



AS

Law

LAW02 The Concept of Liability
Mark scheme

2160
June 2016

Version 1.0: Final Mark Scheme

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

0 1	Explain how an omission can be the basis of the actus reus of a crime.
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[8 marks]

- (A) Explanation with cases and/or examples how omissions can amount to an actus reus. This can include:
- contractual duty, eg **Pitwood**
 - public position requiring a person to act, eg **Dytham**
 - Act of Parliament requiring action, eg **Children and Young Persons Act 1933**
 - Creating dangerous situation, eg **Miller**
 - Assumption of responsibility, eg **Stone and Dobinson**
 - Parental responsibility/special relationship, eg **Gibbins and Proctor**.

NB There could be accurate definitions and illustrations of three bullet points for sound, two for clear and one for some, taking into account breadth and depth

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:

- actus reus is the guilty act and usually requires a positive act rather than an omission
- there are exceptions such as are listed in the potential content.

(AO1 = 5; AO2 = 3)

0 2 Explain the meaning of the coincidence (contemporaneity) rule.

[7 marks]

Potential Content

- Explanation of the meaning of the coincidence/contemporaneity rule - actus reus and mens rea must happen at the same time, place and person.
- Explanation of ways the rule has been extended e.g. continuing acts/ superimposed mens rea, Dutch courage, initial mens rea/ later actus reus etc.
- Cases and/or examples in support – eg **Fagan v MPC; Thabo Meli; Church; Gallagher.**

Mark Bands

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

5 - 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

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 meaning of the contemporaneity rule.
- Brief explanation and illustration of case law eg:
 - continuing actus reus with subsequent mens rea such as **Fagan** explained and illustrated
 - continuing mens rea through connected acts (seen as 1 transaction) such as **Thabo Meli** or **Church** explained and illustrated

(AO1 = 4; AO2 = 3)

0 3 Discuss the criminal liability of Aki for the offence of assault on Binh.

[8 marks + 2 marks for AO3]

Potential Content

- (A) Discussion of the law and application of the actus reus and mens rea of assault. This should include:
- a recognition of the fear/apprehension of unlawful force/violence and the lack of the need for any physical injury, possible discussion of sensitivity of victim
 - discussion of intention or recklessness as to creating the fear/apprehension of immediate unlawful force by shouting obscenities and making threats of force/violence
 - Reference to cases such as **Savage, Logdon, Smith v Chief Constable of Woking Police Station, Ireland.**

Max 5 if no application

PLEASE REMEMBER TO AWARD A SEPARATE AO3 MARK FOR THIS QUESTION

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.

Assessment Objective Three

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 explanation of the actus reus and mens rea of the offence of assault with cases to support the requirements of the offence
- an application to the facts showing that fear was caused to Binh by his reaction to the shouting etc
- that Aki intended to cause Binh to apprehend immediate violence or, at least, was reckless as to that result
- conclusion of offence of assault having been committed.

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

0 4 Aki suffered brain damage for which Binh may be charged with inflicting grievous bodily harm under s20 of the Offences Against the Person Act 1861.

Discuss Binh's liability for this offence.

[10 marks]

Potential Content

- Explanation of inflicting grievous bodily harm s20 Offences Against the Person Act 1861:
 - meaning of GBH: cases such as **Bollom, Smith, Brown and Stratton**
 - factual and legal causation (may be developed through application): cases such as **White/Pagett, Cheshire, Smith, Jordan, Blaue**
 - mens rea being recklessness or intention as to some harm: cases such as **Mowatt, Savage, Parmenter**
- Application of s20 to the facts
 - Serious injury in s20 - brain damage is serious harm
 - Factual causation - if Binh had not pushed Aki away, he would not have suffered resulting brain damage. Legal causation - discussion of whether lack of good medical treatment at first visit to doctor breaks the chain of causation - is such failure palpably wrong?
 - Mens Rea of s20 - no intention but recklessness as to some harm as he must have known there was a risk of some harm by pushing someone away roughly, and did so anyway
 - Conclusion

Max 5 if no application

Max 7 if no causation

Max 4 if causation only

Mark Bands

10 – 8	The candidate demonstrates a sound understanding of (A).
7 – 5	The candidate demonstrates a clear understanding of (A).
4 – 3	The candidate demonstrates some understanding of (A).
2 – 1	The candidate demonstrates limited understanding of (A).
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 inflicting grievous bodily harm s20 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
- application of mens rea - recklessness not intention as to some harm
- application of causation rules – cause in fact and cause in law
- conclusion dependent on view of causation/mens rea offence of gbh under s20 being present or not.

