the venue may be significant for him.

[10 marks]

Mark levels

Level 5	9-10
Level 4	7-8
Level 3	5-6
Level 2	3-4
Level 1	1-2

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate clear knowledge and understanding of the jurisdiction of the Magistrates' Court and the Crown Court

State that theft and burglary are triable either way offences and may be heard in either court depending on the decision of the magistrates on their power to deal with the case

State that Martin has the right to elect trial at the Crown Court if he is pleading not guilty

Assessment Objective 2

Identify the advantages/disadvantages of either decision: speed; cost; 'case hardened' magistrates v jury equity; sentencing powers

Recognise that this type of burglary would be considered suitable for trial at a Magistrates' Court

Advise Martin accordingly

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Advanced GCE

LAW

CRIMINAL LAW SPECIAL STUDY

2573

Specimen Paper

Additional materials:
Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **all** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

In this paper you are expected to show your knowledge and understanding of different aspects of the English legal system and specific areas of Law.

You are reminded of the importance of including relevant knowledge from all areas of your course, where appropriate, including the English Legal System.

Answer ALL questions

1. The Law Commission recommends changes to the criminal law in its 1996 Report - 'Legislating The Code - Involuntary Manslaughter.'

Critically consider the role of the Law Commission in assisting Parliament to change the law.

[20 marks]

2. Discuss why Lord Mackay's definition of gross negligence manslaughter in the House of Lords' decision in *R v Adomako* (1994) has been criticised as unsatisfactory.

[20 marks]

3. Examine how decided cases have developed the offence of unlawful act / constructive manslaughter.

[30 marks]

4. David and Imran, both aged 22, are in David's house while David's parents are away on holiday. David tells Imran that his father has got a revolver in a drawer in his bedroom. They agree that it would be fun to get it and pretend to be gangsters by pointing the gun at each other and making exaggerated threats. David knows his father has also got some 'dummy' bullets and some live bullets in a box next to the gun. He tells Imran they are only dummy bullets. They put six of these bullets into the chamber. They then take turns pointing the gun at each other and pulling the trigger. Unfortunately one of the bullets is real and when David squeezes the trigger for the third time he shoots Imran dead with a real bullet.

When questioned David admits that he didn't really know the difference between the dummy bullets and the real ones but he hoped they were all dummy bullets.

David has now been charged with manslaughter.

Discuss his liability:

- (a) under the existing law; **and**
(b) under the Law Commission's proposals for the reform of involuntary manslaughter.

[30 marks]

Oxford Cambridge and RSA Examinations



Advanced GCE

LAW

CRIMINAL LAW SPECIAL STUDY

2573

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

1. **The Law Commission recommends changes to the criminal law in its 1996 Report - 'Legislating The Code - Involuntary Manslaughter.'** Critically consider the role of the Law Commission in assisting Parliament to change the law. [20 marks]

Mark Levels

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

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

State the purpose of the Law Commission - s3 Law Commission Act 1965

Give details of its role - consultation, report, draft bills - criminal code

Demonstrate knowledge of the Parliamentary procedure for enacting a law

Assessment Objective 2

Discuss the effectiveness of the Commission

Consider the lack of any member of the Government having direct responsibility for the implementation of its proposals

Give examples of its work where legislation has been created e.g., Criminal Damage Act 1981,

Criminal Attempts Act 1981, Theft Act 1996

Comment on the slowness in implementation, e.g. The Draft Criminal Code

Comment on the use of the Jellicoe procedure to introduce Law Commission proposals

Conclude that implementation depends upon political will and available Parliamentary time

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. Discuss why Lord Mackay's definition of gross negligence manslaughter in the House of Lords ' decision in *R v Adomako* (1995) has been criticised as unsatisfactory.

[20 marks]

Mark Levels

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

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

State Lord Mackay's definition of gross negligence manslaughter in *Adomako*

Refer to the facts of the case

Refer to other relevant cases e.g. *Bateman; Andrews*

Mention the Court of Appeal decision in *Prentice, Holloway and Adomako*

Assessment Objective 2

Develop the various aspects of the definition

Discuss the concept of recklessness previously applied in *Seymour*

Distinguish the two prior concepts of recklessness in manslaughter

Identify that Ld. Mackay stated that whether or not the accused is guilty of gross negligence depends on the seriousness of the breach and the circumstances in which it occurs

Recognise that the test for gross negligence is potentially broader than that for recklessness and is clearly designed to cover omissions and is not limited to experts such as doctors or electricians

Comment on the 'circularity' of the definition which requires the jury to decide whether the conduct of the defendant is so 'bad' as to amount to a criminal offence

Discuss whether the jury should now assess the state of a defendant's mind in involuntary manslaughter or merely assess his conduct

Argue whether the defendant must foresee a risk of death or may this be implied from the circumstances?

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. Examine how decided cases have developed the offence of unlawful act / constructive manslaughter. [30 marks]

Mark Levels

Level 5	25 - 30
Level 4	19 - 24
Level 3	13 - 18
Level 2	7 - 12
Level 1	1 - 6

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Define unlawful act manslaughter, e.g. where an accused causes a victim's death by an unlawful and dangerous act but without malice aforethought or intention to kill or do serious harm

Define the meaning of constructive (built out of liability for another act)

Recognise that the act in question must be unlawful and dangerous

Define the meaning of unlawful, i.e. criminal not merely tortious *Franklin*

Define the meaning of dangerous, i.e. such that any sober and reasonable person would regard as likely to cause some harm to the victim albeit not necessarily serious harm *Church*

State that the relevant *mens rea* is that required for the 'unlawful' act *Newbury and Jones*

Assessment Objective 2

Criticise the artificiality and potential unfairness that may be caused by 'constructing' liability for a more serious crime out of another less serious one

Comment upon the doubts surrounding whether the unlawful act in question must in some way be 'aimed at' the victim *Cato; Dalby; Mitchell*

Consider whether and in what circumstances liability ought to be incurred as a result of causing emotional shock e.g. a heart attack *Dawson; Watson*

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

4. **David and Imran, both aged 22, are in David's house while David's parents are away on holiday. David tells Imran that his father has got a revolver in a drawer in his bedroom. They agree that it would be fun to get it and pretend to be gangsters by pointing the gun at each other and making exaggerated threats. David knows his father has also got some 'dummy' bullets and some live bullets in a box next to the gun. He tells Imran they are only dummy bullets. They put six of these bullets into the chamber. They then take turns pointing the gun at each other and pulling the trigger. Unfortunately one of the bullets is real and when David squeezes the trigger for the third time he shoots Imran dead with a real bullet.**

When questioned David admits that he didn't really know the difference between the dummy bullets and the real ones but he hoped they were all dummy bullets.

David has now been charged with manslaughter.

Discuss his liability:

(a) under the existing law, and

(b) under the Law Commission's proposals for the reform of involuntary manslaughter.

[30 marks]

Mark Levels

Level 5	25 - 30
Level 4	19 - 24
Level 3	13 - 18
Level 2	7 - 12
Level 1	1 - 6

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Much of the knowledge for this question will already have been given in questions 2 and 3. Credit under this objective should only be given for additional material

Show understanding by giving a broad definition of manslaughter by reference to the *actus reus* of causing a death in a criminal sense but without *malice aforethought*

Define constructive manslaughter and cite relevant cases e.g. *Church; Newbury & Jones; etc.*

Define the constituents of an assault and the defence of consent (in relation to a potential unlawful act) and refer to *Lamb*

State the law relating to gross negligence manslaughter and cite relevant cases in support e.g.

Bateman; Andrews; Stone & Dobinson; Adomako

Assessment Objective 2

Identify the *actus reus* of homicide

Identify potential charges of constructive or gross negligence manslaughter

Analyse liability for constructive manslaughter by reference to an unlawful act, potentially an assault?

