
A-LEVEL

Law

LAW02/Unit 2 The Concept of Liability
Mark scheme

2160
June 2015

Version 1.0: Final

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

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

Further copies of this Mark Scheme are available from aqa.org.uk

LAW02

Assessment Objectives One and Two

General Marking Guidance

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

Positive Marking

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

Mark Range

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

Citation of Authority

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

Assessment Objective Three**QUALITY OF WRITTEN COMMUNICATION (QoWC)**

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

The level of understanding in AS Law – LAW02

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

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

Section A Introduction to Criminal Liability

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

0 1 Briefly explain the meaning of ‘a crime of strict liability’ **and** the reasons for having such offences. **[8 marks]**

Potential Content

- (A) Brief explanation of the meaning of offences of strict liability
- offences requiring no mens rea with respect to some/all of the actus reus
 - possible reference to both statutory and common law offences
 - possible discussion of absolute liability
 - cases and/or examples in support, eg **Harrow LBC v Shah, Blake, Smedleys v Breed, Alphacell v Woodward.**

Brief explanation of the reasons for offences of strict liability

- regulatory offences designed to protect public interest
- easier to prove
- saving court time
- promotes better-run businesses
- generally only relatively minor offences, etc.

Note - Max 5 if either ‘reasons for’ or ‘meaning of’ omitted

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

Explanation of the meaning of strict liability

- absence of a requirement of mens rea (relating to some element or possibly all elements of the actus reus) in the definition of the offence.
- this will be supported by at least one example that is briefly explained to show the offence requires an actus reus only.

A range of reasons for strict liability will then be set out, each with an example. This might include:

- the reason of protecting the public from unfit food under the **Food and Drugs Act 1955** as seen in the case of **Smedleys v Breed**; the facts of the case are then outlined to show the operation of strict liability
- enforcement of regulatory offences with an example
- ensures compliance by business with an explanation of how this is achieved
- saves court time/money with an explanation of how this is achieved
- most strict liability offences are relatively minor/punishable by fines rather than imprisonment, etc.

(AO1 = 5; AO2 = 3)

0 2 Explain the meaning of the term ‘mens rea’ in criminal law.

[8 marks]

Potential Content

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

Note - Three types of mens rea are needed for sound, two for clear and one for some

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

Explanation of the meaning of mens rea:

- definition of each type of mens rea set out, each with an example showing how that type of mens rea is illustrated by the case.

(AO1 = 5; AO2 = 3)

0 3 Discuss the criminal liability of Ahmed for the injuries caused to Julian by the shooting.
[8 marks + 2 marks for AO3]

REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

Potential Content

- (A) Identification of wounding **s20 Offences Against the Person Act 1861** (definition + authority)
- Discussion and application of actus reus of wounding (evidenced by breaking both layers of the skin/external bleeding), supported by authority such as **Eisenhower**
 - Discussion and application of mens rea of wounding being malicious, ie recklessness or intention as to some harm, supported by authority such as **Savage**.

OR

- Identification of ABH **s47 Offences Against the Person Act 1861** (definition + authority)
- Discussion and application of actus reus of s47 based on battery supported by authority
- Discussion and application of meaning of ABH supported by authority eg **Miller / Chan Fook**
- Discussion and application of mens rea of s47 via mens rea of battery supported by authority eg **Savage**

Note – discussion/application of both s47 and s20 requires less detail, taking into account balance between breadth and depth – max 8 marks (not including AO3 marks)

Note – discussion/application of only s18 or s39 battery – max 4 marks (not including AO3 marks)

Note – discussion/application of assault based ABH – max 4 marks (not including AO3 marks)

Note – discussion/application of assault only – 0 marks (not including AO3 marks)

Note – no application to Ahmed – max 4 marks (not including AO3 marks)

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

AO3

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

A sound answer is likely to include:

- an outline of the actus reus and mens rea of the chosen offence(s) with cases to support the outline of the requirements of the offence(s)
- application to the facts showing that the slight external bleeding amounts to a wound or minor injury
- that Ahmed was reckless in that he took the risk of some harm by firing the pistol in the general direction of Julian, showing Cunningham recklessness
- conclusion of chosen offence(s) having been committed.

(AO1 = 3; AO2 = 5; AO3 = 2)

0 4 Discuss the criminal liability of Ahmed for the brain damage caused to Julian.