(AO1 = 4; AO2 = 6)

0 5 If Aki is charged with assault (a summary offence), outline the following:

- the pre-trial procedure which would be followed **and**
- the burden of proof **and** standard of proof required at this trial.

[7 marks]

Potential Content

- (A) Outline and application of procedure.
- First appearance at Magistrates Court; Trial to be at Magistrates Court
 - Duty solicitor; bail
 - Plea;
 - Legal representation;
 - Pre trial review;
 - Burden of proof on the prosecution;
 - Standard of proof beyond reasonable doubt.

Max 5 for procedure only

Max 2 for burden & standard of Proof only

Mark Bands

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

- accurate outline of procedure for summary offences
- accurate outline of standard of proof
- accurate outline of burden of proof

(AO1 = 4; AO2 = 3)

0 6 If Binh is convicted of inflicting grievous bodily harm:

- outline **two** aims of sentencing **and**
- briefly discuss how **each** of your chosen aims might apply.

[5 marks]

Potential Content

(A) Outline, and brief discussion of the application to Binh, of two aims of sentencing from the following:

- punishment (retribution) - to show society's disapproval of his behaviour
- reduction of crime - is reoffending likely?
- reform and rehabilitation of offenders - to help Binh be a little more cautious in using physical force where none has been received
- protection of the public - he has no previous convictions
- reparation by offenders - this may be appropriate because of the nature of the injuries
- general and individual deterrence
- possible reference to s142 of CJA 2003

Max 3 if no application

Mark Bands

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

A sound answer is likely to include:

- an outline of and brief discussion of the application to Binh of two aims of sentencing.
(AO1 = 3; AO2 = 2)

Section B Introduction to Tort

0 7 Breach of duty of care involves the failure to reach the standard of care of the reasonable man, taking into account various risk factors.

Briefly explain how the law sets the standard of the reasonable man for the breach of duty of care, **and** briefly explain any **one** risk factor that may affect the standard.

[8 marks]

Potential Content

(A) Brief explanation with cases and/or examples of the meaning of the reasonable man eg:

- objective test – explained through a case such as **Blyth v Birmingham Waterworks**
- special characteristics of the defendant
 - professionals – explained through a case such as **Bolam v Friern Barnet HMC**
 - learners – explained through a case such as **Nettleship v Weston**
 - children – explained through a case such as **Mullins v Richards**.

(B) Brief explanation with cases of the meaning of any one risk factor and the effect that has on the standard of care eg:

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

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

Mark Bands

- 8 – 7 The student deals with (A) and (B) as follows:
Max 8: **one** sound, **one** clear
Max 7: **one** sound, **one** some or **two** clear
- 6 - 5 The student deals with (A) and (B) as follows:
Max 6: **one** sound or **one** clear, **one** some
Max 5: **one** clear or **two** some
- 4 - 3 The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)
- 2 - 1 The answers consists of brief, fragmented comments or examples so that no coherent explanation emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

A sound answer is likely to include:

- a brief explanation of the idea of the reasonable man, exemplified by relevant cases
- a brief explanation of how his standard of care varies depending on the chosen risk factor, again exemplified by relevant case(s).

(AO1 = 5; AO2 = 3)

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

[8 marks]

Potential Content

(A) Explanation, with cases, of remoteness

- explanation of the meaning of remoteness of damage – reasonable foreseeability test, eg **The Wagon Mound**
- 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**
- explanation of the effect of the thin skull rule, eg **Smith v Leech Brain**.

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 remoteness as the 'reasonable foreseeability' test, exemplified by a relevant case, the facts of which are then used to demonstrate remoteness
- the answer then deals with the other two bullet points in a similar manner.

(AO1 = 5; AO2 = 3)

0 9 Discuss how the rules on causation and remoteness would apply to Dan's lost earnings **and** his losses arising from being unable to attend an interview for promotion.

[8 marks + 2 marks for AO3]

Potential Content

- (A) Application of the rules to the scenario
- Application of factual causation – but for the defendant's breach of duty, the lost earnings and failed promotion would not have occurred – **Barnett v Chelsea & Kensington Hospital Board**
 - Application of remoteness of damage – reasonable foreseeability – discussion of whether the two losses are reasonably foreseeable or not. For example, general loss of earnings are likely to be foreseeable, but the missed promotion is less likely to be foreseeable by Chris – **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 Dan is very susceptible to bad food is irrelevant **Smith v Leech Brain**
 - Reasoned conclusion (probably as in bullet point 2 but credit alternative application/conclusion based on bullet point 3).

Max 6 if only earnings OR promotion dealt with

PLEASE REMEMBER TO AWARD A SEPARATE AO3 MARK FOR THIS QUESTION

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.