Conclude that Imran's consent would negative an assault *Lamb*

Analyse liability for gross negligence manslaughter by applying *Adomako*

Apply the Law Commission's proposals recognising there could no longer be any liability in any event on the basis of constructive manslaughter

Consider whether David would be liable under the Law Commission's definition of reckless manslaughter and conclude that he may not be liable

Consider whether David would be liable under the Law Commission's definition of killing by gross carelessness

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF CONTRACT 1

2574

Specimen Paper

Additional materials:
Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions, one from Section A and one from Section B.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **TWO** questions, **one** from Section A and **one** from Section B.

SECTION A

1. Critically evaluate what in law will amount to an 'offer'. **[50 marks]**
2. To what extent does the use of the innominate term enable the courts to strike a balance between fairness and certainty? **[50 marks]**

SECTION B

3. Alan and Beth decide to extend and redecorate their house, to improve the accommodation which elderly Aunt Carrie occupies, and to provide space for the family's hobbies. Pleased with the result, they hold a small party. Aunt Carrie's accountant, David, is impressed with the work on the house, and offers to pay £1000 towards it, in order to help support Aunt Carrie. Alan and Beth thank David, and look forward to receiving the money. Two weeks after the party it has not arrived.

Edmund, a wealthy local businessman, who has loaned Alan and Beth £500 towards the cost of the improvements, is also impressed with the work and tells the couple that they need not repay the loan. They thank him, saying that they will now be able to go for a short holiday, and take Aunt Carrie with them. However, on return from their holiday, they find a letter informing them that Edmund requests the payment of £500 after all.

Advise Alan and Beth concerning the money from David and the loan from Edmund.

[50 marks]

4. Nadine and Olivia, both aged 17, are keen on dancing and theatre and both decide to pursue a career in this field.

Nadine gains a place at stage school, and begins her course with enthusiasm. However she soon becomes annoyed at some of the terms to which she finds she has agreed, in particular one which prevents her from taking part in any professional productions during the school vacation, without permission from the school, and another which obliges her to hand over 30% of any earnings from such productions, during her time at the school. Nadine has been invited to take part in a professional play during the summer, and would now like to avoid these obligations.

Olivia's career takes a different course. She borrows money from Countrywide Bank to set up her own small but successful business, selling dance and stage clothing and equipment, the proceeds of which pay for singing and dancing lessons. After a few months Olivia's main supplier finds out that she is only 17 and refuses to trade further with her. This leaves Olivia without enough business to pay for this month's lessons, and her teacher is pressing her to meet her obligations. She is also behind with the payments on her mobile telephone account, and has received a demand for payment.

Advise both Nadine and Olivia regarding the enforceability of any contracts which they may have made.

[50 marks]

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF CONTRACT 1

2574

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

SECTION A

1. Critically evaluate what in law will amount to an ‘offer’.

[50 marks]

Mark Levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	1 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Define an offer.

Explain the difference between an offer and an invitation to treat:

- shopping: *Fisher v Bell*, *Pharmaceutical Society v Boots*;
- advertisements: *Partridge v Crittenden*;
- auctions: *Payne v Cave*;
- tenders: *Spencer v Harding*.

Consider situations which do not follow the above pattern:

- general offers: *Carlill v Carbolic Smoke Ball Co*;
- collateral contracts: *Esso v Commissioners of Customs and Excise*;
- dealing with a machine: *Thornton v Shoe Lane Parking*;
- multipartite agreements: *Clarke v Dunraven*.

Examine counter offers: *Hyde v Wrench*; ‘battle of forms’: *Butler v Ex-cello*.

Assessment Objective 2

(20 marks)

Discuss the importance of the invitation to treat stage, and the fairness (or otherwise) of the decisions.

Discuss the concept of freedom to contract.

Examine commercial reality: exhausted stocks, seeking of custom, encouragement to trade, the need to support commercial agreements.

Consider whether the ‘rules’ will (or should) always apply, and their artificial nature in the general concept of *consensus ad idem*.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. To what extent does the use of the innominate term enable the courts to strike a balance between fairness and certainty?

[50 marks]

Mark Levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	1 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Explain the difference between conditions and warranties: *Bettini v Gye*, *Poussard v Spires and Pond*.

Consider the difference in the consequences of breach of terms and warranties.

Explain the use of innominate terms: *Hong Kong Fir v Kawasaki Kisen Kaisha*.

Elaborate on the approaches taken by the court in deciding when types of terms exist in a contract

- intentions of the parties: *Lombard North Central v Butterworths*, *Schuler v Wickman*;
- innominate terms: *Hong Kong Fir*, *Reardon Smith v Hansen Tangen*, *Bunge v Tradax*, *The Hansa Nord*;
- commercial certainty: *The Mihalis Angelos*;
- the importance of time: *British and Commonwealth Holdings v Quadrex*;
- designation by statute: Sale of Goods Act 1979;
- the effect of breach: *Photo Production v Securicor*.

Assessment Objective 2

(20 marks)

Explain the reasoning behind relevant cases.

Consider the significance of the effect of breach.

Examine the difficulty of balancing certainty with a just outcome.

Evaluate the importance of the intention of the parties.

Examine the use of the innominate term to achieve fairness.

Consider the need for certainty in certain types of contracts.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. **Alan and Beth decide to extend and redecorate their house, to improve the accommodation which elderly Aunt Carrie occupies, and to provide space for the family's hobbies. Pleased with the result, they hold a small party. Aunt Carrie's accountant, David, is impressed with the work on the house, and offers to pay £1000 towards it, in order to help support Aunt Carrie. Alan and Beth thank David, and look forward to receiving the money. Two weeks after the party it has not arrived.**

Edmund, a wealthy local businessman, who has loaned Alan and Beth £500 towards the cost of the improvements, is also impressed with the work and tells the couple that they need not repay the loan. They thank him, saying that they will now be able to go for a short holiday, and take Aunt Carrie with them. However, on return from their holiday, they find a letter informing them that Edmund requests the payment of £500 after all.

Advise Alan and Beth concerning the money from David and the loan from Edmund.

[50 marks]

Mark Levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	1 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Show knowledge and understanding of the nature of consideration: *Dunlop v Selfridge*, *Currie v Misa*;

Demonstrate good knowledge and understanding of the rules on past consideration: *Re McArdle*, *Roscorla v Thomas*; *Lampleigh v Braithwaite*; *Re Casey's Patents*;

Explain the rules in regard to part payment of a debt: *Pinnel's case*, *Foakes v Beer*

Demonstrate knowledge and understanding of the concept of promissory estoppel: *Central London Property Trust v High Trees House*

Assessment Objective 2

(20 marks)

Show application of past consideration to David's offer; draw an analogy with *Re McArdle*.

Discuss whether the law is in line with morals here.

Consider the application of part payment (in fact non-payment here) to Edmund's promise.

Consider the application of the concept of promissory estoppel.

Discuss whether the legal theory matches moral principles.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

4. **Nadine and Olivia, both aged 17, are keen on dancing and theatre and both decide to pursue a career in this field.**

Nadine gains a place at stage school, and begins her course with enthusiasm. However she soon becomes annoyed at some of the terms to which she finds she has agreed, in particular one which prevents her from taking part in any professional productions during the school vacation, without permission from the school, and another which obliges her to hand over 30% of any earnings from such productions, during her time at the school. Nadine has been invited to take part in a professional play during the summer, and would now like to avoid these obligations.

Olivia's career takes a different course. She borrows money from Countrywide Bank to set up her own small business, selling dance and stage clothing and equipment. She also purchases a mobile telephone for use in the business. She uses the proceeds of the business to pay for singing and dancing lessons. After a few months Olivia's main supplier finds out that she is only 17 and refuses to trade further with her. This leaves Olivia without enough business to pay for this month's lessons, and her teacher is pressing her to meet her obligations. She is also behind with the repayments on her bank loan and mobile telephone account, and has received demands for payment.

Advise both Nadine and Olivia regarding the enforceability of any contracts which they may have made.