[8 marks]

Potential Content

- (A) Identification of causing grievous bodily harm with intent under **s18 Offences Against the Person Act 1861** (definition + authority)
- Discussion and application of actus reus of causing gbh - really serious harm (evidenced by permanent brain damage) + cases such as **Smith**
 - Discussion and application of mens rea being intention, ie direct or oblique intention as to causing gbh (evidenced by hitting him many times round the head with the walking stick) + cases such as **Belfon**
 - Possible reference to other cases/examples in support such as **Bollom, Mowatt, Brown and Stratton**

Note – discussion/application of only s20 GBH– max 6 marks

Note – discussion/application of only s47 ABH – max 3 marks

Note – no application to Ahmed – max 4 marks

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- an outline of the actus reus and mens rea of the offence of causing grievous bodily harm with intent under **s18 Offences Against the Person Act 1861** with cases to support the outline of the requirements
- application to the facts showing that the permanent brain damage amounts to grievous bodily harm

- that Ahmed did so intentionally in that he hit him about the head with his walking stick many times
- conclusion of offence of gbh under s18 having been committed.

(AO1 = 3; AO2 = 5)

0 5 Outline the procedural differences between an either-way offence and an indictable offence, **and** briefly explain how this would apply to Ahmed.

[5 marks]

Potential Content

- (A) Outline of an either-way offence
- will be tried at either Magistrates Court or Crown Court – examples such as **s20 Offences Against the Person Act 1861**, **s47 Offences Against the Person Act 1861**
 - if charged with either-way offence, he can elect to be tried in Magistrates Court or the case will be sent to the Crown Court for trial by jury – apply to Ahmed
- Outline of an indictable offence
- can only be tried at Crown Court – examples such as **s18 Offences Against the Person Act 1861**
 - if charged with an indictable-only offence, Ahmed has no choice but to be tried by jury at the Crown Court.

Note – max 3 if no application to Ahmed

Mark Bands

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

A sound answer is likely to include:

- accurate explanations of jurisdiction of courts for both either-way and indictable offences
- application to Ahmed with respect to his potential options for an either-way offence (s20) and no options if charged with an indictable only offence (s18).

(AO1 = 2; AO2 = 3)

0 6 Assume that Ahmed had been convicted of an offence as a result of the brain damage. Discuss the factors that the court would consider before deciding on Ahmed's sentence. **[8 marks]**

Potential Content

- (A) Discussion of the relevant factors, both jurisdictional and personal such as:
- Recognition of maximum penalty available/linked to trial venue
 - Recognition of the 'seriousness' criteria (**CJA 1991**)
 - Reference to other relevant legislation and aims of sentencing
 - Aggravating factors and their effect on sentence
 - Mitigating factors and their effect on sentence
 - Application to Ahmed – aggravating factors: use of weapon(s) (attack with walking stick), vulnerable victim (already injured), repeated hitting of victim round the head; possible unprovoked attack; possible homophobic attack
 - Application to Ahmed – mitigating factors: Ahmed's age and disability; possible racist pressure.

Note – no application to Ahmed – max 4 marks

Mark Bands

- 8 - 7 The student deals with (A) as follows: sound.
- 6 - 5 The student deals with (A) as follows: clear.
- 4 - 3 The student deals with (A) as follows: some.
- 2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

- 0 The answer contains no relevant information.

A sound answer is likely to include:

- a discussion of jurisdictional factors such as maximum penalty for the offence
- aggravating and mitigating factors will be correctly explained with an indication of the effect of each on the starting point for the sentence
- application to Ahmed will focus on his aggravating factors and mitigating factors drawn from the scenario.

(AO1 = 4; AO2 = 4)

Section B Introduction to Tort

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

07	<p>A claimant proves that a duty of care is owed using the three-part test set out in the case of Caparo v. Dickman.</p> <p>Explain the Caparo three-part test.</p> <p style="text-align: right;">[8 marks]</p>
-----------	--

Potential Content

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

Note - there must be accurate definitions and illustrations of all three bullet points for sound, two for clear and one for some

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for

explanation or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- an indication that all three parts of the test in **Caparo v Dickman** must be passed in order to establish a duty of care (assuming one does not already exist)
- each part of the test is then explained by stating the principle, supported by a case that illustrates the principle and an explanation of how the facts of the case show the principle.

(AO1 = 5; AO2 = 3)

0 8 Damage in negligence involves the rules of factual causation **and** the rules of remoteness of damage. Briefly explain these rules.