Assessment Objective Three

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:**The lost earnings**

- application of factual causation to damage - concluding there is factual causation
- application of remoteness test from Wagon Mound – is it reasonably foreseeable?
- application of the thin skull rule – irrelevancy of Dan’s susceptibility
- application of the rule relating to method of causing damage
- reasoned conclusion drawn from that application.

The failed promotion

- application of factual causation to damage - concluding there is (probably) factual causation
- application of remoteness test from Wagon Mound – is it reasonably foreseeable?
- application of the thin skull rule – irrelevancy of Dan’s susceptibility
- reasoned conclusion drawn from that application.

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

- 1 0** Outline the **Caparo** three-part test used to decide whether a duty of care is owed **and** briefly discuss whether or not Chris owed a duty of care to Euan.

[8 marks]

Potential Content

- (A) Outline and application of **Caparo v Dickman** three-part test with appropriate conclusion that a duty of care is owed:

- it is reasonably foreseeable that anyone eating the food would suffer loss (become ill) as a result of eating the contaminated food - eg **Kent v Griffiths**
- they are proximate in terms of relationship - food producer and ultimate consumer - eg **Donoghue v Stevenson**, arguably proximity in terms of time and space
- there is no reason to exclude liability as there is no public policy reason for this on the grounds of extending categories of liability or protecting public services - eg **Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council**

Max 5 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:

- Description of three part test together with application to the facts as set out in the potential content.
- Conclusion based on the arguments put forward.

(AO1 = 5; AO2 = 3)

1 1 Dan decides to sue Chris for negligence. Outline the procedure which would be followed before a trial takes place.

[5 marks]

Potential Content

(A) Outline procedure. This could include:

- negotiation of claim or other possible methods of dispute resolution
- pre-action protocol
- venue
- claim form
- response to claim by defendant
- allocation to track
- case management
- disclosure of documents
- specialist medical reports

Max 1 for only dealing with tracks

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:

- Outline procedure set out in a logical order. The answer may not include all the points listed but will show a logical progression and not just concentrate on tracks.

(AO1 = 3; AO2 = 2)

1 2 Briefly explain **both** of the following:

- the rules relating to burden and standard of proof in a civil case
- the rules relating to res ipsa loquitur.

Briefly explain how these rules may apply in Dan's claim against Chris.

[8 marks]

Potential Content

(A) Brief explanation and application of these rules. This may include:

- recognition that proof of breach of duty normally rests with the claimant, on the balance of probabilities
- recognition that res ipsa loquitur involves an obvious case of negligence
- some development of the res ipsa loquitur rule ie that the thing that causes the harm was wholly under the control of the defendant; the accident would not have happened unless someone had been negligent; there is no other explanation of the injury caused to the claimant.
- where res ipsa applies, the burden of proof shifts to the defendant.
- cases in support, eg **Byrne v Boadle, Pearson v NW Gas Board, Mahon v Osborne, Scott v London and St Katherine's Docks**
- application to Dan ie that normally burden of proof lies on the claimant (Dan), on the balance of probabilities, but this burden would shift to Chris if res ipsa loquitur applied
- reasoned conclusion based on whether the 'standard' rule or the res ipsa loquitur rule applies.

Max 2 if burden and standard of proof only

Max 6 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:

- a brief explanation/application of the burden and standard of proof rules in civil cases
- a brief explanation/application, supported by cases, of the res ipsa loquitur rule
- a reasoned conclusion based on both of the above bullet points.

(AO1 = 4; AO2 = 4)

Section C Introduction to Contract

1 3 Briefly explain how an offer can come to an end by counter-offer, by rejection and by revocation of the offer.

[8 marks]

Potential Content

- (A) Explanation of how an offer can come to an end.
- Counter offer– once communicated, rejects the original offer and opens a new offer eg **Hyde v Wrench**.
 - Rejection – once rejection is communicated, an offer cannot be accepted
 - Revocation - withdrawal can be made at any time by communicating revocation whilst the offer is open eg **Routledge v Grant**.

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 the stated three ways in which an offer can end; counter offer and revocation supported by a relevant case, the facts of which are used to illustrate the principle.

(AO1 = 5; AO2 = 3)

1 4 Explain the meaning of ‘intention to create legal relations’.

[8 marks]

Potential Content

(A)

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

NB Max 5 marks if only commercial or social/domestic explained.

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 intention to create legal relations in commercial situations showing the rebuttable presumption in operation and it being rebutted by reference to decided cases.
- an explanation of intention to create legal relations in domestic situations showing the rebuttable presumption in operation and it being rebutted by reference to decided cases.