[50 marks]

Mark Levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	1 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Show good knowledge and understanding of the need for capacity to contract

Explain the position regarding:

- necessities: *Nash v Inman*, SGA 1979;
- luxurious items of utility: *Chapple v Cooper*;
- contracts of employment / beneficial contracts of service: *Clements v London and N W Rail, Doyle v White City Stadium, De Francesco v Barnum*;
- minors' trading contracts: *Mercantile Union Guarantee v Ball*.

Show understanding of the provisions of the Minors' Contracts Act 1987 regarding the guarantee of loans, and especially regarding restitution.

Assessment Objective 2

(20 marks)

Apply the principles of capacity to the facts of the problem.

Consider how these principles provide protection for Nadine and Olivia.

Consider whether Nadine's contract is on the whole beneficial, or whether two disadvantageous factors make it oppressive.

Consider whether Olivia's loan is guaranteed or unenforceable; the position of minors in trade compared with those in employment.

Consider whether a mobile telephone is a necessary in this situation, and if not, whether restitution applies.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF CONTRACT 2

2575

Specimen Paper

Additional materials:
Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions, one from Section A and one from Section B.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **TWO** questions, **one** from Section A and **one** from Section B.

SECTION A

1. Critically assess whether the remedies which are available to a person who has been induced into a contract by misrepresentation are satisfactory. **[50 marks]**
2. To what extent does the doctrine of frustration give the courts the opportunity to apportion loss between two relatively innocent parties? **[50 marks]**

SECTION B

3. Faridah wishes to sell her valuable violin, so advertises it for sale. Germaine visits Faridah, explaining that she would like to buy the violin, and they agree on a price. Germaine produces a cheque book, but Faridah hesitates, saying that she would prefer cash. Germaine then replies, "Look, you can see who I am", and produces various items of identity, bearing the same surname as a famous musician. Faridah is embarrassed and agrees to take the cheque, handing over the violin to Germaine.

A few days later Faridah is contacted by her bank, who informs her that the cheque from Germaine is worthless, and that Germaine cannot be traced. Faridah is upset at this, but to her surprise a few days later to see "her" violin for sale in the window of a musical instrument supplier, Humbuskers. She tries to recover the violin from Humbuskers, but they claim that they paid a good price for it from someone going abroad, and would certainly not be prepared to just give it back to her.

- (a) Advise Faridah as to whether she has any legal right to claim the return of the violin. **[40]**
- (b) If Faridah wishes to take legal action against Humbuskers, advise her as to how she may be able to get help with the cost of such an action. **[10]**

[Total: 50 marks]

4. Jake is a lecturer in Economics. Kevin is one of Jake's students who has frequently sought his advice over finance. Jake advises Kevin to invest his student loan and savings amounting to £3,000, in a local company, Leeways Ltd, of which Jake is a director.

During the next year Leeways Ltd has operating difficulties and the value of its shares falls dramatically, so that Kevin's investment is now worth £500. Kevin was planning to use the money to start a business of his own and he is now unable to do this. He claims that he was greatly influenced by the advice given by Jake and feels that Jake should have known of the difficulties of Leeways Ltd, which have caused him to lose a lot of his investment.

- (a) Advise Kevin of his remedies, if any, in the law of contract. **[40]**
- (b) Kevin would prefer not to take a court action against Jake. Explain to him how the matter could be resolved without going to court. **[10]**

[Total: 50 marks]

Oxford Cambridge and RSA Examinations



Advanced GCE

LAW

LAW OF CONTRACT 2

2575

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

SECTION A

1. Critically assess whether the remedies which are available to a person who has been induced into a contract by misrepresentation are satisfactory. [50 marks]

Mark Levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	0 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Show good knowledge and understanding of the principles of misrepresentation.

Consider the following points:

- the need for a remedy (link with terms);
- rescission and the various bars:
- affirmation: *Long v Lloyd*;
- lapse of time: *Leaf v International Galleries*;
- supervening third party rights: *White v Garden*;
- restitution impossible: *Vigers v Pike*.

Explain the remedies for misrepresentation detail, providing case authority.

Explain the provisions of the Misrepresentation Act 1967

Discuss the award of damages for fraudulent misrepresentation (*Derry v Peek*); non-fraudulent misrepresentation - special relationship (*Hedley Byrne v Heller*); the provisions of the Misrepresentation Act 1967; the basis of award of damages: *Royscott v Rogerson*, *East v Maurer*; indemnities: *Whittington v Seale-Hayne*.

Assessment Objective 2

(20 marks)

Discuss the nature of misrepresentation and the need for a remedy (link with terms);

Consider the difficulty of proving fraud;

Comment on the need for rescission and damages;

Point out the passing of burden of proof under S 2(1) of the MA; the difficulty of proving reasonable belief according to this section: *Howard Marine Dredging v Ogden*;

Discuss the discretion of the court under S 2(2); the basis of assessment; the unfairness in some situations of innocent misrepresentation: *Royscott v Rogerson*.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. To what extent does the doctrine of frustration give the courts the opportunity to apportion loss between two relatively innocent parties? [50 marks]

Mark Levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	1 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Explain generally the doctrine of frustration as a method of discharging a contract.

Examine in detail the operation of the doctrine through the cases.

Examine the effect of a finding of frustration.

Consider the provisions of the Law Reform (Frustrated Contracts) Act 1943, and cite (for comparison) cases such as *Chandler v Webster* and *Fibrosa v Fairbairn*.

Cite other relevant material to illustrate points:

- Impossibility: *Taylor v Caldwell*;
- Unavailability: *Morgan v Manser*;
- Radical change in circumstances: *Krell v Henry*, *Herne Bay Steam Boat Co v Hutton*;
- the extent of the doctrine: *Tsakiroglou v Noble Thorl*; *Maritime National Fish v Ocean Trawlers*.

Explain clearly situations in which the doctrine of frustration will operate.

Assessment Objective 2

(20 marks)

Consider when doctrine of frustration will apply, including explanation for the reasoning in cases.

Discuss liability in the event of frustration including:

- the Fibrosa case (where there was a complete lack of consideration);
- the Law Reform (Frustrated Contracts Act) 1943 making provision to share the loss more fairly;
- the discretion of the court is this matter, especially in deciding when and how much should be paid for expenses incurred and valuable benefit obtained;
- the relevance of insurance.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

3. Faridah wishes to sell her valuable violin, so advertises it for sale. Germaine visits Faridah, explaining that she would like to buy the violin, and they agree on a price. Germaine produces a cheque book, but Faridah hesitates, saying that she would prefer cash. Germaine then replies, "Look, you can see who I am", and produces various items of identity, bearing the same surname as a famous musician. Faridah is embarrassed and agrees to take the cheque, handing over the violin to Germaine.

A few days later Faridah is contacted by her bank, who inform her that the cheque from Germaine is worthless, and that Germaine cannot be traced. Faridah is upset at this, but to her surprise a few days later to see the same violin for sale in the window of a musical instrument supplier, Humbuskers. She tries to recover the violin from Humbuskers, but they claim that they paid a good price for it from someone going abroad, and would certainly not be prepared to just give it back to her.

- (a) Advise Faridah as to whether she has any legal right to claim the return of the violin.

[40 marks]

Mark Levels

Level 5	33 - 40 marks
Level 4	25 - 32 marks
Level 3	17 - 24 marks
Level 2	9 - 16 marks
Level 1	1 - 8 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(20 marks)

Show good knowledge and understanding of the doctrine of mistake as a vitiating factor.

Demonstrate detailed knowledge of unilateral mistake generally: *Cundy v Lindsay*;

Demonstrate detailed knowledge of the effect of mistaken identity: *Phillips v Brooks*, *Ingram v Little*, *Lewis v Avery*.

Show good understanding of third party rights which bar rescission: *White v Garden*.

Assessment Objective 2

(16 marks)

Apply the principles of unilateral mistake over identity to Germaine and Faridah.

Consider the effect on the situation of a finding of mistake.

Show awareness of the position of a third party in such a situation.

Consider the reasoning in decided cases, and whether they raise the issue of identity or creditworthiness.