[8 marks]

Potential Content

(A) Brief explanation, with cases, of factual causation and remoteness

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

Note – if no factual causation – max 6

Note – if factual causation only – max 3

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- a brief explanation of factual causation as the 'but for' test, exemplified by a relevant case, the facts of which are then used to demonstrate factual causation (bullet point 1)
- a brief explanation of remoteness as the 'reasonable foreseeability' test, exemplified by a relevant case, the facts of which are then used to demonstrate remoteness (bullet point 2)
- the answer then deals with the other two bullet points in a similar manner, although a maximum can be achieved without both being entirely accurate or well illustrated, or by one only of these two done well.

(AO1 = 5; AO2 = 3)

0 9 With reference to breach of duty of care, outline what is meant by the reasonable man **and** briefly explain **one** of the risk factors. Briefly discuss whether or not Ken breached his duty of care to Barry.

[10 marks + 2 marks for AO3]

REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

Potential Content

- (A) Outline with cases and/or examples of the meaning of the reasonable man
- objective test – explained through a case such as **Blyth v Birmingham Waterworks**
 - special characteristics of the defendant
 - professionals – explained through a case such as **Bolam v Friern Barnet HMC**
 - learners – explained through a case such as **Nettlehip v Weston**
 - children – explained through a case such as **Mullins v Richards**.

Brief explanation of one of the risk factors and the effect that has on the standard of care, eg:

- special characteristics of the claimant – if known to the defendant to be more vulnerable, then higher standard expected – explained through a case such as **Paris v Stepney BC**
- the size of the risk – the reasonable man does not take care against minute risks, but does against big risks – explained through a case such as **Bolton v Stone**
- practical precautions – taking reasonable but not excessive precautions – explained through a case such as **Latimer v AEC**
- the benefits of taking the risk – emergencies and public utility – explained through a case such as **Watt v Herts CC**.

Brief discussion and application with appropriate conclusion of whether there has been a breach of duty of care by Ken:

- the reasonable man – effect of being a chemistry teacher on the standard expected – **Bolam v Friern Barnet** applied to the reasonable chemistry expert
- application of risk factors such as:
 - size of the risk – known danger from a firework indoors so standard higher – illustrated in a case such as **Bolton v Stone** or **Paris v Stepney Borough Council**
 - practicality of precautions – easy to check where he puts the firework – illustrated in a case such as **Latimer v AEC**.

Note – max 5 if no application (not including AO3 marks)

Mark Bands

10 – 8 The student deals with (A) as follows: sound.

7 – 5 The student deals with (A) as follows: clear.

4 – 3 The student deals with (A) as follows: some

.

2 – 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

AO3

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

A sound answer is likely to include:

- an outline of the idea of the reasonable man, exemplified by relevant cases
- a brief explanation of how his standard of care varies depending on one risk factor, again exemplified by relevant cases
- accurate application of these rules to the facts, having selected appropriate areas for expansion
- conclusion is that duty of care has been breached, based on the fact that Ken is a chemistry teacher and an apparent expert in fireworks so knows the risk of harm; and that he should take more care and that he has not taken precautions that a reasonable man of this type would take in the circumstances.

(AO1 = 3; AO2 = 7; AO3 = 2)

1 0 Discuss how the rules on causation and remoteness, explained in your answer to Question 08, would apply to the damage to Barry's oil painting.

[6 marks]

Potential Content

(A) Application of the rules to the scenario

- Application of factual causation – but for the defendant's breach of duty, the damage to the oil painting would not have occurred – **Barnett v Chelsea & Kensington Hospital Board**
- Application of remoteness of damage – reasonable foreseeability – discussion of whether the damage to the oil painting is reasonably foreseeable or not, given it is totally unexpected – **The Wagon Mound**
- Application of the rule that if some kind of damage of that type is foreseeable, even if the method by which the damage was caused is highly unusual, it will not be too remote – **Hughes v Lord Advocate, Bradford v Robinson Rentals**
- Application of the thin skull rule – the fact there is a very valuable item present is irrelevant **Smith v Leech Brain**
- Reasoned conclusion (potentially either way, depending on the application of bullet points 2 and 3).

Note – factual only max 3

Note – remoteness only max 4

Mark Bands

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

4 The student deals with (A) as follows: clear.

3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation and/or application but neither is clear

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

0 The answer contains no relevant information.

A sound answer is likely to include:

- application of factual causation to damage to the oil painting - concluding there is factual causation
- application of remoteness test from Wagon Mound – is it reasonably foreseeable?
- whatever conclusion is drawn, continuing to analyse both options in the context of type of damage, the method by which the damage was caused and the thin skull rule.