(AO1 = 5; AO2 = 3)

1 5 In relation to contract law, discuss the stages in the negotiations and indicate whether a contract was formed between:

- Fay and Gareth
- Fay and Harry.

[8 marks + 2 marks for AO3]

Potential Content

- (A) Discussion of the stages in the negotiations.
- Text message asking price to each of them is an invitation to treat – no offer.
 - Gareth’s reply is merely giving a reply to a request for information – credit alternative view that this is an offer with subsequent appropriate analysis including a further contract for the delivery.
 - Harry’s reply is an offer.
 - Fay’s text to Gareth is an offer.
 - Gareth’s reply to Fay is either a counter offer or an offer for a second contract to provide Delivery.
 - Fay’s reply of ‘OK’ is acceptance of the offer(s) for bales and delivery from Gareth.
 - Fay’s reply to Harry is an attempt to accept the offer which has probably ended through lapse of time (accept either view providing issue of time lapse is raised). Alternative that there was never an offer from Harry, merely a reply to a request for information, in which case Fay makes an offer that Harry rejects.
 - Conclusion – offer and acceptance (contract) complete with Gareth but not with Harry (subject to alternative set out above).

PLEASE REMEMBER TO AWARD A SEPARATE AO3 MARK FOR THIS QUESTION

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

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. |

Assessment Objective Three

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.
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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 between Fay and Gareth and between Fay and Harry
- an accurate conclusion, based on that analysis

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

1 6 Explain the difference between actual breach and anticipatory breach.

If both Gareth and Harry were in breach of their separate contracts with Fay, briefly explain whether their breaches would be actual or anticipatory.

[8 marks]

Potential Content

(A) Explanation and application of actual and anticipatory breach of contract

- Explanation of actual breach and anticipatory breach, showing the distinction between breach and anticipatory breach
- both are forms of breach, but anticipatory breach takes place before the date due for performance of the contract – explained through cases such as **Hochster v De La Tour**; **Poussard v Spiers**, **White and Carter Councils v McGregor**, **SK Shipping (S) Pte Ltd v Petroexport Ltd**
- claimant can start action as soon as anticipatory breach occurs – does not have to wait to see if performance takes place
- claimant is not required to accept anticipatory breach and can continue with performance
- actual breach – the breach is established and a right of action follows.

Application to the scenario:

- Gareth is in (actual) breach of contract by failing to deliver the agreed number of bales.
- Harry would be in anticipatory breach because it occurs before performance would be due.

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 difference between actual and anticipatory breach explained through the cases
- Application to Gareth (actual breach) and Harry (anticipatory breach or no breach because there was no contract to breach)

(AO1 = 5; AO2 = 3)

1 7 Assuming that Fay sues Gareth for breach of contract, outline the procedure which would be followed before a trial takes place.

[5 marks]

Potential Content

(A) Outline procedure. This could include:

- negotiation of claim or other possible methods of dispute resolution
- pre action protocol
- venue
- claim form
- response to claim by defendant
- case management
- disclosure of documents
- allocation to track

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:

- outline procedure set out in a logical order. The answer may not include all points listed but will show a logical progression.

(AO1 = 3; AO2 = 2)

1 8 Outline the burden **and** standard of proof required for any claim in contract between Fay and Gareth.

Briefly explain:

- the three track system
- which court and which track is likely to be used to hear any claim between Fay and Gareth?

[8 marks]

Potential Content

- (A) Outline of the burden and standard of proof and brief explanation and application of the three-track system.
- burden of proof lies on the claimant (Fay)
 - standard of proof – Fay will have to discharge this on the balance of probabilities (outline explanation of what this means)
 - brief explanation of the three track system
 - court will be the County Court under small claims track as the claim is for less than £10,000.

Note – if court aspect not dealt with, or only court aspect dealt with – max 3 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 accurate outline of the standard of proof and burden of proof in civil cases
- correct brief explanation of the three-track system
- application to the County Court and small claims track as Fay's claim is for less than £10,000.

(AO1 = 4; AO2 = 4)

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW02)

Section A			AO1	AO2	AO3
Question	0	1	5	3	
Question	0	2	4	3	
Question	0	3	3	5	2
Question	0	4	4	6	
Question	0	5	4	3	
Question	0	6	3	2	
Totals			23	22	2

Section B			AO1	AO2	AO3
Question	0	7	5	3	
Question	0	8	5	3	
Question	0	9	0	8	2
Question	1	0	5	3	
Question	1	1	3	2	
Question	1	2	4	4	
Totals			22	23	2

Section C			AO1	AO2	AO3
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			22	23	2