Show awareness that fraudulent misrepresentation will not assist regarding the presentation of the cheque since third party rights will bar rescission.

Assessment Objective 3

(4 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) If Faridah wishes to take legal action against Humbuskers, advise her as to how she may be able to get help with the cost of such an action.

[10 marks]

Mark Levels

Level 5	9 - 10 marks
Level 4	7 - 8 marks
Level 3	5 - 6 marks
Level 2	3 - 4 marks
Level 1	1 - 2 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(5 marks)

Demonstrate good knowledge and understanding of state funded schemes: - Green form scheme for advice; civil legal aid (means and merits tests).

Explain alternative methods of funding: legal expenses insurance; conditional fees.

Assessment Objective 2

(4 marks)

Identify difficulties that Faridah will face in obtaining state funding: - low level of income and capital for means test; phasing out of legal aid for civil cases.

Discuss availability of conditional fees; point out that such fees do not protect from costs so there is a need to insure against losing case.

Assessment Objective 3

(1 mark)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4. Jake is a lecturer in Economics. Kevin is one of Jake's students who has frequently sought his advice over finance. Jake advises Kevin to invest his student loan and savings amounting to £3,000, in a local company, Leeways Ltd, of which Jake is a director.**

During the next year Leeways Ltd has operating difficulties and the value of its shares falls dramatically, so that Kevin's investment is now worth £500. Kevin was planning to use the money to start a business of his own and he is now unable to do this. He claims that he was greatly influenced by the advice given by Jake and feels that Jake should have known of the difficulties of Leeways Ltd, which have caused him to lose a lot of his investment.

- (a) Advise Kevin of his remedies, if any, in the law of contract.**

[40 marks]

Mark Levels

Level 5	33 - 40 marks
Level 4	25 - 32 marks
Level 3	17 - 24 marks
Level 2	9 - 16 marks
Level 1	1 - 8 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(20 marks)

Show good knowledge and understanding of the concept of undue influence.

Explain the law on proved undue influence (*Williams v Bailey*)

Demonstrate knowledge and understanding of undue influence arising from a relationship (either a recognised relationship or one of actual influence)

Cite cases involving undue influence: *Allcard v Skinner*, *Re Brocklehurst*, *Inche Noriah v Shaik Ali Bin Omar*, *Lloyds Bank v Bundy*, *National Westminster Bank v Morgan*, *BCCI v Aboody*, *Barclays Bank v O'Brien* (and subsequent cases).

Assessment Objective 2

(16 marks)

Discuss whether the situation gives rise to a relationship in which undue influence would be inferred.

Identify that this is not a recognised relationship, but that it could be a situation of actual influence.

Consider whether there is a fiduciary relationship between Jake and Kevin.

Consider the effect of the fact that Jake is a director of the company.

Discuss the need to protect individuals in this situation.

Assessment Objective 3

(4 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Kevin would prefer not to take a court action against Jake. Explain to him how the matter could be resolved without going to court. [10 marks]

Mark Levels

Level 5	9 - 10 marks
Level 4	7 - 8 marks
Level 3	5 - 6 marks
Level 2	3 - 4 marks
Level 1	1 - 2 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(5 marks)

Demonstrate good knowledge and understanding of alternative methods of dispute resolution.

Explain the role of conciliation and mediation schemes.

Demonstrate knowledge of arbitration

Assessment Objective 2

(4 marks)

Discuss the advantages of using mediation or conciliation schemes: speed, low cost, informal.

Point out that these methods may not achieve resolution of the dispute.

Discuss the advantages of using arbitration: privacy and an enforceable award.

Assessment Objective 3

(1 mark)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF CONTRACT SPECIAL STUDY

2576

Specimen Paper

Additional materials:

Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **all** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

In this paper you are expected to show your knowledge and understanding of different aspects of the English legal system and specific areas of Law.

You are reminded of the importance of including relevant knowledge from all areas of your course, where appropriate, including the English Legal System.

Answer ALL questions.

1. The Law Commission recommends changes to the law on privity in its 1996 report - 'Privity of Contract: Contracts for the Benefit of Third Parties'.

Critically consider the role of the Law Commission in assisting Parliament to change the law.

[20 marks]

2. To what extent does the case of *Williams v Roffey* (1990) overrule the case of *Stilk v Myrick*?

[20 marks]

3. Discuss why the law on privity is in need of reform.

[30 marks]

4. Delia reserves places at a millennium party weekend celebration for herself, her husband and two children. The party organisers, Blue Moon, agree to provide accommodation, food and entertainment to make the occasion unforgettable. Unfortunately Blue Moon overbook the accommodation, and at the last minute transfer Delia and her family to a guest house with limited facilities. She wishes to sue for damages, but is told by her solicitor that the law of privity will prevent her from obtaining any compensation for her husband and children.

Advise Delia on her rights:

(a) under the existing law; and

(b) under the Law Commission' proposals for the reform of the law on privity.

[30 marks]

N.B Please note that the exemplar questions on this paper were submitted to QCA before the Contract (Rights of Third Parties) Act 1999 was passed. They should be taken as examples of the type of question that may be set, though future questions would be based on the existence of the relevant statutory changes.

Oxford Cambridge and RSA Examinations



Advanced GCE

LAW

LAW OF CONTRACT SPECIAL STUDY

2576

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

1. The Law Commission recommends changes to the law on privity in its 1996 report - 'Privity of Contract: Contracts for the Benefit of Third Parties'. Critically consider the role of the Law Commission in assisting Parliament to change the law.

[20 marks]

Mark Levels

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

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

State the purpose of the Law Commission - s3 Law Commission Act 1965

Give details of its role - consultation, report, draft bills

Demonstrate knowledge of the Parliamentary procedure for enacting a law

Assessment Objective 2

Discuss the effectiveness of the Commission

Comment on the abandonment of the effort at codifying contract law

Consider the lack of any member of the Government having direct responsibility for the implementation of its proposals

Give examples of its work where legislation has been created

Comment on the slowness in implementation, e.g. the failure to implement the 1991 Report on Privity until 1999.

Comment on the use of the Jellicoe procedure to introduce Law Commission proposals

Conclude that implementation depends upon political will and available Parliamentary time

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. To what extent does the case of *Williams v Roffey* (1990) overrule the case of *Stilk v Myrick*?

[20 marks]

Mark Levels

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

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Explain the legal position regarding the performance of an existing duty, and the need to provide valid consideration, as in *Stilk v Myrick*

Show knowledge and understanding of the particular problem presented by the case of *Williams v Roffey*

Explain how Glidewell LJ dealt with the problem and the restatement of this area of law found in *Williams v Roffey*

Assessment Objective 2

Discuss whether the restatement of this area of law really does attempt to override the original position, or whether it is a modification

Consider how precedent has been used as a tool to reform this area of common law

Consider whether, in attempting to reform the law in the context of a modern commercial society, the decision in *Williams v Roffey* may have strengthened the traditional view of consideration

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. Discuss why the law on privity is in need of reform.

[30 marks]

Mark Levels

Level 5	25 - 30
Level 4	19 - 24
Level 3	13 - 18
Level 2	7 - 12
Level 1	1 - 6

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate good knowledge and understanding of the rule of privity

Support this understanding with good case citation (*Tweddle v Atkinson*, *Beswick v Beswick*, *Dunlop v Selfridge*)

Explain the exceptions which the courts have created (*Jackson v Horizon*, *Darlington Borough Council v Wiltshier Northern Ltd*)

Explain the application of the rule of privity to exclusion clauses drawn in the favour of third parties (*New Zealand Shipping Co v Satterthwaite*, *Scruttons v Midland Silicones Ltd*)

Demonstrate good knowledge and understanding of the Law Commission's proposals for reform

Assessment Objective 2

Discuss the difficulties created by a third party being unable to enforce a contract designed to benefit him

Comment on the courts' reluctance to adopt a more flexible approach (*Woodar Investment Development Ltd v Wimpey Construction UK Ltd* where the House of Lords disapproved of Lord Denning's view in *Jackson v Horizon*)

Consider the link between privity and consideration

Comment on the the Law Commission's proposals for reform

Consider other ways in which the law could have been reformed

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

4. **Delia reserves places at a millennium party weekend celebration for herself, her husband and two children. The party organisers, Blue Moon, agree to provide accommodation, food and entertainment to make the occasion unforgettable. Unfortunately Blue Moon overbook the accommodation, and at the last minute transfer Delia and her family to a guest house with limited facilities. She wishes to sue for damages, but is told by her solicitor that the law of privity will prevent her from obtaining any compensation for her husband and children.**

Advise Delia on her rights:

(a) under the existing law, and

(b) under the Law Commission' proposals for the reform of the law on privity.