(AO1 = 1; AO2 = 5)

- 1 1** Outline the three-track case management system used in the civil courts **and** briefly explain which track and which court would be used in any claim that Barry could make against Ken. **[5 marks]**

Potential Content

(A)

- Outline of tracks (small claims, fast and multi) + financial limits – Civil Procedure Act 1997 (as amended)
- Brief explanation with respect to Barry's claim – multi-track for entire loss (as likely to be well over £50 000, given injuries on top of damage to kitchen + oil painting (if claimable))
- High Court

Note - Max 3 if no application

Mark Bands

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

A sound answer is likely to include:

- an accurate statement of the limits for each of the three tracks (correctly named)
- a brief explanation of why it will be multi-track
- a brief explanation as to why it is likely to be the High Court based on total value (and complexity).

(AO1 = 3; AO2 = 2)

1 2 Assume that Ken was found liable in negligence. Explain how the court would calculate an award of damages to Barry.

[8 marks]

Potential Content

(A) Explanation of the calculation of damages

- Aim of damages in tort
- General and special damages; pecuniary and non-pecuniary
- Heads of damage (damage to property + expenses incurred, loss of future earnings, loss of amenity, pain and suffering, 'tariff' award based on the injury itself)
- Mitigation
- Structure of awards (lump sum or structured settlement)
- Possible reference to authority, eg **Jefford v Gee**.

Application to Barry

- General damages – personal injury + pain and suffering + loss of amenity
- Special damages stated for damage to kitchen (£20 000) and oil painting (£4000) if not too remote
- Possible reference to special damage payable as lump sum, general damages likely to be agreed as structured settlement given nature of injuries, etc.

Note – account should be taken of depth and breadth, ie a strong application can be balanced by a weaker framework explanation or vice versa

Note - max 5 marks if no application

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- An explanation of the structure (heads) of damages focusing on the distinctions between special and general damages.
- Application to Barry. The idea of lump sum and structured settlement may be explored in the context of known losses (the kitchen (and oil painting) - special damages) and unknown large losses being the consequences of the injuries (general damages + likely to be structured settlement).

(AO1 = 5; AO2 = 3)

Section C Introduction to Contract

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

1 3 Outline when an offer comes into existence **and** briefly explain how an offer can come to an end through lapse of time, and by revocation of the offer.

[8 marks]

Potential Content

(A) Explanation of when an offer comes into existence

- when communicated – eg when it is received and read if written or when heard if oral
- Eg cases such as **Thornton v Shoe Lane Parking**, **Carlill v Carbolic Smoke Ball Co**

Explanation of how an offer can come to an end

- lapse of time
 - ends the offer when a fixed time expires, or
 - if no time is set, after a reasonable time – eg **Ramsgate Victoria Hotel v Montefiore**.
- revocation
 - withdrawal can be made at any time by communicating revocation whilst the offer is open – eg **Routledge v Grant**.

Note - Three accurate definitions and illustrations are needed for sound, two for clear and one for some.

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- an explanation of when an offer comes into existence, supported by example(s)
- an explanation of the two ways in which an offer can end, each way supported by a relevant case or example, the facts of which are used to illustrate the principle.

(AO1 = 5; AO2 = 3)

14	Explain the law on acceptance of an offer by conduct, and acceptance of an offer by post.
-----------	--

[8 marks]**Potential Content**

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

Note – for acceptance by conduct only, or acceptance by post only, max 4 marks

Mark Bands

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

A sound answer is likely to include:

- an explanation of when there is acceptance of an offer by conduct
- an explanation of the postal rule of acceptance
- each supported by a relevant case or example, the facts of which are used to illustrate the principle.

(AO1 = 5; AO2 = 3)

1 5 In relation to contract law, discuss the stages in the negotiations between the Stag Hotel and Megapetals. Indicate when the contract was formed **and** when and how the contract was breached.

[8 marks + 2 marks for AO3]

REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

Potential Content

- (A) Discussion of the stages in the negotiations
- Monday email sent – request for information – no offer
 - Monday email reply – reply to request for information – no offer
 - Tuesday letter arrives – offer made then
 - Tuesday email rejecting offer and making counter offer of £5 500
 - Tuesday telephone call – rejecting counter offer and makes new offer of £6 000 – confirms method of acceptance to be post
 - Tuesday letter of acceptance valid when posted – contract made then – arrival date irrelevant except to indicate that the letter needed to be correctly addressed, stamped and posted
 - Wednesday email is anticipatory breach of contract
 - Conclusion – offer and acceptance complete on Tuesday evening when letter posted. Anticipatory breach when email read.