[30 marks]

Mark Levels

Level 5	25 - 30
Level 4	19 - 24
Level 3	13 - 18
Level 2	7 - 12
Level 1	1 - 6

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Much of the knowledge for this question will already have been given in question 3. Credit under this objective should only be given for additional material.

Explain the rule of privity (*Dunlop v Selfridge*)

Show good knowledge and understanding of the decision in *Jackson v Horizon*

Demonstrate good knowledge and understanding of the Law Commission's proposals for reform

Assessment Objective 2

Identify that Delia has a contract with Blue Moon and can take action on her own behalf

Discuss the lack of consideration supplied by Delia's husband and the children

Identify the similarity between the scenario and the case of *Jackson v Horizon*

Apply the decision in *Jackson v Horizon* to the facts

Consider the proposals of the Law Commission and apply these to the facts

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

N.B The exemplar questions on this paper were submitted to QCA before the Contracts (Rights of Third Parties) Act 1999 was passed. They should be taken as examples of the types of questions that may be set, though future questions would be based on the existence of the relevant statutory changes.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF TORTS 1

2577

Specimen Paper

Additional materials:
Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions, one from Section A and one from Section B.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **TWO** questions, **one** from Section A and **one** from Section B.

SECTION A

1. 'The law must draw a line somewhere, it cannot take account of everything that follows a wrongful act.' (Winfield & Jolowicz) .

In the light of this quotation critically examine the rules relating to the concept of remoteness of damage in relation to a claim for damages in negligence. **[50 marks]**

2. To what extent is it true to describe the doctrine of vicarious liability as being based on 'social convenience and rough justice' ? **[50 marks]**

SECTION B

3. Indira, aged 3 years, has been taken by her parents to the local Zoo. She is very excited and runs from one enclosure to the other. The chimpanzees enclosure consists of a wire cage with a second wire mesh fence one metre away to stop people from getting too close. There are notices warning the public that the animals in the enclosure are dangerous. Indira runs ahead of her parents and before they realise what is happening she manages to climb through the bars of a gate in the outer fence. She rushes up to the cage itself and tries to stroke one of the chimpanzees. The chimpanzee grabs her by the arm and bites her. Indira is taken to hospital where the doctors tell her parents that her arm has been very badly injured. She will never be able to use it properly and it will be badly scarred.

About three months ago Gareth, who had been drinking at the local public house, was on his way home when he decided to visit the lions. The Zoo was closed but he managed to scale the perimeter fence and make his way to the lion enclosure where he climbed over another fence into the enclosure. He was badly mauled by two lions. Gareth has survived but will be disabled and scarred for the rest of his life.

Advise the Zoo about what claims, if any, Indira and Gareth may have for compensation.

[50 marks]

4. Yasmin was riding her bicycle at night along a main road. The bicycle was not fitted with rear lights. Yasmin swerved into the path of a car coming fast behind her and was knocked under the wheels of the car. She was taken to hospital where, owing to a major incident which meant the hospital was exceptionally busy, she was left waiting on the trolley, without having been examined, for several hours.

When she was eventually examined, it was found that she had a badly injured hip. As a result of the injury Yasmin will be unable to continue her career as a dancer. It is, however, certain that had she been examined earlier it might have been possible to prevent permanent disability.

Yasmin wants to obtain compensation for her injuries. Advise her as to any claim she may have in negligence. **[50 marks]**



Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF TORTS 1

2577

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

SECTION A

1. 'The law must draw a line somewhere, it cannot take account of everything that follows a wrongful act.' (Winfield & Jolowicz)

In the light of this quotation critically examine the rules relating to the concept of remoteness of damage in relation to a claim for damages in negligence.

[50 marks]

Mark Levels

Level 5	41-50
Level 4	31-40
Level 3	21-30
Level 2	11-20
Level 1	1-10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Explain the requirement of factual causation - the 'but for' test (*Barnett v Chelsea & Kensington HMC*)

Give an explanation of the basis of remoteness, ie., if Defendant is to be liable, it must have been reasonably foreseeable that his conduct would cause injury considering the rules as to foreseeability set out in *The Wagon Mound*.

Explain the relevance of:

- the manner in which the injury occurred (*Hughes v Ld Advocate, Doughty v Turner Manufacturing Co Ltd*)
- the type of harm done (*Bradford v Robinson Rentals Ltd*)
- the extent of the harm (*Smith v Leech Brain & Co Ltd*)
- the egg shell skull rule (*Smith v Leech Brain*).

Assessment Objective 2

(20 marks)

Consider the concept of foreseeability in the light of the rules:

- Is the need for certainty met;
- Do the decisions reached depend on the way the court asks the question rather than on the facts? *Doughty v Turner* contrasted with *Hughes v Ld Advocate*; *Bradford v Robinson Rentals* contrasted with *Tremain v Pike*;

Discuss difficulties encountered where there is more than one cause of injury (*Baker v Willoughby, Jobling v Associated Dairies Ltd*) or novus actus interveniens.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. To what extent is it true to describe the doctrine of vicarious liability as being based on 'social convenience and rough justice'?

[50 marks]

Mark Levels

Level 5	41-50
Level 4	31-40
Level 3	21-30
Level 2	11-20
Level 1	1-10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Define the doctrine and state the basis of liability.

Explain the meaning of 'servant' distinguishing between employee and independent contractor.

Explain the tests for employment (intention, control, integration).

Consider what is meant by course of employment (*Whatman v Pearson Storey v Ashton*, *Smith v Stages*, *Beard v London General Omnibus Co*).

Effect of disobedience by employee (*Limpus v London General Omnibus Co*, *Twine v Bean's Express Ltd*, *Rose v Plenty*).

Assessment Objective 2

(20 marks)

Consider reasons for the doctrine:

- employer benefits from servant's acts;
- employer controls methods of work;
- employer has insurance;
- cost of liability can be recouped by employer in charges for goods/services.

Discuss whether doctrine is fair in light of liability even where servant disobeys express prohibition or is guilty of criminal misconduct.

Consider employer's right to indemnity from servant.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

3 Indira, aged 3 years, has been taken by her parents to the local Zoo. She is very excited and runs from one enclosure to the other. The chimpanzees enclosure consists of a wire cage with a second wire mesh fence one metre away to stop people from getting too close. There are notices warning the public that the animals in the enclosure are dangerous. Indira runs ahead of her parents and before they realise what is happening she manages to climb through the bars of a gate in the outer fence. She rushes up to the cage itself and tries to stroke one of the chimpanzees. The chimpanzee grabs her by the arm and bites her. Indira is taken to hospital where the doctors tell her parents that her arm has been very badly injured. She will never be able to use it properly and it will be badly scarred.

About three months ago Gareth, who had been drinking at the local public house, was on his way home when he decided to visit the lions. The Zoo was closed but he managed to scale the perimeter fence and make his way to the lion enclosure where he climbed over another fence into the enclosure. He was badly mauled by two lions. Gareth has survived but will be disabled and scarred for the rest of his life.

Advise the Zoo about what claims, if any, Indira and Gareth may have for compensation.

[50 marks]

Mark Levels

Level 5	41-50
Level 4	31-40
Level 3	21-30
Level 2	11-20
Level 1	1-10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Identify that the question is concerned with the Occupiers Liability Acts 1957 and 1984

Define the term 'occupier'

Distinguish between lawful and non-lawful visitors

Explain the duty owed under both Acts

Recognise the special duty owed to children (*Phipps v Rochester Corp.*, *Glasgow Corp v Taylor*, *Simkiss v Rhondda BC*)

Recognise the lesser duty owed to trespassers (*BRB v Herrington*)

Assessment Objective 2

(20 marks)

Identify that the child is a lawful visitor and the need for premises like a zoo to be aware of the higher duty of care owed to children.

Consider the common duty of care (s.2 OLA 1957) and means whereby an occupier can protect himself, eg., by the use of warning notices.

Discuss whether or not it is reasonable for such a young child to be closely supervised by her parents (*Phipps v Rochester Corp.*, *Simkiss v Rhondda BC*).

Apply the law as explained to reach a conclusion as to Indira.

Identify that Gareth is a trespasser.

Discuss the scope of the duty of care under s.1(3) OLA 1984 and the applicability of the duty of common humanity (*BRB v Herrington*).

Consider whether the Zoo has fulfilled its duty under s.1(5) OLA 1984 to take reasonable steps to deter trespassers.

Apply the law as explained to reach a conclusion as to Gareth.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4. Yasmin was riding her bicycle at night along a main road. The bicycle was not fitted with rear lights. Yasmin swerved into the path of a car coming fast behind her and was knocked under the wheels of the car. She was taken to hospital where, owing to a major incident which meant the hospital was exceptionally busy, she was left waiting on the trolley, without having been examined, for several hours.**

When she was eventually examined, it was found that she had a badly injured hip. As a result of the injury Yasmin will be unable to continue her career as a dancer. It is, however, certain that had she been examined earlier it might have been possible to prevent permanent disability.

Yasmin wants to obtain compensation for her injuries. Advise her as to any claim she may have in negligence.

[50 marks]

Mark Levels

Level 5	41-50
Level 4	31-40
Level 3	21-30
Level 2	11-20
Level 1	1-10

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Define negligence.

Explain that a duty of care exists between road users and as between a hospital and its patients.

Give details of how the issue of the standard of care is decided - the reasonable man test (*Blyth v Birmingham Waterworks*); the 'professional test' set out in *Bolam v Friern HMC*.

Explain the requirement of consequential injury - the 'but for' test (*Barnett v Chelsea & Kensington HMC, Robinson v Post Office* - which is not too remote (injury must be of type which is reasonably foreseeable - *Wagon Mound, Bradford v Robinson Rentals*)

Identify that there are two potential causes of action and explain the rules relating to novus actus interveniens - was the second incident reasonable and foreseeable - defendant remains liable (*The Oreposa, Haynes v Harwood*) - or was it unreasonable and unforeseeable - a novus actus (*Knightley v Johns, Home Office v Dorset Yacht Co*)

Recognise that the issue of contributory negligence may be relevant; explain the basic principle - Law Reform (Contributory Negligence) Act 1945; what amounts to fault on the part of plaintiff (*Jones v Livox Quarries, Stapley v Gypsum Mines, Sayers v Harlow UDC*); explain apportionment to reflect what is just and equitable.

Assessment Objective 2

(20 marks)

Discuss the issue of negligence in general terms establishing that both driver and hospital owe Yasmin a duty of care.

In relation to the driver, apply the reasonable man test in the light of the facts given - he was driving fast at night on a main road.

In relation to the hospital - does the delay constitute a novus actus? Was the delay reasonable and foreseeable?

In relation to the lost chance, discuss *Hotson v East Berks AH* - was the chance of full recovery improbable in which case driver remains liable or was there a good chance had she been treated in time in which case hospital liable if delay was negligent.

Discuss the issue of contributory negligence in the light of the facts given - Yasmin cycling without lights at night on main road.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF TORTS 2

2578

Specimen Paper

Additional materials:

Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions, one from Section A and one from Section B.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **TWO** questions, **one** from Section A and **one** from Section B.

SECTION A

1. With reference to the tort of trespass to land, critically consider whether the law is adequate to protect the rights of owners and occupiers of land. **[50 marks]**
2. To what extent is it true to describe the Animals Act 1971 as imposing strict liability for damage caused by an animal which does not belong to a dangerous species? **[50 marks]**

SECTION B

3. John and Susan have recently moved into a house on a new estate built on what used to be a field on the outskirts of a village and next to a 500 year old church. They were very happy at first but two months ago they had a baby and now problems have arisen as the baby does not sleep very soundly. Darren, who lives next door, last Saturday celebrated his 40th birthday with a large and very noisy party. The noise kept the baby awake and crying until dawn on Sunday morning. Despite John's requests Darren refused to turn the music down and threatened to have a party every Saturday night in future.

No sooner had the baby got to sleep than the church bells started to ring and woke him again. This has been a problem for some time as the bells always wake the baby. The bells are rung regularly throughout the day on Sundays, starting at about 7.45 a.m. as well as twice a week for two hours' practice starting at 7.30 p.m. and at other times for special services. Susan is receiving treatment from her doctor for the stress caused by the crying baby.

John wants to know if there is anything he can do to stop Darren and bell ringers from causing problems in the future.

- (a) Advise John about any rights in tort he may have in respect of the church bells **and** Darren's behaviour. **[40]**
- (b) John would prefer not to take a court action. Explain to him how the matter could be resolved without going to court. **[10]**

[Total: 50 marks]

4. Diana and Celia are the stars of the local tennis club and are deadly rivals. They are due to play the finals of the singles' championship next Saturday. Recently Celia has proved to be the better player. Diana wants to make sure that Celia does not turn up for the match so that she, Diana, will be champion. On Saturday Diana, manages to lure Celia into a garden shed and locks her in, intending to leave her there for the rest of the day. Celia eventually discovers that she can get out by breaking a small window and climbing through it. She manages to arrive at the tennis club just in time for the match.

In the course of the game Celia deliberately hits the ball straight at Diana's head and succeeds in hitting her several times. Eventually Diana loses her temper, leaps over the net and punches Celia in the face giving her a nosebleed. Celia pushes Diana away causing her to fall and break her ankle.

(a) Consider the liability, if any, in tort of Diana **and** Celia. **[40]**

(b) Celia wishes to take legal action against Diana. Advise Celia as to how she may be able to get help with the cost of such an action. **[10]**

[Total: 50 marks]

Oxford Cambridge and RSA Examinations



Advanced GCE

LAW

LAW OF TORTS 2

2578

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

SECTION A

1. With reference to the tort of trespass to land, critically consider whether the law is adequate to protect the rights of owners and occupiers of land.

[50 marks]

Mark levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	1 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(20 marks)

Define trespass.

Explain the concept of 'land' - rights in possession may extend below the surface of the land (*Bullin Coal Mining Co v Osborne*) and to the airspace including restrictions (e.g. *Kelson v Imperial Tobacco Co Ltd*, Civil Aviation Act 1982).

Consider the concept of 'entry' - must be voluntary, i.e. intentional not accidental.

Distinguish between lawful and unjustified entry giving examples of lawful entry, e.g. under licence (explaining the consequences of revocation of licence including the right to eject using reasonable force), implied permission, eg., postman and other deliveries, police rights under Police & Criminal Evidence Act 1984.

Explain the concept of trespass ab initio.

Assessment Objective 2

(20 marks)

Discuss who may sue, i.e., the need for possession.

Consider remedies, ie.,

- (a) the right to remove a trespasser using reasonable force (*Hemmings v Stoke Poges Golf Club*) but liability for assault and battery if excessive force used,
- (b) damages - difficulty of assessment where no physical damage caused to the land,
- (c) injunction unless there are exceptional circumstances (*Anchor Brewhouse Developments Ltd v Berkley House (Docklands Developments) Ltd* - no harm done, no interference with Claimant's use of his property and no previous complaint or attempt to prevent the trespass not exceptional circumstances;
- (d) ejectment;
- (e) mesne profits.