Note – the above is the expected analysis of the facts. Students may adopt a different approach. Credit fully any alternative, credible approach.

Note – if breach not dealt with – max 6 marks (not including AO3 marks)

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation

0 The answer contains no relevant information.

AO3

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

A sound answer is likely to include:

- a correct discussion of each stage in negotiations stating the legal effect, if any, of each event and/or statements of the parties
- an accurate conclusion, based on that analysis
- a brief discussion of when breach occurs and that it is anticipatory breach.

(AO1 = 0; AO2 = 8 AO3 = 2)

1 6 Explain what is meant by 'consideration' **and** identify the consideration that would exist in the contract between the Stag Hotel and Megapetals.

[8 marks]

(A) Explanation of consideration

- something of value given by each party to a contract to the other – eg **Currie v Misa, Chapple v Nestle, Thomas v Thomas, White v Bluett**
- must move from promisee, eg **Tweddle v Atkinson**
- can be executed or executory
- must not be past consideration – something already done at time of making contract so does not provide some new act or forbearance – eg **Re McArdle, Lampleigh v Braithwaite**

Identification of consideration

- Identification/application of consideration rules to the Stag Hotel and Megapetals, eg cross promises of payment of money in return for the flowers, possible reference to executed/executory

Note – no application to scenario – max 6 marks

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- a definition of consideration, with cases or examples
- an explanation of the key rules of consideration, eg distinction between good consideration and past consideration, with cases or examples
- identification/application of the consideration in the contract between Megapetals and the Stag Hotel – £6000 and flowers.

(AO1 = 5; AO2 = 3)

1 7 Outline the burden **and** standard of proof required for any claim in contract between the Stag Hotel and Megapetals. Briefly explain which court is likely to hear any claim between them.

[5 marks]

Potential Content

- (A) Outline of the burden and standard of proof
- burden of proof lies on the claimant (the Stag Hotel)
 - standard of proof – the Stag Hotel will have to discharge this on the balance of probabilities
 - court likely to be the County Court under small claims procedure.

Note – if court aspect not dealt with, or only court aspect dealt with – max 3 marks

Mark Bands

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

A sound answer is likely to include:

- an accurate outline of the standard of proof and burden of proof in civil cases
- correct brief explanation of the County Court and small claims procedure.

(AO1 = 3; AO2 = 2)

1 8 Outline the law relating to the calculation of damages in contract **and** briefly discuss how this law would apply to any claim arising out of the contract between the Stag Hotel and Megapetals.

[8 marks]

Potential Content

(A) Outline of the way in which the court calculates an award of damages

- the two-stage test in **Hadley v Baxendale, Victoria Laundry v Newman, The Heron II**
- mitigation of loss – buying the flowers elsewhere at short notice

Brief discussion of the Stag Hotel's potential claim

- extra cost of having to buy as a matter of urgency in the marketplace
- subject to any mitigation issues, claim likely to be for around £2000.

Note - no application to the contract between the Stag Hotel and Megapetals - max 5 marks

Mark Bands

8 - 7 The student deals with (A) as follows: sound.

6 - 5 The student deals with (A) as follows: clear.

4 - 3 The student deals with (A) as follows: some.

2 - 1 The student demonstrates limited capacity for explanation

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- an outline of the ways in which damages are calculated in contract claims, shown through the leading cases which are explained using their facts
- an outline of the concept of mitigation of loss
- a brief application of the principles to the facts of the case
- an accurate conclusion.

(AO1 = 4; AO2 = 4)

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW02)

		AO 1	AO 2	AO 3
Section A:				
Question	0 1	5	3	
Question	0 2	5	3	
Question	0 3	3	5	2
Question	0 4	3	5	
Question	0 5	3	2	
Question	0 6	4	4	
Totals Section A		23	22	2
Section B:				
Question	0 7	5	3	
Question	0 8	5	3	
Question	0 9	3	7	2
Question	1 0	1	5	
Question	1 1	3	2	
Question	1 2	5	3	
Totals Section B		22	23	2
Section C:				
Question	1 3	5	3	
Question	1 4	5	3	
Question	1 5	0	8	2
Question	1 6	5	3	
Question	1 7	3	2	
Question	1 8	4	4	
Totals Section C		22	23	2