Discuss effectiveness - court action expensive and slow - and alternative remedies, eg., under Criminal Justice & Public Order Act 1994.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. To what extent is it true to describe the Animals Act 1971 as imposing strict liability for damage caused by an animal which does not belong to a dangerous species?

[50 marks]

Mark levels

Level 5	41 - 50 marks
Level 4	31 - 40 marks
Level 3	21 - 30 marks
Level 2	11 - 20 marks
Level 1	1 - 10 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(25 marks)

Explain the principle of strict liability.

Define a non-dangerous animal by reference to the definition of a dangerous species.

Demonstrate good knowledge and understanding of the criteria for liability:

- damage must be of a kind which was likely to happen if animal not restrained or was likely to be severe;
- damage must be due to peculiar characteristics of the animal (*Cummings v Grainger, Wallace v Newton, Curtis v Bett*);
- knowledge of keeper/his staff/member of his household.

Define the term 'keeper' (s.6(3) Animals Act).

State the defences - default of plaintiff, trespass by plaintiff, contributory negligence/volenti.

Assessment Objective 2

(20 marks)

Discuss the problems arising from interpretation of s.2(2), eg., do the words 'was likely' to cause damage mean 'more probable than not' or 'there is a material risk that it will happen'?

Consider the meaning of 'characteristics', i.e. the need for abnormal/unusual characteristics.

Recognise the requirement of a causal link between the characteristics and the injury.

Discuss whether, in the light of the difficulties of interpretation and, in the light of the defences, the principle of strict liability applies.

Assessment Objective 3

(5 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

3. John and Susan have recently moved into a house on a new estate built on what used to be a field on the outskirts of a village and next to a 500 year old church. They were very happy at first but two months ago they had a baby and now problems have arisen as the baby does not sleep very soundly. Darren, who lives next door, last Saturday celebrated his 40th birthday with a large and very noisy party. The noise kept the baby awake and crying until dawn on Sunday morning. Despite John's requests Darren refused to turn the music down and threatened to have a party every Saturday night in future.

No sooner had the baby got to sleep than the church bells started to ring and woke him again. This has been a problem for some time as the bells always wake the baby. The bells are rung regularly throughout the day on Sundays, starting at about 7.45 a.m. as well as twice a week for two hours' practice starting at 7.30 p.m. and at other times for special services. Susan is receiving treatment from her doctor for the stress caused by the crying baby.

John wants to know if there is anything he can do to stop Darren and bell ringers from causing problems in the future.

(a) Advise John about any rights in tort he may have in respect of the church bells and Darren's behaviour. [40 marks]

Mark levels

Level 5	33 - 40 marks
Level 4	25 - 32 marks
Level 3	17 - 24 marks
Level 2	9 - 16 marks
Level 1	1 - 8 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(20 marks)

Show good knowledge and understanding of the tort of private nuisance

Consider the need to balance the interest of neighbours.

Discuss the concept of reasonable user as relevant where there is no physical damage.

Consider the elements to be taken into account:

- locality (*Hasley v Esso Petroleum Co Ltd*);
- duration of the interference (*Miller v Jackson*, *Bolton v Stone*);
- abnormal sensitivity on part of claimant (*Heath v Mayor of Brighton*).

Demonstrate good knowledge and understanding of the defences of reasonable user and prescription.

Assessment Objective 2

(16 marks)

In relation to Darren, discuss the concept of malice (*Christie v Davey*, *Hollywood Silver Fox Farm Ltd v Emmett*) - does his threat to hold parties in future show malice; the relevance of malice in the context of reasonable user.

Explain the relevance of the defence of prescription in relation to the church bells - *Sturges v Bridgman*

Consider the effectiveness of remedies - damages likely to be inadequate, injunction to restrain the noise in the future.

In relation to Darren, advise John that injunction unlikely to be granted unless further noise nuisance occurs.

In relation to church bells, advise John that if defence of prescription does not apply, then court may grant injunction but the issue of public benefit will be relevant (*Miller v Jackson* and *Kennaway v Thompson*).

Alternative action through local authority for statutory nuisance may be discussed in general terms as advantageous for speed of remedy and in relation to costs.

Assessment Objective 3

(4 marks)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) John would prefer not to take a court action. Explain to him how the matter could be resolved without going to court.

[10 marks]

Mark levels

Level 5	9 - 10 marks
Level 4	7 - 8 marks
Level 3	5 - 6 marks
Level 2	3 - 4 marks
Level 1	1 - 2 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(5 marks)

Demonstrate good knowledge and understanding of alternative methods of dispute resolution.

Explain the role of conciliation and mediation schemes.

Show knowledge of local authority statutory power to take action.

Assessment Objective 2

(4 marks)

Discuss the advantages of using mediation or conciliation schemes: speed, low cost, informal.

Discuss the advantages of alternative action through local authority for statutory nuisance.

Assessment Objective 3

(1 mark)

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4. Diana and Celia are the stars of the local tennis club and are deadly rivals. They are due to play the finals of the singles' championship next Saturday. Recently Celia has proved to be the better player. Diana wants to make sure that Celia does not turn up for the match so that she, Diana, will be champion. On Saturday Diana manages to lure Celia into a garden shed where she locks her in, intending to leave her there for the rest of the day. Celia eventually discovers that she can get out by breaking a small window and climbing through it. She manages to arrive at the tennis club just in time for the match.**

In the course of the game Celia deliberately hits the ball straight at Diana's head and succeeds in hitting her several times. Eventually Diana loses her temper, leaps over the net and punches Celia in the face giving her a nosebleed. Celia pushes Diana away causing her to fall and break her ankle.

Consider the liability, if any, in tort of Diana and Celia.

[40 marks]

Mark levels

Level 5	33 - 40 marks
Level 4	25 - 32 marks
Level 3	17 - 24 marks
Level 2	9 - 16 marks
Level 1	1 - 8 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

(20 marks)

Show good knowledge and understanding of the tort of trespass to the person.

Define the tort of false imprisonment discussing the need for total restraint (*Bird v Jones*, *Robinson v Balmain New Ferry Co*, *Herd v Weardale Steel Coal & Coke Co*).

Define the torts of assault and battery acknowledging that there can be a battery without an assault.

Discuss the requirement of force (*Cole v Turner*) and consider whether or not the touching must be hostile (*Wilson v Pringle*, *F v West Berks. HA*).

Consider the need for intention to commit the act but intention to injure not necessary (*Wilson v Pringle*).

Show good knowledge and understanding of the defences of consent and self-defence.

Assessment Objective 2

(16 marks)

In relation to the imprisonment, consider whether an escape route which requires the breaking of glass is a reasonable means of exit (*Bird v Jones*, *Robinson v Balmain New Ferry Co*, *Herd v Weardale Steel Coal & Coke Co*).

In relation to Celia's action in the tennis match, consider the issue of consent (a complete defence).

Discuss the issue of consent in the context of a sport - taking part may amount to implied consent but not to physical contact outside the rules of the game (*R v Billingham*).

Consider whether in relation to Diana's actions in punching Celia and Celia's action in pushing Diana away, the defence of self-defence may be available, explaining the requirement of minimum use of reasonable force.

Conclude on the facts given that Diana is likely to be liable for false imprisonment and that Celia is likely to be liable in battery for hitting Diana with the tennis ball; that Diana is likely to be liable in battery for punching Celia as the amount of force used may be regarded as unreasonable but that Celia can probably successfully use self-defence in relation to the push which caused Diana to fall.

Assessment Objective 3**(4 marks)**

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Celia wishes to take legal action against Diana. Advise Celia as to how she may be able to get help with the cost of such an action.

[10 marks]**Mark levels**

Level 5	9 - 10 marks
Level 4	7 - 8 marks
Level 3	5 - 6 marks
Level 2	3 - 4 marks
Level 1	1 - 2 marks

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1**(5 marks)**

Demonstrate good knowledge and understanding of state funded schemes: - Green form scheme for advice; civil legal aid (means and merits tests).

Explain alternative methods of funding: legal expenses insurance; conditional fees.

Assessment Objective 2**(4 marks)**

Identify difficulties that Celia will face in obtaining state funding: - low level of income and capital for means test; phasing out of legal aid for civil cases.

Discuss availability of conditional fees; point out that such fees do not protect from costs so there is a need to insure against losing case.

Assessment Objective 3**(1 mark)**

Present relevant material in a well-planned and logical sequence with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF TORTS SPECIAL STUDY

2579

Specimen Paper

Additional materials:

Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **all** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

In this paper you are expected to show your knowledge and understanding of different aspects of the English legal system and specific areas of Law.

You are reminded of the importance of including relevant knowledge from all areas of your course, where appropriate, including the English Legal System.

*Answer **all** questions*

- 1 New legal questions arise with the advance of technology and changing moral standards.

Critically consider the role of the Law Commission in enabling Parliament to change the law to provide answers to these new questions. **[20 marks]**

- 2 “Every human being of adult years and sound mind has a right to determine what shall be done with his own body...”

To what extent do the rules relating to trespass to the person ensure that this right is protected? **[20 marks]**

- 3 Doctors face a difficult problem when treating a patient who is unconscious or otherwise unable to make a decision about medical treatment.

Explain the rules which may help the doctors make a decision whether or not to treat the patient in such circumstances.

In your opinion, would the proposals by the Law Commission in its Report on Mental Capacity make the position of the doctors clearer? **[30 marks]**

- 4 John, aged 45 years, is taken to hospital following an accident. He is a religious man who informs all the health care team caring for him that he refuses any treatment which involves blood transfusions. While he is under anaesthetic in the operating theatre, an emergency occurs and he is given a blood transfusion despite his expressed wishes.

John is very angry when he finds out what has happened, especially as other doctors advise him that the transfusion may not have been necessary.

Consider what, if any, action John can bring to obtain compensation from the hospital. (You do not need to discuss issues of vicarious liability.) **[30 marks]**

Oxford Cambridge and RSA Examinations



Advanced GCE

LAW

LAW OF TORTS SPECIAL STUDY

2579

Mark Scheme

GENERAL MARKING GUIDELINES

Please note:

- 1 All mark schemes are to be used in conjunction with the appropriate assessment matrix.
- 2 Marking must be positive. Candidates should not be penalised for errors or inaccuracies.
- 3 All answers should be written in continuous prose. Quality of written communication will be assessed through Assessment Objective 3. This will take account of organisation and presentation, as well as grammar, punctuation and spelling, including the accurate use of legal terminology.
- 4 Examiners are reminded it is good assessment practice to use the whole mark range in order to differentiate between candidates of different ability. Full marks should be awarded for responses which are the best that can reasonably be expected of an Advanced GCE candidate who has completed two years of study and is writing in controlled examination conditions.
- 5 Throughout the mark schemes the cases cited are examples. Reference may be made to alternative relevant cases and these should be accepted, with credit given to candidates. It is not expected that candidates will include all cases listed.
- 6 For the highest level of marks in assessing objectives AO1 and AO2 candidates will generally be expected to include much of the material suggested in reasonable detail and with good citation. The account should be comprehensive, but not necessarily exhaustive, given time limitations.

1. New legal questions arise with the advance of technology and changing moral standards.

Critically consider the role of the Law Commission in enabling Parliament to change the law to provide answers to these new questions. [20 marks]

Mark levels

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

A level 5 is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

State the purpose of the Law Commission - s.3 Law Commission Act 1965.

Give details of its role - consultation, report, draft bill.

Demonstrate knowledge of the Parliamentary procedure for enacting a law

Assessment Objective 2

Discuss the effectiveness of the Commission

Consider the lack of any member of the Government having responsibility for implementation of its proposals

Give examples of its work where legislation has been created, e.g. Occupiers Liability Act 1984

Comment on the failure to implement proposals, e.g. Personal Injury Compensation: How Much is enough? Law Commission 225, 1994

Comment on the use of the Jellicoe procedure to introduce law Commission proposals

Conclude that the Commission is effective only to the extent that political will exists to enact its proposals

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. “Every human being of adult years and sound mind has a right to determine what shall be done with his own body...”

To what extent do the rules relating to trespass to the person ensure that this right is protected? [20 marks]

Mark levels

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

A level 5 is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Define trespass to the person, i.e. assault, battery and false imprisonment;

Demonstrate good knowledge and understanding of defences, especially consent and lawful authority.

Assessment Objective 2

In the light of the source material previously studied discuss the problems arising in relation to consent to medical treatment by an incapacitated patient and the risks taken by health care practitioners.

Discuss the constraints put on liability by the law, e.g., the Police & Criminal Evidence Act 1984 (although candidates are not expected to have detailed knowledge of that Act), lawful detention in prison, detention under the Mental Health Act 1983;

Use this material to produce relevant and cogent arguments to support a conclusion.

N.B. The question requires candidates to consider the tort from a particular view-point which makes the defences very relevant and candidates who fail to discuss these will not be able to score in the higher bands.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling

3. **Doctors face a difficult problem when treating a patient who is unconscious or otherwise unable to make a decision about medical treatment.**

Explain the rules which may help the doctors make a decision whether or not to treat the patient in such circumstances.

In your opinion, would the proposals by the Law Commission in its Report on Mental Capacity make the position of the doctors clearer? [30 marks]

Mark levels

Level 5	25 - 30
Level 4	19 - 24
Level 3	13 - 18
Level 2	7 - 12
Level 1	1 - 6

A level 5 is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Demonstrate understanding that any treatment without consent may amount to battery.

Define the tort of battery.

Show good knowledge and understanding of the proposals of the Law Commission - definition of incapacity, powers of court.

Refer to the source material, particularly the extracts from the judgments in *Airedale NHS Trust v Bland*, in order to identify the judges approach to the problem.

Assessment Objective 2

Consider judicial guidance in cases where patient lacks capacity - *Airedale NHS Trust v Bland*.

Acknowledge the ethical implications (discussed in source material);

Consider matters which may be relevant - futility of treatment, lack of duty to give specific treatment, has the patient stated his/her wishes prior to the accident, what are the family's view and are these relevant;

Consider whether the proposals by the Law Commission will clarify the situation;

Use the material to reach an appropriate conclusion.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4. John, aged 45 years, is taken to hospital following an accident. He is a religious man who informs all the health care team caring for him that he refuses any treatment which involves blood transfusions. While he is under anaesthetic in the operating theatre, an emergency occurs and he is given a blood transfusion despite his expressed wishes.**

John is very angry when he finds out what has happened, especially as other doctors advise him that the transfusion may not have been necessary.

Consider what, if any, action John can bring to obtain compensation from the hospital. (You do not need to discuss issues of vicarious liability.)

[30 marks]

Mark levels

Level 5	25 - 30
Level 4	19 - 24
Level 3	13 - 18
Level 2	7 - 12
Level 1	1 - 6

A level 5 is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points.

Assessment Objective 1

Much of the knowledge for this question will already have been given in questions 2 and 3. Credit under this objective should only be given for additional material

Identify that the relevant tort may be trespass to the person, in particular battery

Define - nonconsensual touching, actionable per se

State the defence of consent - absolute defence if valid

Assessment Objective 2

Discuss the right to refuse consent (*Re F (Mental Patient: Sterilisation)*, *Airedale NHS Trust v Bland*)

Recognise the problem posed by the fact that John's refusal was communicated prior to the emergency arising at which time he was unconscious - consider whether prior refusal is effective (*Airedale NHS Trust v Bland*).

Discuss the limitation of consent - does it extend beyond those matters specifically covered - in consenting to the operation has John also consented to the transfusion, what are vitiating factors (duress, fraud, misrepresentation);

Use the material to reach an appropriate conclusion.

Some candidates may discuss the issue of negligence on the basis that John has consented to the operation but not to the transfusion. Credit must be given for valid points made although on the facts given the immediate cause of action is trespass to the person.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW Levels of Assessment

Level	Assessment Objectives		
	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be occasional errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify the some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

